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FTA: Nicola Dandrige, Chief Executive
Universities UK
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And by fax to: 020 7388 8649

Dear Madam

**UUK guidance: “External speakers in higher education institutions”
Our client: Radha Bhatt**

We are instructed by Ms Bhatt, a full-time student at the University of Cambridge, in relation to the UUK guidance published on 22 November 2013. We had originally been advising Ms Bhatt on a potential claim for judicial review and discrimination on the basis of the original version of the guidance which contained a case study concerning segregation on the basis of gender. We understand that the case study has been withdrawn, as of 13 December 2013, and the guidance is under review by UUK. We have therefore advised our client that to threaten proceedings at this stage would be inappropriate.

However, Ms Bhatt is so concerned as to the content of the original version of the guidance and statements made by you on behalf of UUK that we are instructed to make the detailed submissions set out below on her behalf, and request that you confirm the following within 14 days of the date of this letter:

1. The points made below on behalf of our client will be taken into account by UUK as part of the review of its guidance;
2. To address the confusion caused by the original version of the guidance, you will issue new guidance confirming that segregation as anticipated in case study 2 (as published on 22 November 2013) is unlawful; and that
3. Representative women’s organisations will be consulted on any new guidance, including any new version of case study 2.

Factual background

Our understanding of the factual background to the provision of the guidance is as follows, and for ease of reference, we set out below the key passages of concern to Ms Bhatt.

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We understand that Universities UK ("UUK") is an umbrella body made up of its member institutions: 132 universities in the UK. We understand from your website that UUK's mission is to be the "definitive voice for universities in the UK". Your strategic plan for 2013 to 2018 confirms that you are the representative organisation for the UK's universities. The strategic plan describes UUK's principal functions, including providing information and services for members.

On 22 November 2013, UUK issued guidance entitled "External speakers in higher education institutions". The guidance was made up of three sections: a summary of the legal context, effective external speaker procedures and external speaker case studies. As outlined above, our client's concerns relate to the third section, and specifically "case study 2: segregation".

The case study included a section headed "Things to consider: legal framework – points likely to be particularly relevant" and included the following statements:

"this issue [possible less favourable treatment] could be overcome assuming the room can be segregated left and right";

*"there does not appear to be any discrimination on gender grounds merely by **imposing segregated seating**" [emphasis added];*

"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".

This section concluded: *"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".*

On 13 December 2013, UUK issued a statement withdrawing the case study pending a review of the guidance. The press release stated: "Universities UK agrees entirely with the prime minister that universities should not enforce gender segregation on audiences at the request of guest speakers. However, where the gender segregation is voluntary, the law is unclear. We are working with our lawyers and the EHRC to clarify the position."

Ms Bhatt is a university student. She objected to the case study on segregation on the basis that it discriminated against women and failed to recognise the importance of gender equality, particularly in higher education. She was concerned that the university she attends, or others that she visits whilst studying, might adopt the guidance and decide to impose segregated seating if requested by an external speaker at a specific event. Our client is particularly concerned that UUK's stance – if the position is not clarified as requested above - will have a disproportionate impact on

women from cultural and religious backgrounds where they already struggle to assert their right to education and to gender equality.

We are also aware that a number of higher education institutions have already held events which either explicitly promoted gender segregation or implied that this would be the case. It is therefore crucial that UUK clarifies the position as a matter of urgency, confirming that gender segregation on the basis of the case study in question would be unlawful.

Legal background

Given that the matter being challenged is the issuing of guidance to your members who are themselves public bodies susceptible to challenge by way of judicial review, we have advised our client that UUK is a public body exercising public functions. As such, UUK is bound by the Human Rights Act 1998 under s.6(3) on the basis that you are exercising functions of a public nature in issuing the guidance, and thus it is unlawful for you to act in a way which is incompatible with a Convention Right.

Similarly, in relation to the public sector equality duty, whilst UUK is not listed in Schedule 19 to the Equality Act 2010, it must meet the PSED when exercising public functions such as issuing guidance to public bodies, as required by s.149(1) and (2) of the Act.

On the basis that UUK is a public body exercising public functions, we had advised our client that the issuing of the guidance was unlawful for the reasons set out below. For the avoidance of doubt, had case study 2 not been withdrawn, UUK would have been susceptible to challenge by way of judicial review. In addition, any member university applying the guidance would itself have been acting unlawfully and any guidance now issued by the UUK should so advise.

We are also aware that the Equality & Human Rights Commission has issued a statement that confirms that it is not permissible to segregate by gender in the situation described in case study 2 of the guidance.

Submission 1 - Articles 9, 10 and 14: the balancing act

Article 9 of the European Convention on Human Rights provides that "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to ... manifest his religion or belief, in worship, teaching, practice and observance". However, this right is qualified by Article 9(2) which confirms: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society ... **for the protection of the rights and freedoms of others**" [emphasis added].

Article 14 ECHR prohibits discrimination in the enjoyment of Convention rights and freedoms, which includes the right to education (Article 2 of the First Protocol) and under Article 10 the right to freedom of expression which is defined as "freedom to hold opinions and to **receive** and impart information and ideas without interference by

public authority" [emphasis added]. Article 10 is also qualified in that this right "may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ...for the protection of... the rights of others".

Thus, the law requires public bodies such as UUK and the universities it is advising to undertake a balancing act when considering how to address the situation set out in the case study in question, i.e. that a speaker's Article 9 and 10 rights must be balanced against the rights of those attending meetings not to be discriminated against under Article 14, and to receive information without interference under Article 10.

Recent case law has dealt with these matters in the context of access to services for a gay couple who had entered into a civil partnership: see *Preddy & Another v Bull & Another* in the Supreme Court.

In the *Preddy* case, the Court confirmed that, although the right of citizens to practise their religion and live out their beliefs is a fundamental one, it can be limited where necessary to protect the rights of others. The court's clear view was that if people were permitted to discriminate because of their belief that civil partnerships are not equivalent to marriage, this would "create a class of people who were exempt from the discrimination legislation" and the Court added that "we do not normally allow people to behave in a way which the law prohibits because they disagree with the law".

The position in the case study is directly analogous with that in the *Preddy* case. The Article 9 rights of the external speaker must be balanced in accordance with the law, against the rights of women students not to be discriminated against. Thus taking into account the analysis in *Preddy* and applying it to the situation in the case study, the case law makes clear that Article 9 rights cannot trump equality. The religious beliefs of a speaker should not be used to legitimise discrimination against women. This applies equally to the Article 10 rights of the speaker in relation to their right of freedom of expression; those rights must be balanced against the Article 14 rights of women students. Great weight will be afforded the right to gender equality in these circumstances. Segregating women from men reinforces negative views about women, and undermines their right to fully participate in activities on equal terms with men within a learning environment.

In addition, Article 10 covers the rights of those *receiving* information not to have this right interfered with by the state. Those attending an open meeting have the right to receive information without pre-conditions on how they will receive it, and this should be given equal weight as the right of the speaker to impart the information. Thus a body that allows a speaker to impose conditions on how they impart information is in itself a breach of the listener's Article 10 rights. The guidance did not address this point at all.

Thus the guidance was incorrect in its analysis and in the statements contained in the guidance that are set out above. The guidance was therefore unlawful and this should

be confirmed by UUK as soon as possible. In respect of these Convention rights, we do not agree with your statement of 13 December 2013 that where segregation is "voluntary" the law is unclear.

Submission 2 - Public sector equality duty, s.149 Equality Act 2010

As set out above UUK and its members are bound by s.149 Equality Act 2010 to have due regard to the need to eliminate discrimination and harassment, the need to advance equality of opportunity and the need to foster good relations between those with protected characteristics.

Firstly, we are not aware of any attempt by UUK to meet its own duty under s.149 EA 2010 as a body exercising a public function, i.e. issuing guidance to other public bodies. It is apparent on the face of it that either no regard, or insufficient regard, has been had to the need to eliminate discrimination and harassment of women, or the need to advance equality of opportunity, when the guidance was prepared and then issued. Guidance that suggests that it would be lawful to agree to or impose a condition of segregation by gender at a meeting cannot in any sense be said to have been produced with the duty in mind.

The duty is on-going and non-delegable; it must be met with rigour and an open mind, and the decision-maker must conscientiously apply their mind to the specific needs set out in s.149. The decision-maker must gather the right information to enable them to assess the impact of their policy decisions on those with protected characteristics and on equality overall. The courts have repeatedly stated that meeting the duty must be integral to policy development and decision-making and that it is good practice for public bodies to record how the duty is met.

We note that no organisations representing women or campaigning for gender equality were consulted in the drafting of the guidance, despite the obvious potential for infringement of women's rights if institutions adopted the guidance and imposed or proposed segregated seating at an event; (see page 39 of the guidance which refers to the organisations that had input into its preparation). This would suggest that no consultation was carried out with women's organisations or those with expertise in promoting gender equality. A failure to consult appropriately in order to gather the right information to meet the duty properly is likely to amount to a breach of the duty itself.

Secondly, the guidance failed to identify the importance of this statutory duty in the case study stating only: "*the institution will also need to have due regard to its Public Sector Equality Duty obligations when making decisions about the event*". Given that it is highly unlikely that the duty can be complied with if segregated seating is imposed, the guidance should have set this out and provided advice and information on the obvious implications for gender equality of agreeing to such a request from an external speaker. Moreover, on our analysis (see below), the guidance was endorsing discriminatory practices which if adopted by an individual institution would be clear evidence of a breach of the PSED.

Thirdly, whilst we accept that the guidance is only guidance, the duty on UUK is to have due regard to the need to eliminate discrimination and the need to advance equality of opportunity, which includes taking positive action in instances such as this to meet those goals. The guidance provided an ideal opportunity for UUK to make clear that segregated seating is discriminatory and undermines the goals of ending discrimination against women and advancing their equality of opportunity. Thus, a failure to adopt a stance that assists in eliminating discrimination and advancing equality of opportunity may in itself constitute a breach of the Act. Thus in respect of the PSED, we do not agree with your statement that the law is unclear if segregation is voluntary.

Submission 3 – discrimination

The case study made a number of suggestions that if adopted by an institution would have resulted in direct discrimination, harassment and would have induced a university to act unlawfully against women attending the event described, contrary to the Equality Act 2010.

Firstly, section 13 of the Equality Act 2010 prohibits less favourable treatment of women on the basis of their sex within the sphere of higher education. We do not accept the analysis in the case study that the risk of “less favourable treatment” can be addressed by segregating the room “left and right” and that there will be no discrimination on gender grounds “merely by imposing segregated seating”. Whilst gender segregation is not *in terms* addressed by the Equality Act 2010 (as may be contrasted with race which, for historical reasons, is specifically referred to), the scheme of the Act is such as to make clear that segregating women from men is, save in exceptional circumstances, less favourable treatment. If evidence of this were necessary (and it would seem obvious), it is provided by the exceptions in the Act which make gender segregation lawful in certain prescribed circumstances (e.g. in Schedule 23, paragraph 3 ‘communal accommodation’), presuming that such provision would otherwise be unlawful. Accordingly, any university following this guidance, and permitting the segregation of women from men, or making attendance at a lecture conditional upon a woman agreeing to sit separately, would have been acting unlawfully.

Further, in promulgating the guidance, you were directly discriminating against my client yourselves. You were treating women students less favourably because of their sex by subjecting them to the knowledge that they may be prohibited from choosing to sit wherever they choose (and in particular with a man or men) as a condition of attendance at a lecture, as anticipated by the guidance. This itself is less favourable treatment. If your guidance had remained in place, my client would have continued her university life in the knowledge that it was regarded as acceptable by yourselves (a body that provides services to the public including for the benefit of universities and thus the student body) that segregating her from her male fellow students was permissible in circumstances anticipated by your guidance and that that guidance was something her university was likely to give particular weight to. This would in itself have been unlawful.

By producing guidance that endorses a discriminatory approach on the basis that "separate but equal" is an appropriate stance to adopt, UUK is treating women less favourably. It is surprising to my client that this even has to be brought to your attention and that the guidance was only withdrawn after considerable pressure from EHRC and others.

Secondly, section 26 EA 2010 prohibits harassment within the sphere of higher education. The segregation of women from men, as a condition of attendance at a lecture as anticipated by your guidance, is self-evidently undermining of the dignity of women and is such as to create an intimidating, hostile, degrading and humiliating environment. It must be said again that it is frankly surprising that this even has to be brought to your attention.

Thirdly, the Equality Act 2010 outlaws discrimination by those who "knowingly help" another to do an unlawful act: see section 112(1). A person "helps" another if he helps or assists, or cooperates or collaborates with him. It is apparent that issuing guidance that endorses - and in particular "helps", "assists", "cooperates" and "collaborates" with universities - discrimination by universities in a case study issued for their use is a breach of s.112(1).

Fourthly, section 111 of the Equality Act 2010 outlaws the "causing", "inducing" and "instructing" of discrimination. Given your relationship with universities to whom you provide services, specifically guidance, you are plainly acting, causing and inducing them (at least) to commit unlawful acts of discrimination and as such acting unlawfully.

These are all matters to which no regard appears to have been had by you in deciding to issue the guidance including case study 2. As with the submissions made above, in respect of discrimination and breaches of the EA 2010, we do not agree that the law is unclear with regard to "voluntary" segregation.

Conclusion

If you do not agree with the legal submissions set out above, please provide a full response addressing each aspect of our analysis which you dispute legally. This is a matter of the utmost importance to our client and many others and UUK must clarify their position on the matters raised above as soon as possible.

We also look forward to hearing from you in relation to the requests made on page 1 of this letter. We are forwarding a copy of this letter to the EHRC for their information.

Yours faithfully



DEIGHTON PIERCE GLYNN