



Universities UK

External speakers in higher education institutions



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USING THIS GUIDANCE

The two main sections of the guidance cover (1) the legal context within which external speaker decisions must be made (Part 1) and (2) the practical components of securing freedom of speech within the law (Part 2). A small number of case studies are provided in Part 3.

FOREWORD

‘It is better to debate a question without settling it than to settle a question without debating it.’

Joseph Joubert, French essayist and moralist

Free speech is fundamental to the role of universities. As a matter of law, universities in England and Wales have a statutory duty to secure freedom of speech, reflecting their mission as places where new ideas can be advanced and where open and free debate can and must take place.

However, free speech is not an unqualified privilege. Universities are subject to a range of legislation and obligations, including those relating to equality, security and charity law. These responsibilities have been explored in previous Universities UK publications, particularly *Freedom of speech on campus: rights and responsibilities in UK universities* (2011).

One area that we felt deserved further attention was in relation to external speakers. The open and uncensored debate that is so rightly treasured by universities often involves contributions from external speakers. Invitations to external speakers play a central role in university life, not least in terms of allowing students to be exposed to a range of different beliefs, to challenge other people’s views and to develop their own opinions. Although most speakers are uncontroversial, some will express contentious, even inflammatory or offensive, views. In some cases, their presence on campus may be divisive. Universities have to balance their obligation to secure free speech with their duties to ensure that the law is observed, which includes promoting good campus relations and maintaining the safety and security of staff, students and visitors. In practice, achieving this balance is not always easy.

Drawing on existing practice within the sector, this guidance seeks to map out the different factors that universities may wish to consider when drawing up policies and protocols for external speakers, reflecting both their legal obligations and their practical application. There is no one simple solution to the issues that emerge, and this guidance does not seek to prescribe a single model. Institutions vary according to their mission, demography, size, location and structure, and their ways of managing external speakers will vary accordingly. Recognising that every institution is different, this guidance instead provides a framework for reviewing and enhancing existing processes.

Thanks are due to the wide range of organisations and individuals whose expertise and experience provided vital input during the development of this guidance.



Nicola Dandridge
Chief Executive, Universities UK

INTRODUCTION AND OVERVIEW

Freedom of speech lies at the heart of universities' missions. In fact universities in England and Wales have an express legal duty to secure freedom of speech.

But free speech is not open-ended or absolute; universities must take account of other considerations, including a range of relevant legislation. Balancing all these different considerations and legal provisions is a complicated process, particularly in relation to invitations to external speakers. This guidance seeks to provide practical assistance to universities in steering a path through all the different considerations, legal and otherwise, that arise in the context of inviting external speakers on campus.

The guidance builds on Universities UK's 2011 publication *Freedom of speech on campus: rights and responsibilities in UK universities* which recommended that universities should 'review current protocols/policies on speaker meetings to ensure they are up to date and relevant, and are aligned with the students' union's protocols and policies'. It will be of relevance to a range of university staff including those with overall responsibility for external speaker policies and those involved in the consideration of external speaker requests.¹ It complements resources published by the National Union of Students, Equality Challenge Unit and Charity Commission.²

Institutions are autonomous bodies with the freedom to determine their own external speaker processes. This may result in institutions taking different approaches to when and how external speaker requests are made and handled, to the information they request from those organising external speaker events and to the individuals they involve in making decisions about individual external speaker requests. In contrast, adherence to the law is not optional and applies to all institutions.

This guidance will apply to a range of activities involving external speakers. Examples include visiting lecturers invited by academic staff, religious and political representatives speaking on-campus and events such as debates, speeches and conferences taking place in university facilities that have been organised by staff, students and external bodies. The majority of external speaker requests will be straightforward and low-risk. However, some will be complicated and will require further consideration. A number of the steps identified in this guidance will only apply in a minority of circumstances – to events or speakers deemed to be higher-risk.

Institutions must ensure that their external speaker processes adapt in response to geopolitical or socioeconomic events, legislative changes and other factors. Consideration should also be given to what oversight is in place of events taking place in institutions or establishments in foreign countries that are formally linked to an institution in the UK. Whilst the legal framework will differ for events held overseas, they will nonetheless pose similar reputational risks should views outside the law be propagated. Some UK legislation, notably anti-terrorism legislation, can apply to activities outside the UK.

In order to make well-informed decisions, universities must ensure that they have effective procedures in place to consider each external speaker request. This is not simply a question of drafting a written policy (such as a Code of Practice on Freedom of Speech, which is a legal requirement in England and Wales), but also of ensuring it is clearly communicated, adhered to and reviewed regularly. This guidance provides a framework for individual institutions to review their existing approach to managing external speakers. It focuses not only on bureaucratic considerations such as how speaker requests are made, but also more complicated issues of how to make informed decisions on individual speakers and what mitigating actions might enable external speaker events to proceed within the law.

¹ This includes vice-chancellors, governing bodies of higher education institutions, academic registrars, heads of university security, heads of student services, university chaplains, equality and diversity officers, directors of estates and conference and event managers.

² For other resources, please see Annexe C.

1: A SUMMARY OF THE LEGAL CONTEXT

Universities operate in a complex legal environment. It is vital that all individuals involved in considering external speaker requests understand this legal framework and access appropriate legal advice where necessary.

Whilst academic freedom and freedom of speech are fundamental to the role and success of universities, they are not unqualified rights. This section sets out in brief the complex legal framework within which decisions about external speakers must be made. Further information can be found in Annexe A and examples of how the law might apply in practice in Part 3: External speaker case studies.

The legal context in overview

Freedom of speech, human rights and academic freedoms are rightly regarded as important foundations of a modern democratic society. The law places strong positive duties on universities³ to secure freedom of speech for staff, students and visiting speakers.⁴ These concepts are very familiar to universities and their staff, and are closely aligned with encouraging wide ranging debate, research and teaching that is not afraid to address controversial issues. Part of the process of encouraging vibrant, thought provoking and challenging debate on controversial issues involves the presence of external speakers on university or students' union premises, either at the request of the university, or at the request of a students' union or student society, in accordance with the university's external speaker policy.

However, whilst the law promotes and protects freedoms of speech and debate, the law also places limits on those freedoms, both in a university setting and elsewhere. The freedoms which the law protects and promotes are freedoms *within the law*. So the protection of freedom of speech does not extend, for

example, to allowing a speaker to commit a criminal offence in the course of speaking. Examples of criminal offences which might fall into this category are using threatening, abusive or insulting words or behaviour in circumstances where it is likely that racial hatred will be stirred up (or with such intention), or inviting support for a proscribed terrorist organisation. However, it should be noted that these provisions do not create a broad right not to be offended. Expressing views which some people may find objectionable or offensive is not prohibited generally – it is only where the specific requirements of the criminal offences are met that freedom of speech will be restricted by the criminal law.

In addition to the limitations on freedom of speech imposed by the criminal law, there are also aspects of the civil law that can be relevant to external speaker events. The civil law provides remedies, for example, where a speaker defames another person.

When considering the balance between the laws which promote freedom of speech and those which restrict it, the laws relating to equality and discrimination also become relevant, including the duties placed on universities to have due regard to the need to prevent discrimination, harassment and victimisation.

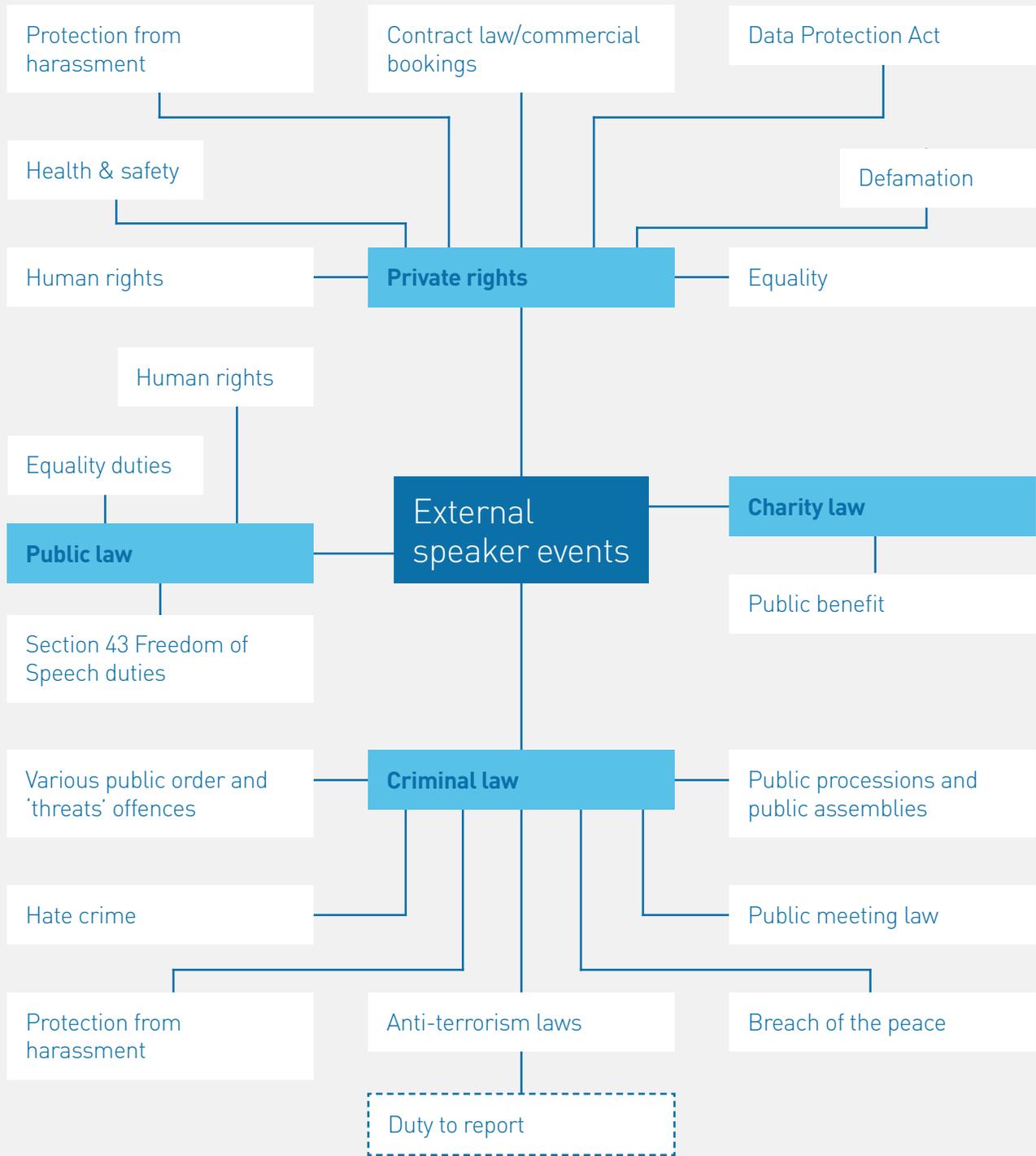
In addition to the fundamental legal principles outlined above, other legal frameworks become relevant when it comes to dealing with practical issues concerning external speaker events. If a proposed speaker is particularly controversial, there may be risk of protest, which in turn may focus particular attention to the health and safety of all concerned. Speakers may also attract media attention and become the focus of extensive social media activity. If a speaker is suspected of involvement in criminal activity, it may be necessary to consider whether information about the speaker should be shared with the police, in which case obligations under the Data Protection Act will need to be considered.

These legal frameworks can also be potentially relevant to the activities of third party organisations that book university premises for speaking events.

³ In the context of this guidance, thought must be given to the range of different university and higher education institution structures. The particular legal structure and funding of institutions may need to be considered when determining the legal obligations on an institution, particularly where those legal obligations are matters of public law. Some of these questions are considered more fully in Annexe A.

⁴ The duties apply to universities in England and Wales; see pages 6 and 32 in relation to Scotland and Northern Ireland.

Diagram 1: External speakers – overview of the legal framework



In many cases applying these laws in relation to decisions regarding an external speaker event will be straightforward. However, in some cases, most likely those involving controversial speakers or controversial subject matter, these judgments need to be exercised with particular care and attention.

There are a wide range of potentially controversial topics and speakers, and in part because they are controversial they are of genuine interest to students and the academic community, both on a personal level and as a matter of academic debate. The law does not seek to prevent such open debate in universities. On the contrary, universities have a statutory duty to secure free speech. Universities need, however, to be aware of the legal framework which sets the boundaries, so that they are able to operate within them.

The legal framework governs all aspects of activity relating to external speakers, from drafting and reviewing a policy or code of practice on freedom of speech and external speakers, to making decisions under that policy, to dealing with urgent questions which might arise in the context of a controversial speaker, and to cases where the police ask for assistance.

Because of the overlapping nature of the laws involved and the variety of factual issues that can arise, it is impossible to provide a succinct summary of the law that will cover every situation, but the following summary seeks to draw together the key provisions so that institutions are able to review their policies, and are informed about the legal framework that applies to their decisions. Some legal concepts are explained further in Annexe A, but neither this summary nor the annexe are intended as a substitute for obtaining legal advice in appropriate cases.

Summary of the key legal issues

The key legal issues that are considered in relation to external speakers are:

- The duty to secure freedom of speech within the law
 - Human rights law
 - Equality law
 - Criminal law (including anti-terrorism laws)
 - The duty of care to staff, students and visitors
 - Civil law claims relating to spoken words
 - Data sharing
 - Charity law
 - Law relating to security staff
 - Students' unions
 - Third party bookings of university/ students' union premises
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The duty to secure freedom of speech within the law

Section 43(1) of the Education (No 2) Act 1986 places a direct obligation on universities⁵ in England and Wales⁶ to 'take such steps as are **reasonably practicable** to ensure that **freedom of speech within the law** is secured for **members, students and employees** of the establishment and for **visiting speakers**'.

This duty 'within the law' extends to ensuring '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 (a) the **beliefs or views** of that individual or of any member of that body; or (b) the **policy or objectives** of that body.'

For the purposes of the Act, the university's duty extends to students' union premises, even if the university does not own them (see page 12 for more information).

Pursuant to the s.43(1) duty, the Act also requires universities to issue and keep updated a code of practice setting out the procedures to be followed by members, students and employees in connection with the organisation of meetings and activities, and the conduct required of them. The university's governing body may include such other matters in the code as it considers appropriate.

The university is also under a duty to take such steps as are '**reasonably practicable (including where appropriate the initiation of disciplinary measures) to secure that the requirements of the code... are complied with**'. For example, this may apply to a situation where an individual or group behaves in a way which seeks to prevent an invited speaker from proceeding with their speech; institutions should, however, check that their disciplinary procedures allow action to be taken in such circumstances.

This statutory duty does not apply in Scotland but there is a strong tradition of freedom of speech at Scottish universities and the human rights and equalities law discussed later in this section apply directly to impose legal duties on Scottish universities in relation to freedom of speech.

In Northern Ireland, the Education (Academic Tenure) (Northern Ireland) Order 1988 protects academic staff from losing their jobs or privileges as a result of putting forward or testing new, controversial or unpopular opinions within the law. This does not extend to guests or visiting speakers, however.

The concept of 'academic freedom' is not directly applicable to external speakers, but is a question of employment law between the academic and his or her employing institution. The reasons for this are explained in Annexe A.

Some practical advice

Duty to secure freedom of speech within the law

- Obtain relevant background information to enable an informed decision to be made on whether the event can proceed within the law.
- Decide whether it is reasonably practicable to take measures to enable the event to proceed within the law (eg by applying conditions or taking other action within the institution's powers).
- Ensure that a code of practice is in place, that any reasonably practicable steps are taken to ensure compliance, and that it is kept updated.

⁵The s.43 duty applies to 'Every individual and body of persons concerned in the government' of the university, but see the note at the end of Annexe A as to how 'university' is defined in this and other legislative contexts.

⁶See page 32 in relation to Scotland and Northern Ireland.

Human rights law

The Human Rights Act 1998 ('the HRA') in effect incorporates significant elements of the European Convention on Human Rights into UK law⁷. Universities⁸ need to have regard to the HRA when making decisions about external speakers, both since they may be public authorities for certain purposes, and because the UK courts are obliged to interpret UK law in accordance with the Act. The following rights are of potential relevance to external speakers:

- Article 9: freedom of thought, conscience and religion. This right includes an individual's 'freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance'.
- Article 10: freedom of expression. This right includes 'freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers'.
- Article 11: freedom of assembly and association.

These rights are qualified rights, which broadly means that national laws can place limitations on them to the extent necessary in a democratic society in order to protect matters such as public order, public safety, crime prevention, national security and the protection of the rights and freedoms of others.

Article 14 prohibits discrimination in relation to the enjoyment of the above rights on *any ground such as 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'*.

Equality law

Universities owe duties to both staff and students under the Equality Act 2010 (in England, Wales and Scotland⁹), and in some respects these duties can extend to the activities of external speakers.

The Act prohibits unlawful discrimination in relation to certain 'protected characteristics', namely age, disability, gender reassignment, marriage¹⁰ and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The meaning of the phrase 'religion or belief' is likely to have particular importance in relation to some external speaker events. It has been widely interpreted in the employment law context and advice should be sought if it is unclear whether a 'religion or belief' is engaged. In outline, the definition includes various aspects of religious and non-religious beliefs and political philosophies, although there is ongoing legal debate as to the extent to which it protects membership of political parties and similar political organisations.¹¹

Unlawful discrimination can occur in various ways:

- through 'direct' discrimination (less favourable treatment because of a protected characteristic)
- through 'indirect' discrimination (the application of a provision, criterion or practice which has a discriminatory effect on someone with a protected characteristic)
- through harassment (engaging in 'unwanted conduct' related to a protected characteristic, which includes verbal harassment)
- through victimisation (subjecting someone to detrimental treatment because they seek to bring proceedings under the Equality Act, for example)

⁷ The HRA applies in England, Wales, Scotland and Northern Ireland. Strictly speaking 'UK law' is a misnomer, but is used in this summary as a shorthand where the law is identical in all jurisdictions of the UK.

⁸ See note at the end of Annexe A as to how 'university' is defined in this and some other legislative contexts.

⁹ See footnote 11 in relation to Northern Ireland.

¹⁰ Once enabling legislation has brought it into force, the Marriage (Same Sex Couples) Act 2013 will allow same sex couples to marry and obtain the same legal benefits and protections as other married couples, including under the Equality Act.

¹¹ This matter is specifically covered in Northern Ireland under Article 3 of the Fair Employment and Treatment (Northern Ireland) Order 1998 and section 75 of the Northern Ireland Act 1998.

Again, this is only a brief outline of the concepts and advice should be sought if it is necessary to consider the provisions in detail. For example, in relation to 'harassment', a university can be liable for the harassment of staff by third parties, such as external speakers.¹² Furthermore, under the Public Sector Equality Duty, universities are obliged to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and other conduct prohibited by the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and those who do not
- foster good relations between persons who share a relevant protected characteristic and those who do not

At present, the Equality Act 2010 does not extend to Northern Ireland. However, there is various similar anti-discrimination legislation in Northern Ireland (see Annexe A). There is also an 'equality' and 'good relations' duty in s.75 of the Northern Ireland Act 1998 which requires public authorities to have due regard to the need to promote equality of opportunity:

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation
- between men and women generally
- between persons with a disability and persons without
- between persons with dependants and persons without

Public authorities in Northern Ireland are also required to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

Universities will therefore need to have due regard to their obligations under equality legislation when (for example) considering what policies and codes of practice to adopt, and when making decisions about external speaker events.

Some practical advice

Equality law

- Comply with the Public Sector Equality Duty and equality law when drafting and applying policies and making decisions.
- Institutions may be liable for the harassment of staff by third parties.

Criminal law (including anti-terrorism legislation)

A number of criminal offences can be committed by spoken words, typically involving threats of violence or certain categories of 'hate crime'. In relation to anti-terrorism legislation, there are also offences in connection with arranging or attending meetings and terrorist training events. Examples which illustrate the range of offences are:

- threats of violence
- using threatening, abusive or insulting words¹³ or behaviour or disorderly behaviour within hearing of someone likely to be caused harassment, alarm or distress
- using threatening, abusive or insulting words or behaviour to another person **with intent** to cause that person to believe that immediate unlawful violence will be used against him or another; or to provoke the immediate use of unlawful violence by another; or to cause another to believe that such violence will be used or is likely to be provoked¹⁴

¹² On 1 October 2013 the third party harassment provisions in s.40 of the Equality Act 2010 were repealed by s.65 of the Enterprise and Regulatory Reform Act 2013. However, employers may still be liable for failing to prevent such harassment under other provisions of the Equality Act.

¹³ Note: 'insulting words' will be removed from the scope of the offence of causing harassment, alarm or distress once s.57 of the Crime and Courts Act 2013 is brought into force, on a date to be announced.

¹⁴ The offences under the Public Order Act 1986 concerning the use of threatening or abusive words do not apply in Scotland, but this conduct can amount to criminal conduct as a matter of common law in Scotland and may amount to breach of the peace.

- using threatening, abusive or insulting words or behaviour either with the intention of stirring up racial hatred, or in circumstances where it is likely racial hatred will be stirred up
- using threatening words or behaviour with the intention to stir up religious hatred, or hatred on the grounds of sexual orientation, subject to certain free speech protections
- speech which constitutes a 'course of conduct' amounting to harassment within the meaning of the Protection from Harassment Act 1997¹⁵

In addition to the general criminal laws referred to above, the anti-terrorism legislation also creates various offences which might be relevant when considering external speaker issues. It is beyond the scope of this guidance to set out every provision in detail, but in outline the offences are:

- professing to belong to a 'proscribed organisation'¹⁶
- inviting support for a proscribed organisation
- arranging or managing a meeting of three or more persons which is known: (a) to support a proscribed organisation; or (b) to further the activities of a proscribed organisation; or (c) to be addressed by a person who belongs to or professes to belong to a proscribed organisation. It is also an offence to assist in arranging or managing such meetings
- addressing a meeting of three or more persons where the purpose of the address is to encourage support for a proscribed organisation or to further its activities
- wearing, carrying or displaying clothing or articles which arouse reasonable suspicion of membership or support of a proscribed organisation
- inviting another to provide money or other property with the intention that it should be used, or having reasonable cause to suspect it might be used for the purposes of terrorism
- providing or receiving training in relation to 'terrorism skills' or 'weapons training'
- attendance at a place used for terrorist training

- collection or possession of information useful for acts of terrorism
- inviting another to provide money or property with the intent that it should be used (or having reasonable grounds to suspect it will be used) for terrorist purposes. There are various other 'terrorist property offences'
- publishing statements encouraging terrorism and disseminating terrorist material

This list outlines a number of detailed criminal offences, but in order to assess whether an offence has been committed it is necessary for the precise requirements of the relevant statute to be met. The legislation does specify that certain defences to these offences are available in some circumstances, but a detailed exposition of these is beyond the scope of this guidance. The statutory definition of 'terrorism' is outlined in Annexe A.

Another category of both criminal and anti-terrorism offences which might be relevant to external events are those which relate to written (including electronic) material. In the context of an external speaker event, it is possible that such offences could be committed through publicising the event, if the requirements of the relevant statutory provision are met (broadly these relate to offences of publishing statements encouraging terrorism and disseminating terrorist material). Some further details are set out in Annexe A.

In addition to the categories of offences outlined here, which are most likely to be relevant to speaker events, there are various other associated anti-terrorism offences which are beyond the scope of this guidance.

It is also worth noting that in certain cases, acts that are committed outside the UK can be considered offences under UK terrorism legislation.

Offences of failing to report certain terrorism activities and offences

Generally, there is no legal obligation to prevent or report criminal activity under UK law; however, in the case of certain terrorism activities and offences, the law does in certain circumstances impose a positive duty to report matters to the police, and failure to comply is a criminal offence. Details of the scope of the two offences are set out in Annexe A.

¹⁵ In Northern Ireland the equivalent legislation is the Protection from Harassment (Northern Ireland) Order 1997.

¹⁶ A list of proscribed organisations is published by the Home Office, available at: <https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations>

In cases where suspected terrorist or other criminal activity does not fall within the scope of the 'duty to disclose' offences, an institution wishing to consider making a disclosure to the police will still need to consider issues relating to data sharing under the Data Protection Act 1998 (see page 11).

Breach of the peace

Although not technically a criminal offence in England, Wales and Northern Ireland, both the police and ordinary citizens have powers to arrest in relation to a breach of the peace. Again, it is not the intention of this guidance to provide a detailed explanation of the law relating to breach of the peace. In Scotland breach of the peace does constitute a criminal offence which is subject to prosecution and, by contrast with the rest of the UK, a member of the public may not carry out an arrest solely in relation to breach of the peace.

Concern that a breach of the peace may occur (in addition to other criminal offences) may be a factor when considering a university's duty of care in relation to staff, students and visitors (see page 11), but any decisions would need to be based on cogent evidence, taking account of the university's other duties, including those in relation to freedom of speech outlined earlier.

Public meetings

If there are concerns that a meeting will be disrupted, one option may be to declare the meeting to be a 'public meeting'. Police have further powers in relation to such meetings under the Public Meeting Act 1908 (in England and Wales)¹⁷.

Under the Act, it is an offence to act in a disorderly manner for the purpose of preventing the transaction of the business for which a lawful public meeting was called. It is also an offence to incite someone to act in such a manner.

In Northern Ireland this falls under the Public Order (Northern Ireland) Order 1987 (the 1987 Order). Under Article 7 of the 1987 Order any person who, at a lawful public meeting, acts in a disorderly manner for the purposes of preventing the transaction of business for which the meeting was called together shall be guilty of an offence. A public meeting is defined as any meeting in a public place and any meeting which the public or any section of the public is permitted to attend, whether for payment or otherwise.

Offences relating to public processions and assemblies and 'trespassory assemblies'

Further offences are created by the Public Order Act 1986¹⁸ in relation to potentially disruptive processions and assemblies in certain circumstances. Some further details are set out in Annexe A.

Some practical advice

Criminal law (including anti-terrorism legislation)

- Generally universities have no duty to report or prevent criminal offences, except in specific cases involving certain terrorism offences.
- A range of criminal offences can apply to certain threatening, abusive or insulting words, but only if the requirements of a specific offence are met.
- Consider what assurances might be sought from speakers if concerns are raised that they may breach the criminal law. If these are provided, it will still be necessary to consider other legal issues such as health and safety concerns.
- Anti-terrorism legislation contains further restrictions, eg in relation to proscribed organisations and terrorist training.
- If a decision is taken to declare a meeting open to the public, the police have additional powers.
- There can be a requirement to notify the police in advance of 'public processions'.

¹⁷ Article 7 of the Public Order (Northern Ireland) Order 1987 contains similar provisions (see Annexe A).

¹⁸ Most but not all parts of the Public Order Act 2006 apply in Scotland. The Civic Government (Scotland) Act 1982 applies to public processions in Scotland. The equivalent legislation in Northern Ireland is the Public Order (Northern Ireland) Order 1987 which governs, inter alia, open-air public meetings. Note that the provisions are not identical to the Public Order Act 1986.

The duty of care to staff, students and visitors

Universities have duties under health and safety legislation to ensure, so far as reasonably practicable:

- the health, safety and welfare at work of their employees
- that they conduct their undertaking in such a way that persons not in their employment who may be affected thereby (eg students, external speakers and other visitors) are not exposed to risks to their health and safety

These duties might be relevant if it is anticipated that protests or violence might take place at an external speaker event. Given the other legal obligations that universities are under in relation to speaker events, it would be advisable for universities to have proper evidence to substantiate any concerns in relation to health and safety (for example through obtaining advice from the police, and minuted meetings considering that advice and any advice from the university's own security staff).



Some practical advice

The duty of care to staff, students and visitors

- Health and safety obligations need to be taken into account, particularly if there are concerns about the potential safety of individuals involved in a speaker event (whether they are speakers, students, staff or visitors).

Civil law claims relating to spoken words

An external speaker can be liable for defamatory remarks, or those which amount to 'malicious falsehood'.

However, concern that defamatory remarks might be made by a speaker does not displace the duties on universities to secure freedom of speech, or under human rights law.

Defamation law provides a remedy to a person defamed, who can bring proceedings for damages and/or an injunction (or in Scotland an interdict) preventing defamatory remarks. Any such injunction would not prevent a speaker from being given a platform, but would prevent them from making specified defamatory remarks.

The Protection from Harassment Act 1997¹⁹ also enables someone who has been harassed to bring civil proceedings for damages, or for an injunction or interdict preventing threatened harassment. The grounds for such a claim in effect mirror the criminal offence created by the Act.²⁰

Data sharing

Where universities wish to share information with the police, they can only do so in accordance with the terms of the Data Protection Act 1998 (DPA).

The DPA will also need to be complied with where a students' union or society wishes to share personal data with a university.

Ultimately, if there is any doubt as to whether the police are entitled to certain information, then a university can insist that a court order is obtained by the police compelling disclosure. This will address any concern over whether the police request is legitimate and proportionate, and whether disclosure would be in accordance with the DPA.

¹⁹ In Northern Ireland the equivalent legislation is the Prevention from Harassment (Northern Ireland) Order 1997.

²⁰ Harassment is not a criminal offence in Scotland in terms of the 1997 Act (although breach of a non-harassment order is), but conduct amounting to harassment may be a crime at common law (and prosecuted, for example, as breach of the peace).

Charity law

Under the Charities Act 2011²¹, charities (including universities and students' unions) must be established for charitable purposes only. Charitable purposes must meet what is called the 'public benefit' requirement (s.2(1)(b)).²²

The Charity Commission's non-statutory guidance (January 2013) has suggested that under the public benefit requirement, there may be 'extreme views and activities... which may be inappropriate for a charity to host or promote'.

However, although most universities are charities, universities (in England and Wales) have a clear statutory duty to secure freedom of speech: s.43 of the Education (No 2) Act 1986. The courts would also be obliged to interpret the Charities Act (and in Scotland the 2005 Act) in accordance with the Human Rights Act, including the Article 10 rights of freedom of expression, where any limitation on such rights must be necessary in a democratic society.

Law relating to security staff

Security staff may be called on to assist in the case of controversial speaking events. In certain circumstances security staff, like ordinary citizens, do have a power of arrest. However, there are risks in terms of civil liability for wrongful arrest or assault if the power is used inappropriately.

Reasonable force can be used in preventing crime, or in effecting or assisting the lawful arrest of an offender or persons unlawfully at large, but it would ultimately be a matter for the court to decide whether the force used was 'reasonable' in all of the circumstances. If excessive force has been used, the university and/or security firm providing security cover can be vicariously liable for a civil claim for assault.

Given the potential civil liability in the event that can ensue for wrongful use of the power of arrest, there is significantly lower risk for a university if the police carry out arrests rather than private security staff. However, judgment will need to be exercised on the ground by properly trained staff, taking account of all the circumstances, including the balance of risks.

Students' unions

Students' unions also need to have regard to the legal frameworks. Whilst they are not public bodies for Public Sector Equality Duty²³ and Human Rights Act purposes, they are mostly charities subject to the requirements of charity law. They also need to have regard to the scope of the criminal law and potential civil liability in relation to external speaker events.

A particular question for universities arises where a students' union decides that an external speaker event should not proceed, but the university considers that this decision may conflict with its duty to secure freedom of speech within the law under s.43 of the Education (No 2) Act 1986²⁴ (see 'Charity law').

As noted in the section 'The duty to secure freedom of speech within the law', universities' duty under s.43 extends to students' union premises even if these are not owned by the university. This means that universities owe duties in relation to their students' union premises, regardless of whether those premises are, for example, leased by the union from the university, or indeed from a third party.

Whilst s.43 undoubtedly places a duty on a university in relation to the students' union premises, there is a separate question of how it complies with that duty, given that the students' union is a distinct legal entity with its own policies and procedures. There are two aspects to this question.

²¹ The equivalent legislation in Northern Ireland is the Charities Act (Northern Ireland) 2008.

²² In Scotland the relevant legislation is the Charity and Trustee Investment (Scotland) Act 2005, which contains a similar public benefit test.

²³ Similarly, students' unions in Northern Ireland have not been designated for the purposes of section 75 of the Northern Ireland Act 1998.

²⁴ Section 43 applies in England and Wales only, as noted above.

The first aspect is whether the s.43 duty also applies to the legal entity that is the students' union²⁵ rather than just creating a duty on the part of the university in respect of speaker events in the students' union premises. The s.43 duty applies to 'every individual and body of persons concerned in the government' of the institution. Whether that definition includes a students' union might be open to legal argument, taking account of the particular facts, including the legal status of the students' union and its relationship with the institution.

The second aspect is that the s.43 code of practice should set out the procedures to be followed by students, and should make non-compliance with the code a disciplinary matter. Under s.43(4) universities are under a duty to 'take such steps as are reasonably practicable (including where appropriate the initiation of disciplinary measures)' to secure compliance with the s.43 code of practice.

Institutions and students' unions should therefore seek to align their policies and procedures in relation to external speakers, taking account of the institution's s.43 duty.

Ultimately, if there is a conflict between the decisions taken by a students' union and those of the institution, the institution will need to consider what steps it is 'reasonably practicable' to take to secure compliance with the code of practice and s.43 duty, for example through disciplinary action and/or arranging an alternative event.²⁶



Some practical advice

Students' unions

- The s.43 duty to secure freedom of speech within the law applies to students' union premises.
- The s.43 code should make non-compliance a disciplinary matter in appropriate circumstances.
- Universities and students' unions should seek to align their policies, taking account of the institution's s.43 duty.

Third party bookings of university or students' union premises

The legal frameworks can also potentially apply to third party bookings of university or students' union premises that involve speaker events. Institutions should try to ensure that the contractual terms of such bookings are aligned with the relevant legal obligations to ensure that the institution is able to exercise appropriate contractual rights if necessary to comply with any legal requirements.

Conclusions

The legal framework outlined in this section provides institutions with the basis on which their policies and decisions should be formulated.

In difficult or controversial cases the key is to determine which legal provisions take precedence, taking account of all the circumstances. It is impossible to foresee every situation, although the case studies in this guidance give some examples of how the legal framework can be applied in practice.

There is not space in this guidance to set out all the detail behind the legal provisions outlined here. If there is any doubt as to the position, legal advice should be sought.

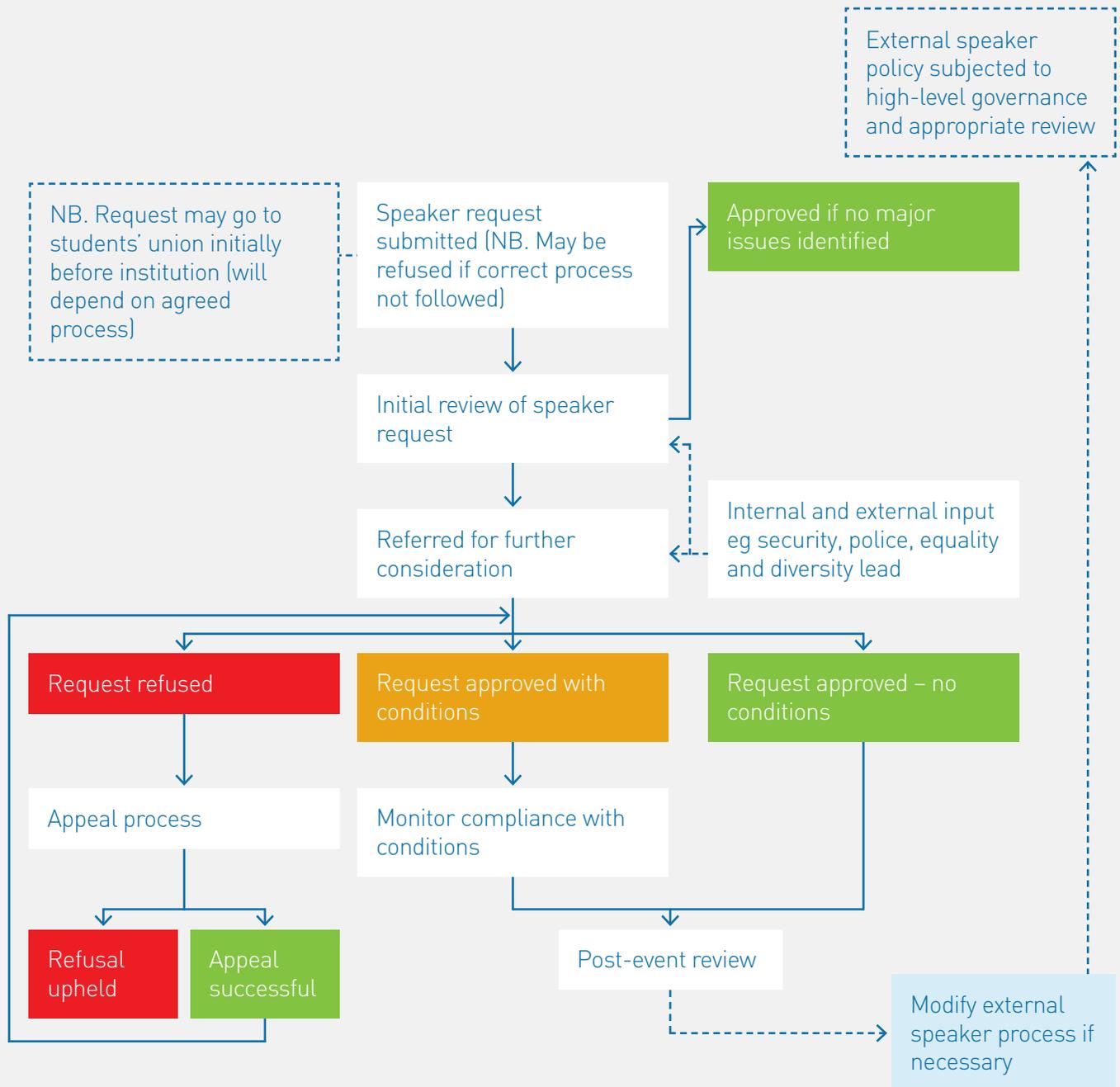
The law stated is the law as at 31 August 2013.

²⁵ The legal entity may, for example, be a Company Limited by Guarantee, or an unincorporated association consisting of the students' union members and officers.

²⁶ As noted above, s.43 does not apply in Scotland or Northern Ireland and so universities in these jurisdictions are not subject to a specific statutory duty in relation to students' unions. Nevertheless, Scottish and Northern Irish universities will be able, in practice, to influence and effect conduct on students' unions and the provisions of the Human Rights Act and equality laws apply so as to require Scottish and Northern Irish universities to ensure that freedom of expression and the rights of those who may be affected by the exercise of freedom of expression are appropriately protected.

2: EFFECTIVE EXTERNAL SPEAKER PROCESSES

Diagram 2: The lifecycle of an external speaker request



Devising an effective external speaker process

As autonomous organisations, higher education institutions are free to determine their own internal processes for considering external speaker requests. However, in general terms an effective approach might involve the features outlined in Diagram 3.

These components are considered in more depth in the following sections, as are the mechanisms that institutions may wish to consider to ensure that freedom of speech is secured within the law.

Governance and review of external speaker policies

External speakers are fundamental to universities as educational institutions, as well as in their promotion of freedom of speech and academic freedom. It is important that policies remain relevant, effective and up to date (in particular, the code of practice that institutions in England and Wales must issue under section 43 of the Education (No 2) Act 1986 is subject to

a statutory duty to keep the code up to date). High-level governance and appropriate review mechanisms will facilitate this. Institutions may wish to follow the steps below to ensure effective oversight of their external speaker policy:

- Include name and contact details of the appointed individual (responsible officer) with overall responsibility for the policy
- Date the policy
- Ensure high-level sign-off of the policy, eg university council
- Determine what factors will trigger a review (such as legislative changes or an external speaker event not going to plan) and who will conduct such a review
- Institutions may wish to include a statement confirming that individuals or groups breaching the agreed external speakers' policy will face penalties (removal of particular privileges or formal disciplinary proceedings) or, where breaches of criminal law occur, referral to the police.

Diagram 3: The building blocks of an external speaker process

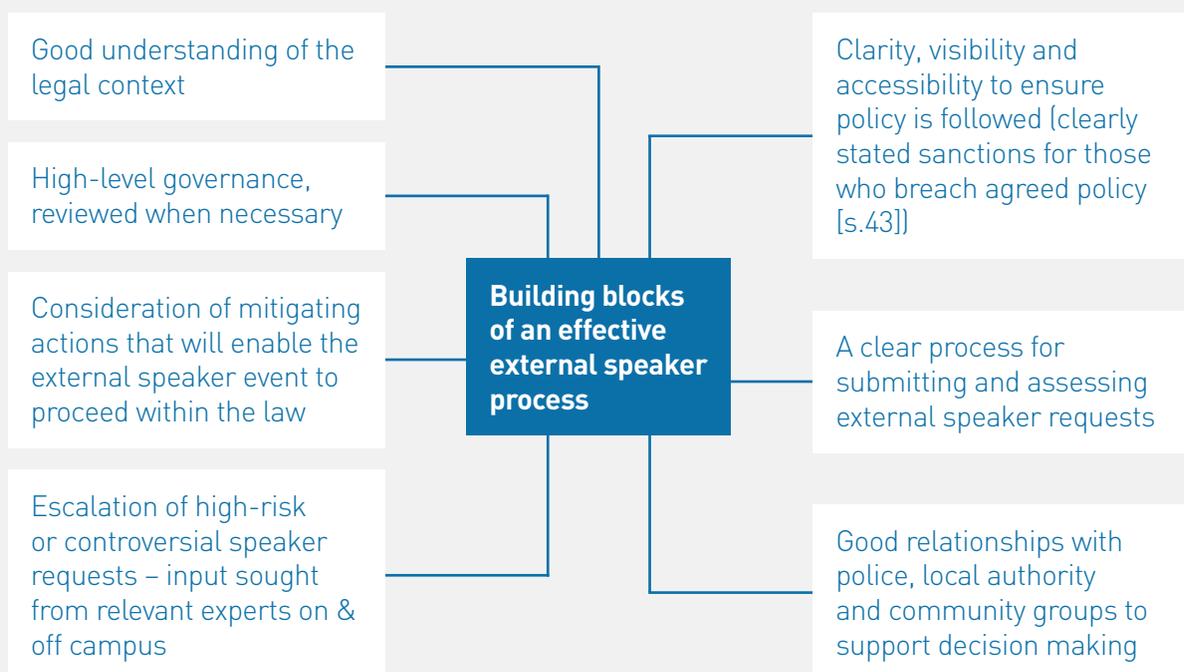
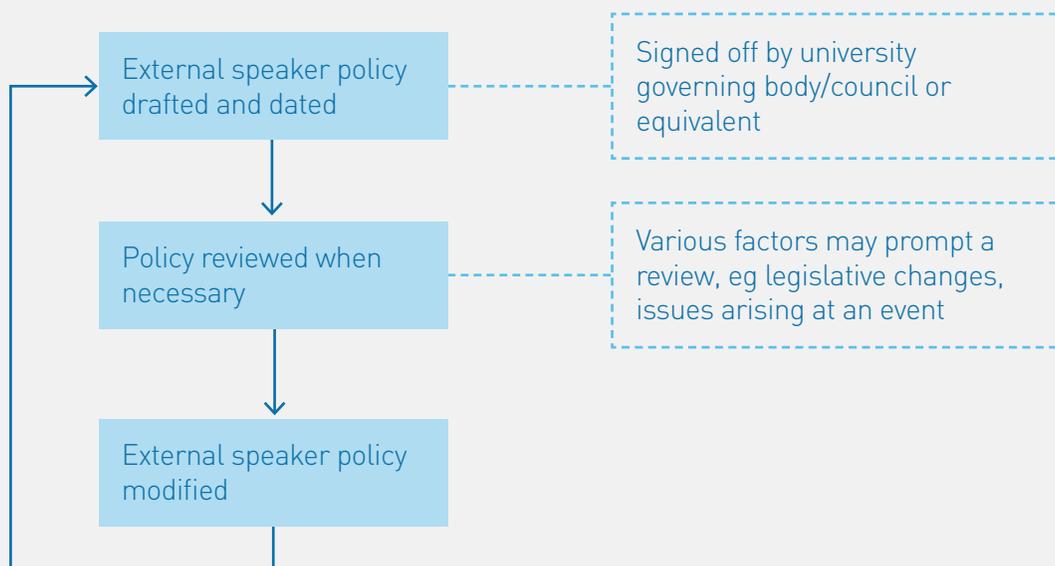


Diagram 4: External speaker policy review process

POINTS TO CONSIDER WHEN REVIEWING YOUR EXTERNAL SPEAKER PROCESSES: **GOVERNANCE**

- Is the policy dated?
- When was the policy reviewed?
- What details are included relating to the individual with ultimate oversight for the policy and decision-making authority (name, contact details)?
- Does the policy state that individuals or organisations that fail to adhere to it will face sanctions?

Clarity, visibility and communication of external speaker policies

It is important to ensure external speaker policies are visible and easily accessible. Institutions may wish to follow the steps below to achieve this.

1. Maximise the accessibility of external speaker policies by communicating them via a number of internal and external channels, including but not limited to:
 - intranet
 - staff handbooks
 - induction processes for new staff where the external speaker policy has relevance to their role
 - student handbooks
 - guidelines on good campus relations

- the students' union and students' societies
-
- institutional website (publicly accessible)
-
- individuals responsible for room bookings/timetabling/conferences/events
-
2. Make clear the scope and coverage of the policy, who it applies to and what is meant by an external or outside speaker.
 3. Clearly state in the external speaker policy who has ultimate responsibility for the policy and external speaker decisions – include contact details and job title.
 4. Make clear that in some circumstances, after full consideration of possible mitigating actions, there may be grounds for refusing a request; example grounds may include:
 - That the speaker professes to belong to a proscribed organisation, or (following appropriate information gathering, and potentially seeking express assurances from the speaker/organisers if appropriate) it is believed the speaker is intending to invite support for such an organisation or its activities
-
- That having obtained and considered input as appropriate (eg from the institution's security office, estates office and/or police/other emergency services) it is believed to be in the interests of public safety, the prevention of disorder or crime or the protection of those persons lawfully on university-controlled premises that the event does not take place
-
6. That following appropriate input from relevant bodies and consideration of available evidence the institution has concluded:
 - that reasonable steps cannot be taken to prevent the speaker from expressing views that are contrary to the law
 - that reasonable steps cannot be taken to prevent the speaker from encouraging, assisting or committing criminal acts
 - that reasonable steps cannot be taken to prevent the speaker from putting forward views or ideas that unlawfully infringe the rights of others or unlawfully breach the institution's equality duties
5. Institutions might wish to include or append case studies of situations (hypothetical or real) where external speakers would be (or have been) refused a platform.
 6. To aid clarity, policies might state that controversial, offensive or distasteful views which are not unlawful per se would not normally constitute reasonable grounds for refusing an external speaker request.

POINTS TO CONSIDER WHEN REVIEWING YOUR EXTERNAL SPEAKER PROCESSES: CLARITY AND ACCESSIBILITY

- How accessible is the policy?
- Could the policy be made more widely available by utilising additional channels?
- What measures are in place to communicate the policy to student societies?
- Is the university event (conference) management team aware of the policy?
- Does the policy include any details of who it applies to and which premises?
- Would examples of scenarios where requests may be refused provide additional clarity?

The components of a structured, staged and consistent process for considering external speaker requests

In broad terms, there are three stages of the external speaker process, as outlined below. These three stages will apply to all requests but Stage 2 in particular will differ depending on the risks identified with a specific request. Stage 2 will be brief for straightforward requests but will involve more extensive consideration for requests that appear controversial or high risk.

Stage 1: Submission of speaker request

Stage 2: Review of speaker request – identification and mitigation of possible risks

Stage 3: Communication of an external speaker decision

Stage 1: Submission of speaker request

This is the stage that enables an institution to obtain relevant information on the proposed speaker and event. This information will then be used to assess whether the speaker or event is likely to operate within the framework of the law (Stage 2).

It is important to allow appropriate time to consider whether external speaker events are likely to proceed within the framework of the law. Agreeing the process and timeframe for submitting a request and stating this clearly in the external speaker policy may help achieve this. Institutions may wish to adopt the following steps to facilitate this:

Identifying a responsible individual for each external speaker request

- Identify an appointed 'principal organiser' for each booking request who has responsibility for ensuring the request meets agreed requirements
- Restrict the advertising of an external speaker event until approved

Agreed timeframes

- State the required timeframe for submitting an external speaker request (for example, all requests to be made no less than [x] working days before the scheduled event)
- Highlight that bookings submitted outside of the agreed timeframes will not be authorised to take place on university premises (except in exceptional circumstances)
- State the timeframe for approving or refusing external speaker requests and how the decision will be communicated (for example, a decision will be made within [x] working days and will be communicated in writing to the principal organiser)

Use of agreed documentation to make a speaker request

- State how requests must be made and the timeframe for doing so (for example external speaker request to be submitted using a standardised booking form no more than [x] working days before the event is scheduled to take place)
- Include information on how to access the relevant documents for making an external speaker request (for example, signpost individuals to relevant area on university intranet)

POINTS TO CONSIDER WHEN REVIEWING YOUR EXTERNAL SPEAKER PROCESSES: MAKING A DECISION 1

- What information is given on the timeframe within which external speaker requests must be submitted and responded to?
- What information is given on how external speaker requests must be made and where relevant forms can be accessed?

Content of standardised external speaker request form

Individual institutions will devise their own external speaker request form. It should contain questions to identify events and speakers that may be controversial or problematic. Some suggested fields that institutions may wish to include are:

- Name and contact details of principal organiser

- Name and details of visiting speaker – what organisation, if any, do they represent? Have they spoken at the institution before or at another higher education institution?

- Date, time and place of meeting or activity

- Expected timing of the arrival and departure of any speaker together with details of the proposed entry and exit of the speaker to the event venue (this may be more important in some cases than others, particularly where there are security concerns)

- Overview of the event – subject matter, appointed chairperson, what language the event will take place in

- What topic will the external speaker be talking about?

- How will the event be advertised and in what language? (some institutions request draft copy of materials advertising the event)

- What publications or materials (CDs, DVDs) will be available to event attendees?

- The numbers expected to attend (staff, students, members of the university, guests, general public)

- Conditions applying to the event (Will it be ticketed? Open to the public? Is there any intention to segregate the event?)

- Do principal organisers have any reason to believe that there may be a threat of disruption caused by the proposed meeting or activity and what is the substance of that threat?

- Any other reason known to the principal organiser or others involved in organising the event as to why issues may arise with that speaker. Has there been any controversy attracted by the speaker in the past? (If so this may trigger contact with the university press office.)

- Will members of the press, TV or radio be permitted to attend?

- Is the event being sponsored? If so, who by? Will advertising appear at it?

Notifying an agreed representative of potential controversy

It is important that potential problems are identified at the earliest opportunity. To facilitate this, an external speaker policy might also make clear to principal organisers:

- that they are expected to highlight at the earliest opportunity any grounds for believing that a speaker will be controversial or will potentially commit a criminal offence

- the individual to whom any concerns should be raised

Notifying an agreed representative of a material change to the booking

Occasionally an external speaker booking may change after the booking has been approved. This might involve a change to the agreed speaker or event structure. It is important that organisers notify the institution of material changes. To assist with this, external speaker policies may include the following components:

- A statement highlighting that principal organisers must notify an agreed representative if an approved speaker is replaced or other material changes occur to the proposed event

- A statement making clear that the institution reserves the right to review an external speaker decision if further information emerges about the proposed event

POINTS TO CONSIDER WHEN REVIEWING YOUR EXTERNAL SPEAKER PROCESSES: MAKING A DECISION 2

- Are there any questions on the list on page 19 which might be useful additions to your external speaker booking form?
- What information is given on notifying the institution of material changes to an approved booking (such as a change in speaker)?

Stage 2: Review of speaker request

The review of every external speaker request must involve consideration of the full legal context that applies to such activity. The legal framework is non-negotiable and is summarised in Part 1 of this guidance and explored in depth in Annexe A.

The majority of external speaker requests will be relatively straightforward and easy to assess – in these cases, the review process will be short and simple. Others may require further consideration to assess whether speakers are likely to contravene the law and whether mitigating actions will satisfactorily address the risk of this happening.

The following questions may be of relevance in determining whether to approve, refuse or escalate a speaker request:

- Does the proposed external speaker have links to or represent a proscribed terror group or organisation (as per the Home Office list²⁷) or feature on HM Treasury's list of organisations subject to government sanctions?²⁸
- What is the topic of the event? Is the event title or subject matter likely to be controversial or cause distress to anyone? Will both sides of the argument be presented? Has an event been run on this topic by the university previously?
- Who is chairing the meeting? Are they sufficiently qualified to provide balance and challenge during the event? What is their stance on the topic under discussion and is this likely to impact the smooth running of the event?

- Has the speaker spoken at the institution or another higher education institution previously? What is known about him or her? Are there grounds to suspect that the individual may speak outside the parameters of the law?
- Will hosting the speaker have public order implications, risk injury to attendees or damage to university or any other property?²⁹ Is there the potential for serious health and safety issues to arise? Is it likely that the presence of the speaker will prompt protests?
- Who is attending the event? Is it restricted to staff and students of the institution only or will it be open to the public? Is it likely that the presence of the speaker will prompt specific groups or individuals to attend the event?
- What security provisions are in place? Are these sufficient? Will sufficient security staff be available?
- Will hosting the speaker have reputational risks for the institution? Is the event likely to attract media attention and if so how can the university manage this effectively?
- Has the speaker agreed to abide by the institution's values?
- What materials will be available at the event (eg leaflets, DVDs, CDs, memory sticks)?

POINTS TO CONSIDER WHEN REVIEWING YOUR EXTERNAL SPEAKER PROCESSES: MAKING A DECISION 3

- Using the legal overview in Diagram 1 on page 4 as a guide, are there any areas of the law that staff making external speaker decisions are unfamiliar with?
- Is there a well-communicated and structured process in place to escalate external speaker requests that appear to be high risk or controversial?

²⁷ The list can be found on www.gov.uk – listed as 'Proscribed Terror Groups or Organisations'.

²⁸ The list can be found on www.gov.uk – listed as 'Consolidated List of Financial Sanctions Targets in the UK'.

²⁹ If damage to public property is likely this is not the responsibility of the institution, but this information will be of relevance to the police and local authority.

Escalation processes

In most circumstances, reviewing external speaker requests will be relatively straightforward. However, in some cases, there may be indications that the planned event is higher risk. In such cases, institutions may wish to consider taking additional steps to inform their decision, as follows:

- Seek input both internally and externally on the external speaker request. Depending on the circumstances of a specific request, input may be appropriate from:
 - Principal organiser of the event
 - Head of university security
 - Vice-chancellor/registrar/secretary/academic registrar
 - Local police
 - President of students' union
 - Equality and diversity lead
 - Head of communications
 - University chaplain
 - Heads of student societies
 - BIS regional Prevent coordinators
 - The proposed speaker (to get a clearer idea of what they intend to say; this may include obtaining an advance copy of their speech or presentation)
 - Community groups
 - Local authority
 - Information already held by the university about the speaker or event organisers
 - Higher education institutions known to have hosted or refused the speaker previously
 - Individuals with relevant legal expertise
-
- Form an internal working group to assist with particularly controversial or difficult requests.³⁰
-
- Engage with different groups on campus to discuss specific external speaker requests.
-

POINTS TO CONSIDER WHEN REVIEWING YOUR EXTERNAL SPEAKER PROCESSES: MAKING A DECISION 4

- Would creating a dedicated internal group assist with making decisions on the most complicated external speaker requests?
- Using the list on this page as a guide, are there any individuals or organisations that your institution might usefully involve in external speaker decisions in particular circumstances?
- What links currently exist with community groups, police and the local authority and are these links used to assist with external speaker decisions where necessary?

The mitigation of identified risks

In general, institutions can respond in one of three ways to an external speaker request: (i) approve the request, (ii) approve the request on the proviso that specific conditions are met, or (iii) refuse the request.

A range of options are available to institutions in managing identified risks which will enable the external speaker event to go ahead in accordance with the law. The appropriateness of individual mitigating actions will depend on the specific event under consideration, the nature of the potential issues identified and other factors such as the risk appetite of the institution. Examples of mitigating actions that institutions might decide to take include:

- Varying the time and location of the event from the original plan
-
- Approving a request on the condition that a particular individual chairs the event
-
- Making the event ticketed only or specifying that attendees must show valid ID
-
- Opening the event up to the general public
-
- Requesting an advance copy of the guest list for review before the event takes place
-

³⁰ Two examples are LSE's Free Speech Group and St George's, University of London's Promoting Good Campus Relations Advisory Group. Further details can be found at <http://www.lse.ac.uk/intranet/LSEServices/governanceAndCommittees/committeesAndWorkingGroups/freeSpeechGroup/termsOfReference.aspx> and <http://www.sgu.ac.uk/about-st-georges/planning-secretariat-office/secretariat-office/equality-and-diversity/docs-2012/promoting-good-campus-relations-policy-1.pdf>

- Placing restrictions on the numbers able to attend or restricting the event to university staff and students only
- Enhancing security arrangements including possible police attendance, minimum number of stewards
- Imposing conditions on how the event is advertised (eg promotional material to contain translations if in a language not understood by university staff)
- Mandatory attendance of specified senior university representatives to maintain order
- Making a translator available to university staff attending the event
- Refusing admission to media representatives (press, radio, television)
- Restricting the display of banners or placards at the event and its immediate surrounds
- Restricting the sale of alcohol or consumption of food at the event
- Imposing conditions on how the event is run in relation to specific requests such as a request to segregate the audience
- Imposing special arrangements on how the event or meeting is chaired
- Requesting a script or précis from the speaker outlining what they intend to say and requiring them to sign an undertaking acknowledging that their speech will be terminated if they deviate from it
- Briefing the chair in advance of the event, making clear that they have a responsibility to ensure that no speaker or other person present at the event infringes the law; this briefing could highlight the circumstances under which they must stop the event, issue warnings to participants on their conduct or request the withdrawal or removal by stewards (or the police if necessary) of the person(s) concerned

- Requiring invited speaker(s) to confirm that they will abide by the university's values or good campus relations policy or providing speakers with a copy of such documents
- Clearly stating at the start of the event that the speakers and audience must act in accordance with the law
- Restricting what materials are available at the event (CDs, DVDs, leaflets, memory sticks)

Stage 3: Communication of an external speaker decision

External speaker decisions should be clearly communicated to the principal organiser of an event. Institutions may wish to incorporate the following into their external speaker policies to achieve this:

- Describe how decisions will be communicated and the timeframe within which this will happen – for example, 'external speaker decisions will be communicated in writing to the principal organiser within [x] working days of the request'
- Inform principal organisers of any conditions that apply to the event
- Circulate a copy of their promoting good campus relations policy to invited speakers
- Require that speakers confirm in writing that they understand and will abide by the university's values (an alternative may be to develop specific guidelines for external speakers which invited speakers must agree to abide by)
- Highlight in the decision letter that individuals have a right to appeal

Appealing a decision

External speaker policies might also include information on the process for appealing a refusal decision.

POINTS TO CONSIDER WHEN REVIEWING YOUR EXTERNAL SPEAKER PROCESSES: COMMUNICATING AN EXTERNAL SPEAKER DECISION

- What information is given on the timeframe for communicating an external speaker decision and the mode of communication that will be used to do so?
- Is any information given on appealing an external speaker decision?

Reviewing an external speaker decision on the basis of new information

Sometimes external speaker decisions may have to be reviewed on the basis of new information or material changes occurring to the planned event, for example a change in speaker, increased risk of disorder or information from the police or community. This new information may determine whether an event is cancelled or whether further mitigating actions are required to address the new risks.

There are several steps that institutions may wish to take to facilitate the reporting of potential difficulties:

- Instructing principal organisers that they have a duty to notify the institution of a material change to an event booking
- Making public the contact details of the individual who has responsibility for the institution's external speaker policy
- Building good links with the police and community groups

Effective management of an external speaker event

Although institutions take many pre-emptive steps to ensure events occur within the framework of the law, occasionally things do not go to plan and action is required during the course of the event. Examples include attempts to disrupt the event, unexpected guests appearing, inappropriate material being made available at the event, or views expressed by the speaker or an audience member falling outside of the law.

In such circumstances, there are a number of options institutions may wish to consider, including:

- Delaying the start of the event
- Moving the event to a different location
- Issuing clear verbal warnings to individuals attempting to disrupt the event (usually by the event chair)
- Requesting that individuals leave the event or instructing security (or the police if necessary) to remove them from the event
- Warning individuals that sanctions apply to those impeding freedom of speech within the law
- Postponing the event and rearranging it under different circumstances and conditions
- Stopping the event part-way through
- Cancelling the event
- Notifying the university press office and vice-chancellor of any developments that may attract media attention so they can prepare for this

As mentioned previously, any decision will need to be made in compliance with the relevant legal frameworks. Where events do not go to plan, institutions may wish to consider reviewing their processes to ensure that similar problems do not arise in future.

³¹ St George's, University of London issues 'Guidance for all speakers at SGUL' which both the event organiser and external speaker must sign to confirm they have read and understood the guidance and agree to abide by it.

Alignment of policies with the students' union

Universities UK's 2011 report *Freedom of speech on campus: rights and responsibilities in UK universities* recommended that higher education institutions should:

Review current protocols/policies on speaker meetings to ensure they are up to date and relevant, and are aligned with the students' union's protocols and policies.

Individual institutions will have different processes in place in terms of the role of students' unions in managing external speaker requests made by student societies. In some cases, external speaker requests for events organised by student societies are submitted directly to the president of the students' union within agreed timeframes. The students' union then conducts an initial vetting of the request to identify risks before referring the request to the associated institution and where necessary raising concerns about impediments to proposed events, safety concerns or the likelihood of a breach of the law. In other cases, institutions might require all external speaker bookings that involve the use of university-owned facilities to come directly to the university.

Aligning students' union and institutional processes is not always easy as the two may differ in their approach to individual speakers. This is particularly true where a students' union has a 'no platform' policy and their associated institution does not. Case study 1 in Part 3 (page 26) examines this in more depth.

However, wherever possible, higher education institutions and students' unions should work closely together. The following steps may facilitate this:

- Regular liaison and discussion of external speaker policies should take place between the associated institution and the students' union, including students' union input during any review of the institution's external speaker policy.
- In circumstances where student societies make their external speaker requests directly to the institution, it may be appropriate to circulate copies of external

booking requests to the students' union president or nominee. The students' union and institution should agree the criteria for identifying which bookings should be shared. For example, it might apply to any external speaker bookings lodged by a student or person acting on behalf of a student society. Alternatively, an institution might agree to share copies of all external speaker invitations (ie speakers the institution has approved) to the president of the students' union or only those that appear contentious.

- Where appropriate, institutions should seek input from the students' union in relation to potentially controversial speakers, particularly if their presence on campus is likely to be of interest to particular student societies.
- Institutions and students' unions should work together to ensure that the institutions retain an accurate knowledge of which student societies are registered and approved.
- Institutions and students' unions should engage in joint scenario planning to identify potentially problematic issues and make effective contingency plans for them.
- Institutions and students' unions may wish to develop joint guidelines for engaging with sensitive and controversial issues. This might include tips on agreeing a suitable title for a debate, selecting a suitable chair and facilitating a balanced view of issues.
- Regular liaison between the institution and the students' union will also provide a mechanism to discuss any student society events taking place off campus that are causing concern (good community links will help bring these to the institution's attention).
- Institutions may wish to consider developing and maintaining good relationships with individual student societies so that any concerns around external speakers can be raised directly with them.

POINTS TO CONSIDER WHEN REVIEWING YOUR EXTERNAL SPEAKER PROCESSES: WORKING WITH THE STUDENTS' UNION

- Does the policy refer to the processes that student societies must follow when making an external speaker booking request for an event on university premises?
- Does the policy include any involvement from a students' union representative (eg the president) in relation to potentially controversial external speaker requests submitted to the institution by student societies?

Speakers at events booked by external individuals or organisations

It is common for universities to make their facilities available to external organisations for commercial and non-commercial events. These events may involve invited speakers who must act within the law. Institutions may wish to consider taking the following steps to help manage these risks:

- Ask external or commercial clients to confirm that they will abide by the university's values (seek this confirmation when agreeing a contract with the client)
- Ensure that individuals who manage bookings from external organisations are familiar with the university's external speaker policy and know who to contact in the event of any issues arising
- Consider developing an 'expected behaviours contract' for external clients that are using university facilities
- Bar organisations and individuals that fail to abide with the university's values from booking facilities in future

The institution's contract with the external or commercial client should be drafted to include appropriate contractual terms, in relation to both expected behaviour from speakers and the audience, and in terms of the institution's rights in the event that such terms are breached.

Good relationships with the police, local authority and community groups

Good relationships with the police, local authority and community groups can provide invaluable support to institutions in making informed decisions on external speakers, particularly those that are higher-risk. Regular liaison may also help to identify issues before they escalate to a serious level.

3: EXTERNAL SPEAKER CASE STUDIES

The following case studies illustrate the factors that institutions must consider and balance in relation to external speakers in a range of different scenarios.

The case studies highlight some of the legal and practical issues that might arise, but are not intended as a substitute for legal advice. Each scenario depends on the particular facts, and the analysis cannot necessarily be applied to other cases. Also, any analysis can change if additional information comes to light.

CASE STUDY 1: NO PLATFORM POLICY

In advance of a general election, the Politics Department of the university is organising a series of seminars featuring representatives from a range of political parties and covering a broad spectrum of political views. One of the events will focus on the policies and views of the British National Party (BNP). The university's students' union has a 'no platform' policy and the BNP is on the union's list of organisations that will be denied a platform to speak. The event will be held in a lecture theatre in the university's main city centre campus.

Since the decision was taken to invite the BNP, there has been increasing unrest on campus with a number of student groups expressing their opposition to the invitation. There are indications that several are planning to protest outside the event venue and rumours that they intend to disrupt the event itself by storming the venue.

Separately, there are unsubstantiated rumours within the local community that the English Defence League (EDL) is considering attending the event to promote its own policies. There is no suggestion that the local EDL has any links with the proposed BNP speaker. The event is open to the public and tickets will be allocated on a first come, first served basis on the night.

Things to consider

Legal framework – points likely to be particularly relevant

- Rights of freedom of expression.
- The section 43 (s.43) duty to secure freedom of speech within the law applies to the institution (if in England and Wales). A students' union 'no platform' policy will not override the s.43 duty.
- Public order issues as well as safety of speakers, staff, students and others will need to be considered at all stages and kept under review.
- Whilst there is no suggestion on the basis of the facts outlined above that the speaker is intending to breach other laws, eg the criminal law, those involved in making decisions and those responsible for the event will need to take account of all relevant legal issues throughout the decision-making process and at the seminar itself (assuming it proceeds).
- Equality obligations, including having due regard to the Public Sector Equality Duty.

Other practical considerations

- The institution should be in dialogue with the students' union to ensure it understands the nature of the s.43 duty.

- Public order implications – will protest arise and what impact will it have?
- Security considerations – do they outweigh the s.43 duty?
- Freedom from harassment – will the speaker agree to adhere to university values?
- The BNP is not a proscribed group.
- What is known about the speaker and the proposed content of the seminar? If there are concerns on the basis of the evidence obtained about whether the content might breach any legislation, have adequate steps been taken, eg to seek appropriate written assurances from the speaker or organisers?
- Does a guest list need to be established to manage attendees?
- Should the event be a closed event and not a public one?
- What liaison with the police has happened?
- Do discussions need to take place with the local authority?
- Who is chairing the event and are they sufficiently experienced?
- Is the event likely to generate media coverage? Do the press office and senior management team or vice-chancellor need to be informed?

CASE STUDY 2: SEGREGATION

A representative of an ultra-orthodox religious group has been invited to speak at an event to discuss faith in the modern world. The event is part of four different speeches taking place over the course of a month exploring different approaches to religion. The initial speaker request has been approved but the speaker has since made clear that he wishes for the event to be segregated according to gender. The event organiser has followed agreed processes and raised the issue with university management. The event has been widely advertised and interest levels are high.

The segregation request is not yet in the public domain but the students' union has an active feminist society which is likely to protest against the segregation request. Other societies are likely to express similar concerns. The event is also due to take place a few days after a number of campus-based activities to coincide with International Women's Day.

Things to consider

Legal framework – points likely to be particularly relevant

- Aside from freedom of speech and the s.43 duty, the paramount issue is to consider how equality obligations apply, and how those interact.
- For example, under the Equality Act 2010, the first question is whether the segregation is discriminatory on the grounds of a protected characteristic within the definition of the Act. Segregation in the context of the facts outlined above would only be discriminatory on the grounds of sex if it amounts to 'less favourable treatment' of either female or male attendees.
- It will therefore, for example, be necessary to consider the seating plan for any segregation. For example, if the segregation is to be 'front to back', then that may well make it harder for the participants at the back to ask questions or participate in debate, and therefore is potentially discriminatory against those attendees. This issue could be overcome assuming the room can be segregated left and right, rather than front and back (and also ensuring that appropriate arrangements are made for those with disabilities).
- Consideration will also need to be given to whether imposing segregation on everyone attending the event is required (see below). If it is required, this may amount to less favourable treatment of other attendees because of a protected characteristic. On the face of the case study, assuming the side-by-side segregated seating arrangement is adopted, there does not appear to be any discrimination on gender grounds merely by imposing segregated seating. Both men and women are being treated equally, as they are both being segregated in the same way. However, one cannot rule out the possibility that discrimination claims will be made on other grounds. For example, it is arguable that 'feminism' (bearing in mind the views of the feminist society referred to in the case study), or some forms of belief in freedom of choice or freedom of association, could fall within

the definition of 'belief' under the Equality Act. This would in turn mean that applying a segregated seating policy without offering alternatives (eg a non-segregated seating area, again on a 'side by side' basis with the gender segregated areas) might be discriminatory against those (men or women) who hold such beliefs. However, the question of whether such beliefs are protected under the Act is unclear without a court ruling. Further, an act of indirect discrimination can be 'objectively justified' if it is a proportionate means of achieving a legitimate aim, meaning the institution should also have regard to its other obligations under the Equality Act and the s.43 duty to secure freedom of speech, for example.

- It should therefore be borne in mind – taking account of the s.43 duty, as well as equality duties and Human Rights Act obligations – that in these circumstances, concerns to accommodate the wishes or beliefs of those opposed to segregation should not result in a religious group being prevented from having a debate in accordance with its belief system. Ultimately, if imposing an unsegregated seating area in addition to the segregated areas contravenes the genuinely-held religious beliefs of the group hosting the event, or those of the speaker, the institution should be mindful to ensure that the freedom of speech of the religious group or speaker is not curtailed unlawfully. Those opposed to segregation are entitled to engage in lawful protest against segregation, and could be encouraged to hold a separate debate of the issues, but their views do not require an institution to stifle a religious society's segregated debate where the segregation accords with a genuinely-held religious belief. The s.43 duty requires an institution to secure freedom of speech within the law.
- The institution will also need to have due regard to its Public Sector Equality Duty obligations when making decisions about the event.
- In practice, a balance of interests is most likely to be achieved if it is possible to offer attendees both segregated and non-segregated seating areas, although if the speaker is unwilling to accept this, the institution will need to consider the speaker's reasons under equalities legislation.

- Note that decisions can be very fact-dependent, and that the law applies differently in different scenarios. For example, there is an express prohibition in the Equality Act against segregation on racial grounds, and there are also special provisions in relation to single-sex sporting events. The points above are not intended as a substitute for seeking appropriate legal advice.

Other practical considerations

- Who is chairing the event?
- What is known about the speaker?
- What reasons do the speaker and/or the society give for the event to be segregated?
- Is the event open to the public?
- Is there scope for segregation to be voluntary/optional?
- Has input been sought from the institution's equality and diversity officer?
- Is it advisable to obtain legal advice, and/or to seek advice from the Equality Challenge Unit?
- Can any steps be taken to ensure segregation is voluntary?
- If no segregation is permitted, will this discriminate against any groups who will now be unable to attend the event?
- Are there particular issues around potential discrimination, public order etc, including because of the particular demographic/religious/cultural makeup of the institution's student body?
- Is the event likely to generate media coverage? Do the press office and senior management team or vice-chancellor need to be informed?

Decisions may need to be re-evaluated during the process of considering the proposed event. For example, if the speaker is unwilling to speak unless the event is fully segregated, it may be necessary to further explore the basis for his position before deciding whether a partially segregated event is a possibility.

CASE STUDY 3: SPEAKER WITH CONTROVERSIAL VIEWS AND CHARITY LEGISLATION

The university's law faculty is organising a series of events exploring different concepts of justice and different types of punishment. The events are supported by the university's Law Society and will be open to all students and staff. Different events will cover the concepts of restorative justice, retributive justice and debate the pros and cons of the death penalty. The events will not only examine the UK's justice system but explore the justice systems of other countries.

It is planned that the event covering retributive justice will feature a well-known proponent of Sharia Law. Originally from Saudi Arabia, he has previously caused controversy with some well-publicised remarks calling for the introduction of Sharia Law in Britain. He has also expressed controversial views stating that women should not have the right to vote or hold political office. The speaker has only been invited to speak about Sharia Law and not the role of women in society. Nonetheless, some concerns have been expressed that the speaker does not reflect the values of democracy and equality and should not be given a platform to speak. Others have said that allowing him a platform will damage the institution's reputation as a charity.

The planned structure of the event is for the speaker to talk for 20 minutes, setting out his views on why he believes retributive justice is effective. This will be followed by a 40-minute question and answer session during which attendees will be given the opportunity to reflect on the validity of the speaker's comments and question him further on his views. The event is following the same structure as the other events in the series.

Things to consider

Legal framework – points likely to be particularly relevant

- Freedom of expression and (in England and Wales) the s.43 duty.
- Interaction with charity law. Whilst concern has been expressed at the institution's reputation as a charity, in the absence of a particular charity law obligation being contravened, the s.43 duty will not be overridden. Similar reputational concerns are likely to arise in relation to some of the other case studies.
- Whilst there is no suggestion on the basis of the facts outlined above that the speaker is intending to breach other laws, eg the criminal law or the Equality Act's harassment provisions, those involved in making decisions and those responsible for the event will need to take account of all relevant legal issues throughout the decision-making process and at the event itself (assuming it proceeds).
- Equality law: the institution will also need to take into account the Equality Act, including its Public Sector Equality Duty obligations, when making decisions about the event. On the basis of the facts as presented, there is no suggestion that the speaker intends to breach the Equality Act. The institution would need to review any decision if the facts changed, or when more information is obtained.

Other practical considerations

- Have discussions taken place with the speaker to ascertain what he intends to cover? Has he been asked to focus solely on Sharia Law as opposed to issues of equality and women's rights?
- Public order considerations – are there health and safety implications?
- Who is chairing and do they have the capacity to do so effectively?
- Is there sufficient scope for challenge?
- Is the event likely to generate media coverage? Do the press office and senior management team or vice-chancellor need to be informed?

CASE STUDY 4: ISRAEL AND PALESTINE

A prominent academic well known for his pro-Palestinian views and vocal criticism of Israel has been invited to speak at an event organised by the university's Palestinian Society. He has frequently spoken publicly in support of sanctions against Israel. The university's Jewish Society and representatives from the local synagogue have expressed their concerns about the event to senior university management. Articles have appeared in the student newspaper implying that protests are likely and that attempts may be made to disrupt the event. The local rabbi has written to the local newspaper expressing his concerns. Some have accused the proposed speaker of supporting violent means.

The event, as planned, will be open to staff and students of the university only. The intention is for the president of the Palestinian Society to chair the event. He is relatively new in post and has little experience of chairing events of this nature. There are currently no other events planned that will explore alternative views of the Israel-Palestine conflict.

The event proceeds but during the course of the event there are concerted attempts to shout the speaker down and prevent him from speaking. Warnings are issued and several individuals are asked to leave the event (and do so voluntarily).

Things to consider

Legal framework – points likely to be particularly relevant

- The speaker is accused by some of having supported 'violent means'. The details of what is alleged and the evidence behind the allegations are unclear, but the institution will need to bear in mind the provisions of the criminal law (including anti-terrorism legislation) when seeking further information in relation to a proposed event such as this. For example, particular offences apply in relation to hate crime on racial and religious grounds, and in relation to 'proscribed organisations'.

- Safety and public order issues will need to be considered.

- The meeting is not a public meeting, but a decision could have been taken to declare the meeting public in order to bring the meeting within the provisions of the Public Meeting Act (in England and Wales). It is a judgment call as to whether an institution should take such a step, taking account of all of the circumstances. On the basis of the facts above, those attempting to shout the speaker down left voluntarily, so it appears that on this occasion this issue was capable of being managed without needing to take further steps to secure freedom of speech within the law.

- If those shouting down the speaker had not left when asked, but had prevented the speaker from speaking, the institution would need to consider what further steps might be taken to secure freedom of speech within the law. These might include disciplinary sanctions, or potentially asking the police to intervene in relation to any breach of the peace. The police could also intervene in relation to any breach of the Public Meeting Act, if the meeting had been declared public. Obviously careful judgment would need to be exercised in light of the developing situation.

- Presumably the speaker is a visiting academic from another institution, but if he were an employee of the host institution then any dealings with him would also need to take account of his and the institution's rights and obligations under the academic contract of employment.

Other practical considerations

- What security arrangements are in place?
- Who is chairing the event and are they suitably equipped to do so?
- Health and safety of staff, students and speaker(s) – are sufficient measures in place to ensure safety? Are there other public order considerations?
- Should the event be public? Should it be ticketed?

- Will any disruption spill over into the local community?
- Should the scope of the event be broadened, eg turned into a debate?
- What is known about the speaker? Has he supported violence? Has he spoken elsewhere?
- What action will be taken against those seeking to prevent the speaker from speaking?
- Is the event likely to generate media coverage? Do the press office and senior management team or vice-chancellor need to be informed?

CASE STUDY 5: EXTERNAL ORGANISATION BOOKING UNIVERSITY PREMISES

A local Pentecostal church has approached the university about using university facilities for regular evening meetings which will be open to staff and students of the university and the general public. The church will require use of the premises for a 12-week period whilst significant renovations are carried out to their usual venue. The pastor at the church has previously been reported in the local media as expressing negative views on homosexuality during sermons.

Things to consider

Legal framework – points likely to be particularly relevant

- The Public Order Act creates offences in relation to various acts committed with the intention to stir up hatred on the grounds of sexual orientation. However, the Act also provides that *'the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred.'* The university will need to bear these provisions in mind, as well as the other legal frameworks (eg the Equality Act, which also contains certain exceptions in relation to religious organisations).

- There is no indication whether the reported 'views' might, if repeated, amount to harassment under either the Equality Act or the Protection from Harassment Act. The university will need to consider those issues further if appropriate from the evidence or from further information which comes to light.
- Assuming the university enters into the proposed arrangement with the church, it is advisable for the terms of the arrangement to include appropriate provisions to ensure that the university's reputation and rights are adequately protected.

Other practical considerations

- Will the church, its pastor and its congregation abide by the university's values?
- What oversight can there be of proceedings during the 12-week period they will be using the university's premises?
- Is the event likely to generate media coverage? Do the press office and senior management team or vice-chancellor need to be informed?

ANNEXE A: LEGAL CONSIDERATIONS

This annexe is not intended as a substitute for legal advice, but is intended to explore the legal issues which might need to be considered in the context of external speaker events. It provides further information on some of the key issues set out in the legal summary in Part 1.

Freedom of speech

Freedom of speech within higher education institutions is closely associated with the academic freedom that they enjoy. **Section 43(1)** of the Education (No 2) Act 1986 imposes an express duty on institutions in England and Wales, in relation to staff, students and visiting speakers:

*‘Every individual and body of persons concerned in the government of any establishment to which this section applies shall take such steps as are reasonably practicable to ensure that freedom of speech **within the law** is secured for members, students and employees of the establishment and for visiting speakers.’*

S.43(2) clarifies that the duty extends to use of university premises. It provides that the above duty includes in particular the 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

(a) the beliefs or views of that individual or of any member of that body; or

(b) the policy or objectives of that body.’

Where a students’ union occupies premises which are not the university’s premises, s.43(8) provides that the university nonetheless be required to comply with the s.43 duties in relation to the students’ union premises.

S.43(3) requires universities with a view to discharging their s.43(1) duties to:

‘issue and keep up to date a code of practice setting out

(a) the procedures to be followed by members, students and employees of the establishment in connection with the organisation

(i) of meetings which are to be held on premises of the establishment and which fall within any class of meeting specified in the code; and

(ii) of other activities which are to take place on those premises and which fall within any class of activity so specified; and

(b) the conduct required of such persons in connection with any such meeting or activity; and dealing with such other matters as the governing body consider appropriate.’

S.43(4) requires every individual and body of persons concerned in the government of a university to:

‘... take such steps as are reasonably practicable (including where appropriate the initiation of disciplinary measures) to secure that the requirements of the code of practice for that establishment, issued under subsection (3) above, are complied with.’

The section 43 duty does not apply in Scotland or Northern Ireland and there is no directly equivalent provision. Scottish/Northern Irish universities, therefore, could not be the subject of a claim for breach of this statutory duty.

Nevertheless, freedom of speech is also protected through human rights law concepts such as freedom of expression and freedom of assembly, which apply throughout the UK. These are considered in more detail on the the next page.

Academic freedom

The legal basis for academic freedom focuses on the teaching activities of staff and the freedom of institutions and their staff to determine admission criteria and the content of courses. Beyond the freedom of speech provisions, the legal framework does not extend academic freedom to the activities of visiting speakers.

The concept of academic freedom underscores different pieces of legislation; for example in England and Wales, s.32(2) of the Higher Education Act 2004 puts a duty on the director of fair access to protect academic freedom when performing his statutory functions. The statute refers to:

'in particular, the freedom of institutions

(a) to determine the contents of particular courses and the manner in which they are taught, supervised or assessed, and

*(b) to determine the criteria for the admission of students and apply those criteria in particular cases.'*³²

In terms of the freedom of individual academics, s.202(2)

(a) of the Education Reform Act 1988 acknowledges that in England and Wales:

*'academic staff have freedom **within the law** to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions'.*

Whilst this provision relates to duties on the former University Commissioners in relation to pre-1992 universities, the principle of academic freedom has been incorporated into many universities' governance documents.

In Scotland, similar reference is made to academic freedom 'within the law' in s.26 of the Further and Higher Education (Scotland) Act 2005, concerning duties on further and higher education institutions ('fundable bodies') to protect academic freedom, which is defined as including '... *freedom (within the law) to:*

(a) hold and express opinion;

(b) question and test established ideas and received wisdom; and

(c) present controversial or unpopular points of view.'

Section 26 imposes duties on fundable bodies to (a) have regard to the desirability of ensuring the academic freedom of those engaged in teaching, the provision of learning and research and (b) ensure that appointments and entitlements to privileges are not adversely affected by the exercise of academic freedom by those persons.

In Northern Ireland the Education (Academic Tenure) (Northern Ireland) Order 1988 provides in Article 3(2) (a) that the University Commissioners for Northern Ireland shall in exercising their functions have regard to the need 'to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions...'

Equality law in Northern Ireland

At present, the Equality Act 2010 does not extend to Northern Ireland. There are various individual pieces of anti-discrimination legislation which cover equality in Northern Ireland:

- Sex Discrimination Act (Northern Ireland) 1970
- Disability Discrimination Act 1995
- Race Relations (Northern Ireland) Order 1997
- Fair Employment and Treatment (Northern Ireland) Order 1998
- Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003
- Employment Equality (Age) Regulations (Northern Ireland) 2006
- Equal Pay Act (Northern Ireland) 1970

The Fair Employment and Treatment (Northern Ireland) Order 1998 specifically applies to discrimination on account of actual or perceived religious belief or political opinion.

³² Higher Education Act 2004, s.32(2)

Criminal law, including anti-terrorism legislation

A number of criminal law statutes create offences which are potentially relevant in the case of controversial or extremist speakers. The principal legislation is considered below.

In addition to potential offences by an external speaker, offences can also be committed by those responsible for organising events, be they students or staff.

In outline, it consists of:

- The Public Order Act 1986³³
- The Protection from Harassment Act 1997³⁴
- The Terrorism Acts 2000 and 2006³⁵
- The Breach of the Peace law³⁶
- The Public Meeting Act 1908³⁷
- Other offences where verbal or written threats are made or circulated

The position in Scotland is different: for example, not all of the provisions of the Public Order Act 1986 creating criminal offences apply in Scotland. Conduct which amounts to an offence under the Public Order Act 1986 in England and Wales may be a criminal offence at common law in Scotland.

The statutory definition of terrorism

Section 1 of the Terrorism Act 2000 (TA 2000) defines 'terrorism' as the use or threat of:

- serious violence
- serious damage to property

- endangering another's life
- creating a serious risk to health and safety of the public, or a section of the public
- actions designed to seriously interfere with or disrupt an 'electronic system'

The above actions would constitute criminal acts in their own right, but to constitute terrorism, the use or threat of these actions must also be:

- designed to influence the government or an international governmental organisation, or to intimidate the public or a section of the public (although this element is unnecessary where the use or threat of firearms or explosives is involved)
- made for the purpose of advancing a political, religious, racial or ideological cause

The definition is wide and could, for example, potentially include animal rights activism, nationalist groups, religious extremism, anti-abortion and pro-life campaigners.

The TA 2000 further provides that actions taken 'for the purposes of terrorism' includes a reference to action taken 'for the benefit of a proscribed organisation'.

Further:

- the definition applies regardless of whether the act or threat occurred inside or outside the UK (s.1(4)(a) TA 2000)
- 'public' includes the public in other countries (s.1(4)(c) TA 2000)
- 'government' includes the UK government, the government of any part of the UK, and the government of any other country (s.1(4)(d) TA 2000)

³³ The equivalent legislation in Northern Ireland is the Public Order (Northern Ireland) Order 1987.

³⁴ The equivalent legislation in Northern Ireland is the Protection from Harassment (Northern Ireland) Order 1997.

³⁵ This legislation extends to Northern Ireland.

³⁶ The position is the same in Northern Ireland.

³⁷ In Northern Ireland, provisions relating to public meetings are under Article 7 of the Public Order (Northern Ireland Order) 1987.

Terrorism offences: the 'duties to disclose'

Whilst generally there is no legal obligation to prevent or report criminal activity under UK law, ss.19 and 38B TA 2000 do impose express duties to disclose specified information to the police in connection with terrorism offences and suspected terrorism offences.

(s. 38B) It is an offence to fail, without 'reasonable excuse' to disclose to the police, as soon as is reasonably practicable information which he knows or believes might be of material assistance in:

'preventing the commission by another person of an act of terrorism; or securing the apprehension, prosecution or conviction of another person, in the UK, for an offence involving the commission, preparation or instigation of an act of terrorism'

(s.19 TA 2000) It is an offence to fail, without 'reasonable excuse' to disclose to the police, as soon as is reasonably practicable:

- a belief or suspicion that another person has committed a 'terrorist property offence' (ie one of the offences under TA 2000 sections 15–18); and
- the information underlying that belief or suspicion

The duty only applies where the information giving rise to the belief or suspicion was obtained in the course of a trade, profession, business or employment. The duty to disclose also applies in relation to actions taken or items possessed outside the UK which would have been a terrorist property offence (under TA 2000 s.15–18) in the UK.

Where an employer has an established procedure for making disclosures (for example through a nominated reporting officer), it is a defence for an employee to prove that a disclosure was made in accordance with that procedure.

S.20 TA 2000 allows a person to make disclosure to the police in respect of a suspicion or belief that money or other property is terrorist property. S.20(3) provides that this is 'notwithstanding any restriction on the disclosure of information imposed by statute or otherwise', although there is scope for legal argument as to whether such a disclosure would comply with European data protection law, so institutions may consider it appropriate to ensure that any such disclosures are made in accordance with the provisions of the Data Protection Act.

Other offences where threats of violence are communicated³⁸

It is possible that offences could be committed by making threats, including in written material circulated on behalf of or relating to a controversial speaker. Examples are:

S.16 Offences Against the Person Act 1861³⁹

A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out, to kill that other or a third person.

Crime and Disorder Act 1998⁴⁰

This act imposes additional penalties for certain offences which are racially or religiously aggravated. The offences affected include some of the offences under the Public Order Act referred to above (s.4 fear or provocation of violence, s.4A intentional harassment, alarm or distress, and s.5 harassment, alarm or distress), as well as the offences under the Protection from Harassment Act 1997.

S.127 Communications Act 2003⁴¹

Under s.127 it is an offence to send by means of a 'public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character, or to cause messages or matter to be so sent.'

³⁸ In Northern Ireland under section 9(1) of the Northern Ireland Order 1987 a person who uses threatening, abusive or insulting words or behaviour or displays any written material which is threatening, abusive or insulting is guilty of an offence if (a) he intends to stir up hatred, arouse fear; or (b) having regard to all the circumstances hatred is likely to be stirred up or fear is likely to be aroused thereby.

³⁹ This legislation extends to Northern Ireland, but does not apply in Scotland.

⁴⁰ This legislation extends to Northern Ireland. These provisions of the 1998 Act do not apply in Scotland.

⁴¹ This legislation extends to Northern Ireland.

Malicious Communications Act 1988⁴²

The Act makes it an offence for any person to send to another with the purpose of causing distress or anxiety to the recipient:

- any letter, electronic communication or article of any description which conveys a message which is indecent or grossly offensive, a threat, or information which is false and known or believed to be false by the sender
- any article or electronic communication which is, in whole or in part, of an indecent or grossly offensive nature

There is a defence in relation to threats used to reinforce demands made on reasonable grounds, with a belief (itself held on reasonable grounds) that the use of the threat was a proper means of reinforcing the demand.

Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

The 2012 Act creates specific offences in relation to regulated football matches and represented an attempt by the Scottish Parliament to respond to concerns about sectarian behaviour at football matches in Scotland. The offences relate to (a) expressing hatred or stirring up hatred against groups of persons based on their membership (or presumed membership) of religious groups or social or cultural groups with a perceived religious affiliation or membership of groups defined by reference to other characteristics such as race, disability or sexual orientation; (b) behaviour motivated by such hatred; (c) behaviour that is threatening and (d) behaviour that a reasonable person would be likely to consider offensive. The behaviour must be likely to incite public disorder.

The offences can be committed in any place where a regulated football match is televised, which could of course include students' unions.

The 2012 Act also creates offences in relation to threatening communications. In terms of s.6 of the 2012 Act a person commits an offence if he or she communicates material to another person, and either:

(a) the material consists of, contains or implies a threat, or an incitement, to carry out a seriously violent act against a person or against persons of a particular description, the material or the communication of it would be likely to cause a reasonable person to suffer fear or alarm, and the person communicating the material intends by doing so to cause fear or alarm, or is reckless as to whether the communication of the material would cause fear or alarm; or

(b) the material is threatening, and the person communicating it intends by doing so to stir up hatred on religious grounds

Offences relating to public processions and 'trespassory assemblies'

Further offences are created by the Public Order Act 1986⁴³ in relation to potentially disruptive processions and assemblies in certain circumstances. In outline:

- In the case of **processions on public highways** or in **places where the public or part of the public have 'access as of right or by express or implied permission'** it is an offence to fail to give the police not less than six 'clear' days' notice of the procession, unless this is not 'reasonably practicable'. 'Clear' days means that the day on which notice is given and the day of the procession cannot be counted towards the notice period.
- The police can have the power in certain circumstances (broadly speaking where they believe that serious public order offences or disruption may occur) to **impose conditions** on such processions, and it is an offence to fail to comply with such conditions.
- If the police believe that the conditions will not be sufficient to prevent anticipated disruption, they can seek an **order from a local authority prohibiting a procession**. If such an order is made, it becomes an offence to organise, take part in or incite another to take part in the specified procession.

⁴² The equivalent in Northern Ireland is the Malicious Communications (Northern Ireland) Order 1988. The Act does not apply in Scotland.

⁴³ Most but not all parts of the Public Order Act 2006 apply in Scotland. The Civic Government (Scotland) Act 1982 applies to public processions in Scotland. The equivalent legislation in Northern Ireland is the Public Order (Northern Ireland) Order 1987 which governs, inter alia, open-air public meetings. Note that the provisions are not identical to the Public Order Act 1986.

- A senior police officer may also impose similar conditions on **'public assemblies'** on the same grounds. A public assembly is an assembly of two or more persons in a public place which is open to the air. 'Public place' is defined as taking place on public highways and places in the same way as the 'public procession' offence above. It is an offence for the organisers and attendees to knowingly fail to comply with the conditions. It is also an offence to incite another to knowingly fail to comply with the conditions.
- The police can also seek a local authority order prohibiting a **'trespassory assembly'**, which in broad terms is an assembly of 20 persons or more on land to which the public do not have access, which the landowner does not wish to permit and which it is anticipated will cause serious disruption or damage.

Advice should be sought if it is considered likely that these provisions are going to be relevant to a particular event.

Definition of universities

The changing funding arrangements and legal structures of universities can have an impact on their legal obligations. In terms of the matters considered in this guidance, the duties under the Education (No 2) Act 1986 apply in England and Wales to every individual and body of persons concerned in the government of:

- any university
- any institution other than a university within the higher education sector
- any establishment of higher or further education which is maintained by a local authority
- any institution within the further education sector⁴⁴

'University' is defined for the purposes of the 1986 Act to include a university college and any college, or institution in the nature of a college, in a university⁴⁵.

The Human Rights Act 1998 makes it unlawful for a public authority to act in a manner which is incompatible with the Convention Rights. 'Public authority' is defined as:

- a court or tribunal
- any person certain of whose functions are functions of a public nature⁴⁶

Traditionally, state funding of institutions has been viewed as a potential ground for establishing that such institutions may exercise certain functions of a public nature. However, given changes to the funding regime in recent years, it remains to be seen what approach a court will take to institutions in future, taking account of their individual legal status, funding and functions.

Under the Equality Act 2010, the s.149 Public Sector Equality Duty applies to 'public authorities' (s.149(1)). Schedule 19 of the Act defines 'public authorities' to include *'The governing body of an institution in England within the higher education sector (within the meaning of section 91(5) of [the Further and Higher Education Act 1992]'*.⁴⁷

⁴⁴ Education (No 2) Act 1986 s.43(5)

⁴⁵ Education (No 2) Act 1986 s.43(6)

⁴⁶ Human Rights Act 1998 s.6(3)

⁴⁷ In Northern Ireland, the two universities are designated for the purposes of section 75 of the Northern Ireland Act 1998 and are thus subject to the 'Equality' and 'Good Relations' duties. However, the Northern Irish students' unions have not been designated.

ANNEXE B: POINTS TO CONSIDER WHEN REVIEWING YOUR EXTERNAL SPEAKER PROCESSES

Institutions are free to devise their own policies and processes. These questions may be helpful in reviewing existing processes.

1. Is the policy dated?
2. When was the policy reviewed?
3. What details are included relating to the individual with ultimate oversight for the policy and decision-making authority (name, contact details)?
4. Does the policy state that individuals or organisations that fail to adhere to it will face sanctions?
5. How accessible is the policy?
6. Could the policy be made more widely available by utilising additional channels?
7. What measures are in place to communicate the policy to student societies?
8. Is the university event (conference) management team aware of the policy?
9. Does the policy include any details of who it applies to and which premises?
10. Would examples of scenarios where requests may be refused provide additional clarity?
11. What information is given on the timeframe within which external speaker requests must be submitted and responded to?
12. What information is given on how external speaker requests must be made and where relevant forms can be accessed?
13. Are there any questions on the list on page 19 which might be useful additions to your external speaker booking form?
14. What information is given on notifying the institution of material changes to an approved booking (such as a change in speaker)?
15. Using the legal overview in Diagram 1 on page 4 as a guide, are there any areas of the law that staff making external speaker decisions are unfamiliar with?
16. Is there a well-communicated and structured process in place to escalate external speaker requests that appear to be high risk or controversial?
17. Would creating a dedicated internal group assist with making decisions on the most complicated external speaker requests?
18. Using the list on page 21 as a guide, are there any individuals or organisations on it that your institution might usefully involve in external speaker decisions in particular circumstances?
19. What links currently exist with community groups, police and the local authority and are these links used to assist with external speaker decisions where necessary?
20. What information is given on the timeframe for communicating an external speaker decision and the mode of communication that will be used to do so?
21. Is any information given on appealing an external speaker decision?
22. Does the policy refer to the processes that student societies must follow when making an external speaker booking request for an event on university premises?
23. Does the policy include any involvement from a students' union representative (eg the president) in relation to potentially controversial external speaker requests submitted to the institution by student societies?

ANNEXE C: OTHER RESOURCES

Association of Chief Police Officers (2012) *Prevent, police and universities*

Association of Chief Police Officers (2008) *The application of neighbourhood policing to higher education institutions*

Charity Commission (2013) *Protecting charities from harm – compliance toolkit* (Chapter 5 – ‘Protecting Charities from abuse for extremist purposes and managing the risks at events and in activities’)

Equality Challenge Unit (2013) *Promoting good relations on campus: a guide for higher and further education*

National Union of Students (2011) *Managing the risks associated with external speakers*

Safe Campus Communities website:
www.safecampuscommunities.ac.uk

True Vision Stop Hate Crime website:
http://report-it.org.uk/report_a_hate_crime

Universities UK (2011) *Freedom of speech on campus: rights and responsibilities in UK universities*

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Association of Chief Police Officers

Association of University Chief Security Officers

Charity Commission

Church of England

Department for Business, Innovation and Skills

Equality Challenge Unit

Federation of Student Islamic Societies

GuildHE

Higher Education Funding Council for England

Home Office

Lokahi Foundation

National Union of Students

The University of Nottingham

Union of Jewish Students

University College London

University of Greenwich

University of Westminster

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BIBLIOGRAPHY

Aberystwyth University

Rules and Regulations

Cardiff University

Code of Practice to ensure freedom of speech

Durham University

Code of Practice on Freedom of Expression in Relation to Meetings or Other Activities on University Premises

Leeds Metropolitan University

Code of Practice on Freedom of Speech and Expression

Liverpool John Moores University

External Speakers Policy

London School of Economics

Code of practice on free speech

Loughborough University

Centre for Faith and Spirituality Handbook 2012-13

Oxford Brookes University

Code of Practice on Freehold of Speech and the Right of Lawful Assembly

Roehampton University and Roehampton University Students' Union

Guidelines for engaging with sensitive issues

St George's, University of London

Guidance for all speakers at SGUL

St George's, University of London

Promoting Good Campus Relations: Policy on Events and Meetings

University College London

Code of Practice on Freedom of Speech

University of Bath

Code of Practice – Freedom of Expression

University of Birmingham

Code of Practice on Freedom of Speech on Campus

University of Bolton

Code of Practice Relating to Freedom of Speech and Meetings on University Premises (including the premises of the University of Bolton Students' Union)

University of Bradford

Policy and Code of Practice on the Conduct of Events at the University

University of Brighton

Code of Practice on Freedom of Speech and Lawful Assembly in the University

University of Essex

Policy on Tackling Violent Extremism in the name of ideology or belief and maintaining cohesive campus relations

University of Manchester

Code of Practice on Freedom of Speech

University of Oxford, Magdalen College

Code of Practice on Freedom of Speech

University of Surrey

Code of Practice on Freedom of Speech

University of West London

Freedom of Speech – Code of Practice

University of Westminster

Code of Practice on Freedom of Speech within the University of Westminster



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