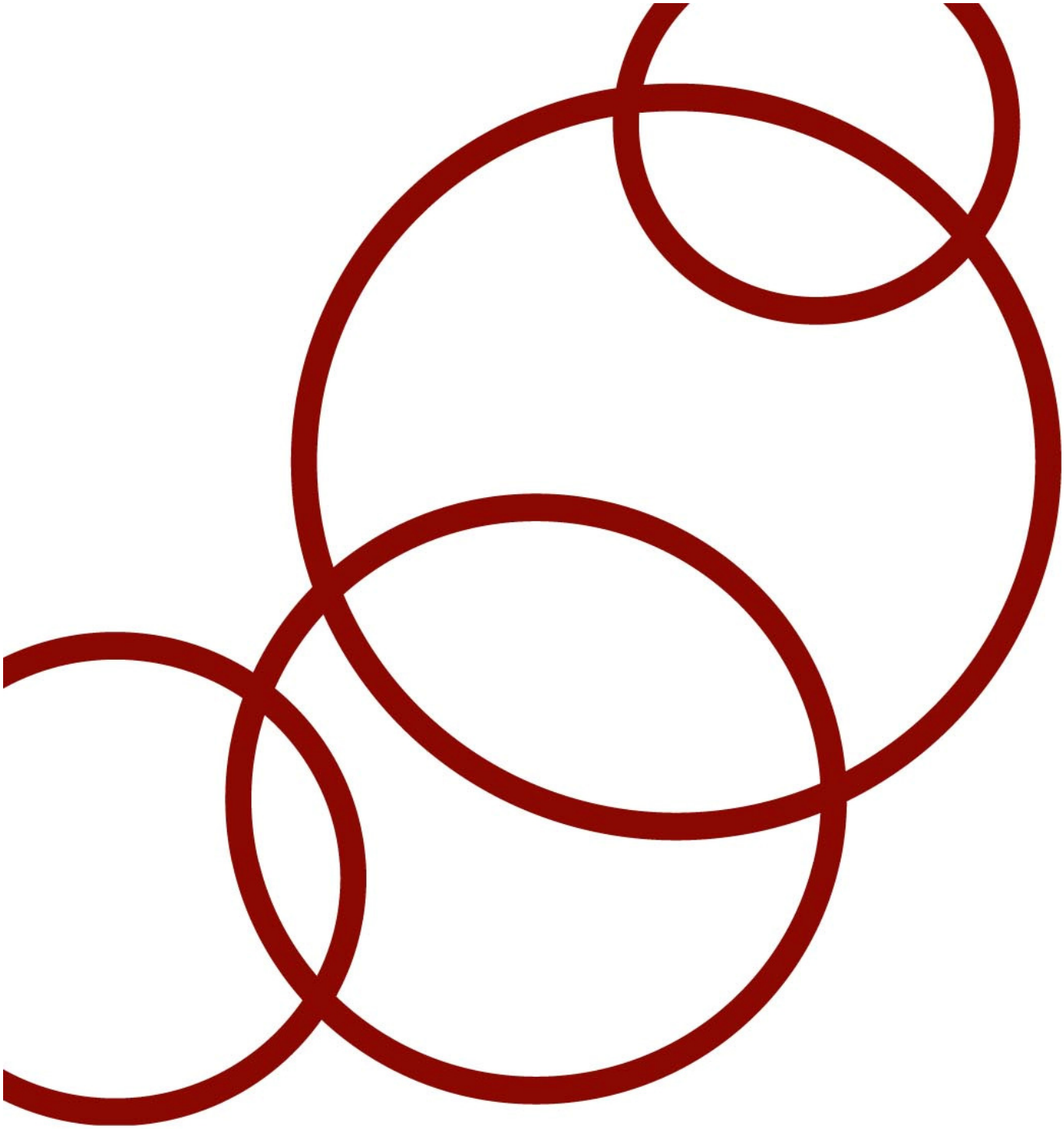

No Platform Policies

A guide for students' unions

national union of students

Introduction

Most students' unions want to promote a safe environment for students, where students can be free to go about their lives free from racism and prejudice. "No Platform" policies are central to that aim. This briefing explains the policies, examines concepts of "free speech" and gives detailed legal advice on implementing a "no platform" policy in your union. Given the rise of the BNP at the last euro election, it is essential that you prepare for the next election by ensuring that your union passes a robust "No Platform" policy in preparation.

Background

Following the decision of NUS Conference to adopt a "No-platform" policy some years ago, NUS has been effective in ensuring that racist, fascist and anti-semitic organisations have been silenced in the student movement, both nationally and within students' unions. Yet despite the effectiveness of this and other similar policies, racist and fascist organisations have managed to infiltrate campuses and undermine students' union's fairness and equality practice. In some cases students' union have actually sought to invite racist and fascist organisations to provoke debates.

At its' Annual Conferences, NUS has regularly debated and voted upon a wide range of policies on anti-fascism and anti-racism covering issues such as immigration and asylum, stop and search, religious extremism and no platform. Within the student movement there have been heated and protracted discussions as to what a no- platform policy for racists and fascists actually amounts to and whether or not it contradicts equal opportunities and freedom of speech.

The notes below aim to provide officers and students with NUS' view of what a no platform policy amounts to and answer the question of its relationship with equal opportunities and freedom of speech.

No-platform in a union democracy

A no platform policy should have as its aims:

1. To prevent individuals or groups known to hold racist, fascist views from speaking at union events.
2. To ensure that executive members will not share a public platform with individuals or groups known to hold racist or fascist views.

Racism

- the prejudice that members of one race are intrinsically superior to members of

other races
- discriminatory or abusive behaviour towards members of another race

Fascism

- a system of government marked by centralization of authority under a dictator, stringent socioeconomic controls, suppression of the opposition through terror and censorship, and typically a policy of belligerent nationalism and racism.

A No platform policy is a tool through which students' unions can ensure they provide a safe environment for all their members. Racists and fascists seek to isolate certain sections of society whether on the basis of race, ethnic origin or religion and subject them to taunts, attacks and harassment. No platform policies prevent them from not only attending union events but can also include banning them from even entering union buildings and displaying their publicity on union property.

Equal Opportunities and Freedom of Speech

Quite often the arguments against no platform have centred on the issue of 'free speech'. Some believe a no platform policy limits the "freedom" of certain individuals and organisations. However, students are also collectively free to invite- or not invite- who they wish to their events. Given that students' unions are democratic membership organisations, it is right that they should be free to decide who they should and should not invite to speak on platforms at their events.

NUS supports freedom of speech, thought and expression. But NUS opposes those who attempt to utilise this "freedom" in order to remove the freedoms of others. Affording racists and fascists a platform helps them in their search for credibility to promote their messages of hate, which in turn can lead to violence against those that they target.

Many students' unions have been concerned that no-platform policies are in breach of the lawboth. Human Rights Legislation and the 1986 Education Act dealing with Freedom of Speech.

See the later section on "No Platform and the Law"

The British National Party, racist and fascist in both policy statement and practice, is the organisation which is most commonly prevented from expressing its views by a 'no platform policy'. But it is not just the BNP who may be subject to 'no platform'. There is a range of organisations currently listed as being subject to 'no platform' by the National Union of Students. - A current and up to date list is available on request.

Why a policy for both racists and fascists?

It is important to recognise that racism and fascism are two different forms of prejudice directed at certain sections of the student community. To ensure that those sections of your membership which are likely to be targeted by either racists or fascists are protected, a union's no platform policy must explicitly cover both these forms of prejudice.

Within the student movement, most students are aware of racism but less about fascism and the ways in which they destroy the lives. The Union should ensure that it provides a safe space for all its' members.

If the policy only made reference to fascist then those sections of a unions membership who are targeted by racists could be subjected to racists material being distributed around the union. The same would apply if the policy only made reference to racists and leave those targeted by fascists being subjected to verbal abuse in the union.

Safeguarding minority students and reducing conflict

Creating an environment that promotes multiculturalism and equality is not just for sake of the minority students, but it is also a tool for reducing potential conflict among the diverse communities that exist on campuses.
It is unions that promote equal opportunities and uphold them that can claim to be champions of creating an environment where healthy democracy can thrive.

How to enforce such a policy

The policy should be displayed in a prominent place around the union, and should be distributed to all clubs and societies, which receive funding from the Union. It is important that once the policy is passed by either Union Council, a General Meeting or Referendum that your members do not forget about its' existence.

The Union should incorporate breaking the policy into its' disciplinary procedures, whereby should a member be caught distributing racist/fascist publicity at the Union or invite a racist or fascist to address an event at the Union, they can be subject to the union's disciplinary procedures.

The union should run a series of awareness events for both its members and institution staff about what the no platform policy amounts to and how each of them have a role to play in enforcing the policy. Part of this work can be done in conjunction with any relevant liberation or anti-racism/fascism student societies that are on campus.

Model No Platform Policy Motion

This Union believes

1. That racism and fascism are still rife in all aspects of society and that it should be confronted wherever it is found.
2. That students and students' unions have a long proud record of achievement in the fight against racism and fascism.
3. That in line with the union's equal opportunities policy, the union should be at the forefront of campaigns to combat prejudice on the form of ethnic origin or religious belief, i.e. racism, fascism.
4. That a no platform policy is a key element in the fight against racism on campus.
5. That the no-platform policy compliments Equal opportunities polices and the Public Order Act.
6. This Union States
7. That no platform policies safeguard its members from being subjected to listen to the lies, bigotry and hatred of racists and fascists.
8. That some members are confused about what a no platform amounts to and that it is the responsibility of the executive to educate its members on the issues surrounding a no platform policy.

This Union Resolves

1. Not to allow any individual who is known to hold racist or fascist views from entering union premises.
2. Not to allow any individual who is known to hold racist or fascist, to speak at a union event.
3. Not to allow any individual who is known to hold racist or fascist from distributing any written or recorded material in the union which expresses those views.
4. That no elected officer of the union will speak on a platform with an individual who is known to hold racist or fascist views.
5. That resolutions one to four shall be known as the union's 'no platform policy'
6. To widely publicise this policy, not only to its members but also to the institution.
7. To incorporate the no-platform policy into the Union's disciplinary procedure and use accordingly.

No Platform and the Law

A number of students' unions have raised concerns that such a 'no platform' policy may constitute a violation of the law relating to freedom of speech and expression.

Does no platform infringe on freedom of speech?

No. Some have argued that 'no platform' policies are an infringement of freedom of speech or, perhaps more seriously, of freedom of speech legislation such as article 10 of the Human Rights Act 1998. This is not the case. See below for more details.

A no platform policy in no way prevents anyone from holding ideas, speaking their mind in the street, holding meetings in any venue that will agree to their use of a room etc. No platform is simply a students' union making a democratic decision about who it chooses to invite or not invite to its meetings. Students' unions make decisions every day about who to invite to address their meetings - a local MP, high profile campaigner, university VC etc. By doing so they are at the same time making a decision not to invite a whole series of others. By adopting a no platform policy a students' union is simply choosing not to invite certain individuals or representatives of certain groups to address its events - something perfectly within its remit to do.

Can a students' union prevent societies from inviting speakers?

Yes, legally a students' union society has no identity separate to that of the students' union. Therefore all society meetings are in fact meetings of the students' union so if the union democratically chooses not to invite certain speakers that decision can be applied to all meetings.

Is no platform in breach of the Education Act 1986 No. Section 43 of the education act does not directly apply to students unions. See detailed advice below.

In addition, nobody is obliged by the education act to invite any particular speaker. A university or department can choose to invite the BNP but they don't have to. Therefore even if a students' union was not considered a separate body from the institution, it still has the same rights and can exercise them in the form of a decision not to invite the BNP.

What if our students are members of "No Platformed" groups

This is an area that can cause considerable difficulty and we are seeking detailed advice on these issues in coming months. Contact NUS for support.

Detailed Legal View:

Education Act (No. 2) 1986

Section 43 of the Education Act (No. 2) 1986 ("the 1986 Act") requires universities 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. Such a duty includes in particular the duty to ensure that so far as is reasonably practicable, the use of any of the establishment's premises is not denied to any individual or body of persons on any ground connected with the belief or views of that individual or of any member of that body or that body's policy or objectives.

Universities

Section 43 is a positive obligation on universities to protect and promote lawful freedom of speech. It requires a university to secure freedom of speech and to take steps that are reasonably practicable. Watkins LJ in R v University of Liverpool, ex p Caesar-Gordon ([1990] 3 All ER 821) stated at paragraph 826:

It's [a university's] duty is to ensure, so far as is reasonably practicable, that those whom it may control, that is to say its members, students and employees, do not prevent the exercise of freedom of speech within the law by other members, students and employees and by visiting speakers in places under its control.

A university is required is required to ensure that so far as is reasonably practicable the use of its premises is not denied to any individual or group on any ground connected with their views or beliefs or that bodies policy or objectives. A blanket ban on an individual or group would on the face of it be contrary to this obligation. During a House of Commons debate in the context of the Islamic extremism guidance issued last November, Bill Rammell MP categorically stated that a blanket 'no platform' policy would not be consistent with the 1986 Act.

In the Caesar-Gordon case referred to above, the court held that a university was not, by virtue of Section 43, under a duty to take into consideration persons and places outside of its control when deciding whether to permit meetings to take place on university premises. It followed that the fact that the police were concerned that there might be a risk of public disorder in the surrounding area was not a good reason for the governing body of the university to refuse permission for meetings at the university at which speakers from the South African embassy were to address a student society. Watkins LJ stated that Section 43(1) imposes on the university a positive duty to take steps to ensure that freedom of speech within the law is secured and pointed out that this duty is qualified to the extent that it only requires a university to take steps that are reasonably practicable to ensure that freedom of speech within the law is secured. It was also recognised that the

imposition of certain conditions (in that case to limit publicity of the event, restrict attendance and to charge for cost of security) was not in breach of Section 43. Watkins LJ stated that

"the conditions in question could be considered to be necessary in the interests of free speech and good order in the event of the meeting taking place."

Students' Unions

Section 20(1) of the Education Act 1994 ("the 1994 Act") defines a students' union as either:

an association of the generality of students at a university whose principal purposes include promoting the general interests of its members as students; or a representative body whose principal purposes include representing the generality of students at such an establishment in academic, disciplinary or other matters relating to the government of the establishment.

The opinion obtained by the NUS from Richard McManus confirms the decision in the case of C & E Commissioners v University of Leicester Students' Union ([2001] EWCA Civ 1972) that a university and a union have distinct purposes and functions. Although a university has a supervisory role, that does not detract from the ultimate independence of the union from the university. It does not have a public law or statutory character such as to make its decisions amenable to judicial review (see R v Thames Valley University Students' Union, ex p Ogilvy [1997] CLY 2149). A students' union therefore, as a distinct and separate legal entity to its university, is not under any duty to secure freedom of speech pursuant to Section 43.

Conclusion

A blanket 'no platform' policy would leave a university susceptible to challenge on the grounds that such a policy is inconsistent and in breach of section 43 of the 1986 Act. A students' union is not directly affected by section 43, but could come under pressure from their university as a result of the university being affected.

Section 22 of the 1994 Act provides that the governing body of a university must take such steps as are reasonably practicable to secure that a students' union operates in a fair and democratic manner and is accountable for its finances. I am not sure whether a university, which opposed the adoption of a 'no platform' policy by a students' union because of the risk that an action may be brought against it for a breach of section 43, could rely on these powers to prevent such a policy from being adopted.

The next section details the human rights concerns raised by the adoption of a blanket 'no platform' policy.

Human Rights Act 1998

As you are aware, the Human Rights Act 1998 (HRA) incorporates the European Convention on Human Rights into domestic law. It came into force on 2 October 2000.

The HRA is relevant to the question of 'no platform' policies in two ways. First, section 3 of the HRA requires primary and secondary legislation (which includes section 43 of the 1986 Act) to be read, insofar as possible, in a manner which is compatible with the rights protected by the HRA. Second, section 6 of the HRA makes it unlawful for a public authority to act in a way which is incompatible with a Convention right. The relevant Convention right with regard to a 'no platform' policy will be Article 10 which relates to freedom of expression.

Article 10

Article 10 provides as follows:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by a public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for the maintaining of the authority and impartiality of the judiciary.

In Handyside v UK ([1976] 1 EHRR 737) the European Court held that freedom of expression Constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to Article 10(2), it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend shock or disturb the state or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'.

It is in this context that the legitimacy of any interference with this right is to be

determined. Racist, fascist and xenophobic views run counter to the principles of tolerance, pluralism and mutual respect on which the Convention is founded. Therefore, restrictions on such expression can be justified as necessary for the protection of the rights of others (and if considered to incite violence, hate and hostility, for the prevention of disorder) and excluded from the scope of Article 10. Any restriction on Article 10 must have a basis in domestic law. The Public Order Act 1986 prohibits speech which incites violence or racial and religious hatred and therefore a restriction on racist speech would be permissible.

For an interference to be necessary in a democratic society, it must be shown to be proportionate. In the recent case of R (Laporte) v Chief Constable of Gloucestershire Constabulary ([2006] All ER 172), the House of Lords held that any prior restraint on freedom of expression called for the most careful scrutiny.

The European Court of Human Rights would wish to be satisfied not merely that a state exercised its discretion reasonably, carefully and in good faith, but also that it applied standards in conformity with Convention standards and based its decisions on an acceptable assessment of the relevant facts.

There is unlikely to be a problem in demonstrating that the 'no platform' policy is in pursuit of a legitimate aim.

However, a blanket policy seems to run contrary to the requirement that any interference should be in accordance with the law and should be proportionate to the aim sought to be achieved. Scrutiny on a case by case basis is more likely to pass the test. A blanket policy does not entail any such scrutiny which is why it is likely to be problematic.

If we assume that the operation of a blanket ban is likely to result in an interference with Article 10, the next issue to consider is who will be bound by the standards set out in the HRA.

Public authorities

There is no exhaustive definition of what will constitute a public authority, and the case law so far is not particularly clear.

The term 'public authority' will include core authorities such as government departments, local authorities, the police and so on. It will also include courts and tribunals. Section 6(3)(b) of the HRA further provides that 'any person certain of whose functions are functions of a public nature' often referred to as hybrid bodies, may also be public authorities for the purposes of the HRA.

There is an important distinction between core public authorities and hybrid bodies that should be noted: the HRA will apply to all of the functions and actions of a core body, but

not to all those of a hybrid body. If a body is determined to be a hybrid public authority, section 6(5) of the HRA provides that a '...a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private'.

The classification of universities for the purposes of the HRA has not, to my knowledge, been tested in the courts but I think it is possible that the courts would find that a university is bound by the HRA to act compatibly with Convention rights in this case, if not as a wholly public body then as a hybrid body exercising public functions.

The leading case on whether an act will be public or private in the case of hybrid bodies is Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank and another ([2003] 3 All ER 1213). In this case, Lord Nicholls observed that there could not be a single test of universal application to determine whether an act by a hybrid body was public or private in nature. He went on to state that

[f]actors to be taken into account include the extent to which in carrying out the relevant function the body is publicly funded, or is exercising statutory powers, or is taking the place of central government or local authorities, or is providing a public service. (Paragraph 12)

The alternative is to consider whether universities could be considered to be wholly public bodies, which would negate the necessity to consider the nature of the act itself. Looking at Aston Cantlow again, Lord Nicholls observed that core public authorities will be those bodies of a governmental nature. The classification of a body as governmental includes factors such '...the possession of special powers, democratic accountability, public funding in whole or in part, an obligation to act only in the public interest, and a statutory constitution' (paragraph 7). Though universities in England receive a large part of their funding from the state (from the Higher Education Funding Council for England), case law in this area has shown that public funding will not necessarily be a determining factor. In R (Heather) v Leonard Cheshire Foundation ([2002] EWCA Civ 366), the court of appeal held that the Leonard Cheshire Foundation was not a public authority for the purposes of the HRA despite the fact that it was in receipt of public funding, was regulated by the state and, if it had not provided such care, such care would have to be provided by the state. A final point to consider in this regard is that the classification of universities as wholly public bodies would mean that universities would not be able to avail themselves of the protection provided by the HRA. Hybrid public bodies may be able to do so in their private capacity.

Conclusion

I think it is extremely unlikely, considering the definition from the 1994 Act set out above and its functions, that a students union would be bound to act in a way that is compatible with Convention rights. Counsel's opinion that the NUS have obtained confirms the

independence of students' unions from universities.

Although a university may not be directly responsible for a breach of Article 10, it may be held responsible for a failure to protect an individual's Article 10 rights. A public authority (assuming that a university is determined to be one) is under a positive obligation to take action where a threat to an individual's freedom of expression comes from a private source, such as a students' union (see Plattform Artze für das Leben v Austria A 139 (1988), 13 EHRR 204). The university will also be the owner of premises from which an individual may have been prevented by the students' union from entering. The positive nature of section 43 will also be a factor in attributing responsibility for an interference with an individual's Article 10 rights to the university, rather than the students' union.

Once again, although a students' union may not be directly affected by the HRA, it may well come under pressure as a result of the university being susceptible to challenge.