Promoting good campus relations: dealing with hate crimes and intolerance
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The principle of academic freedom is central to the work of higher education institutions, which were established to be places where there is free debate and the interchange of ideas. For this to be achieved, there needs to be a climate of tolerance and mutual respect. It is hoped that these guidelines will assist HEIs in preserving this tolerance that they were founded to promote.

The terrorist attacks in London in July 2005 shocked us all. These events sparked vigorous debates about the nature of extremism in the UK today and the ways of tackling it. The role of HEIs in this has been stressed. However, this guidance was not written as a reaction to these attacks. The bulk of this document was drafted in Spring 2005 and arose out of a need for new practical guidance on this subject due to recent legislative changes. Whilst we have, of course, considered and included these events, we were keen to ensure that the guidance retained its original focus, which is to outline the ways in which HEIs can respond to any incidents concerning hate crimes and intolerance, irrespective of their specific origins.

HEIs are not complacent. We all have a responsibility to be aware of these issues in the current climate, and HEIs are no different from the wider society in this respect.

Finally, I must express my sincere thanks to all the members of both the core and virtual steering groups. Their comments, expertise and inputs were invaluable. Special thanks to the Equality Challenge Unit, Universities UK and the Standing Conference of Principals and in particular to Saheema Rawat and Clare Taylor Gold for the excellent support they gave to the work of the steering group.

I am delighted to commend these guidelines to institutions.

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The steering group would also like to thank Martineau Johnson, who acted as legal consultants for this project.
Executive Summary

*Promoting good campus relations: dealing with hate crimes and intolerance* provides an overview of the ways in which higher education institutions (HEIs) can deal with hate crimes and intolerance through existing or future work on promoting good relations, and thus ensure that academic freedom cannot be exploited to damage the legitimate freedoms of others.

The key principle for dealing with hate crimes and intolerance on campus is to understand that all staff and students have the right to work, study and live without fear of intimidation, harassment and threatening or violent behaviour. The key ingredient for the preservation of academic freedom is tolerance and respect for diversity.
Purpose of this guidance

This guidance has been produced to help higher education institutions (HEIs) deal with hate crimes and intolerance. Aiming to replace the previous Committee of Vice-Chancellors and Principals’ guidance on extremism and intolerance, this publication provides an overview of the ways in which HEIs can encourage tolerance and respect and ensure that academic freedoms cannot be exploited to damage the legitimate freedoms of others.

The guidance is divided into three parts:

Part 1
- Gives an overview of the social and political contexts within which hate crimes and intolerance can operate
- Identifies the ways in which hate crimes and intolerance can surface in a higher education context.

Part 2
- Provides an outline of key legislative provisions that can equip HEIs to meet the challenges of dealing with hate crimes and intolerance on campus, with a particular focus on the positive duty currently in place for race equality.
- Introduces general principles for HEIs in relation to preventing and dealing with hate crimes and intolerance on campus.

Part 3
- Looks at case studies which show how intolerant and extremist activity can potentially cause problems on campus. These are examined through a legal framework and appropriate guidance is provided.

Status of this guidance

Readers of this guidance should note the following points:

- The aim of this publication is to support HEIs to develop and improve their long-term strategies against hate crimes and intolerance, based on the present and forthcoming legal framework. It is based on the premise that practical solutions require a good understanding of the particular context within which each HEI operates. Instead of advocating a ‘one size fits all’ approach, the guidance outlines good principles of practice that HEIs should consider in their particular context. As a general rule, it is recommended that HEIs should consider incidents of hate crimes and intolerance on a case-by-case basis within the framework of an agreed policy, seeking specific legal advice where necessary.
Dealing with hate crimes and intolerance is only one part of promoting good campus relations. The approach advocated by this guidance is intended to complement HEI’s existing strategies in this area, and not to replace them.

Promoting good relations involves fostering better understanding and dialogue with the campus community together with the creation and maintenance of a clear standard of respect.

In order to support HEIs in resolving issues in a practical way, the guidance also derives from the law its principles of good practice. From these principles, HEIs can continue to develop good relations within their campus communities.

This guidance does not constitute legal advice, but rather outlines the potential manifestations of hate crimes and intolerant behaviour, and looks at the ways in which the law can provide positive solutions.

This publication covers the relevant legislative context within England, Scotland and Wales. While this document would be useful for HEIs in Northern Ireland to identify or enhance existing broad strategies, we recommend that these HEIs seek more specific advice from the Equality Commission for Northern Ireland.

How this guidance was produced

The production of this publication was guided by a core steering group comprising representatives from Universities UK, ECU, SCOP, HEEON, AMOSSHE, NUS, AHUA and a trade union representative; it was chaired by Professor Les Ebdon, Vice Chancellor at the University of Luton and member of the Universities UK Student Experience Strategy Group. The work of the core steering group was supplemented by a virtual steering group of representatives from religious and faith organisations, specialist organisations and higher education institutions.

Who should read this guidance?

This guidance is aimed primarily at senior managers, along with those staff involved in the implementation of policy. People involved with student and staff matters, including trade union and students’ union officers within HEIs, would also find this publication helpful.
This section looks at the context within which higher education operates, and the different ways in which hate crimes and intolerant behaviour can affect HEIs in the changing circumstances within which they work.

The role of higher education institutions

In 1997 the Dearing Report reviewed the long-term development of higher education. The report stated that one of the aims of higher education is:

‘To play a major role in shaping a democratic, civilised, inclusive society’.2

As environments of research and learning, HEIs have a special role in promoting and encouraging vigorous debate, free speech and freedom of enquiry within the law. This means HEIs need to be tolerant of a wide range of political, social, economic and scientific views, regardless of how unpopular, controversial or provocative these views are.3

Higher education and diversity

As the number of people entering higher education increases, there is a growing diversity of backgrounds and viewpoints within institutions. The number of people in England who seek a higher education qualification has grown significantly, with over 934,000 full-time undergraduate students and an additional 521,000 studying part-time.4 When looking at ethnicity, for example, higher education is steadily becoming more diverse. Students from black and minority ethnic backgrounds now make up 16 percent of all higher education students, sometimes reaching 50 percent in metropolitan institutions.5 Staff from black and minority ethnic backgrounds now make up approximately 9 percent of all HE staff. Furthermore, international students are making an increasingly important contribution to UK higher education, now forming 13 percent of the student cohort in the UK.6

These trends, coupled with more equalities legislation that places on HEIs a positive duty to promote equality, mean that HEIs have to ensure that the needs of students and staff from diverse backgrounds are supported by high institutional standards and principles such as those espoused by the Dearing Report. However, there may be instances where hate crimes or intolerance serve to undermine and threaten good relations on campus.
Hate crimes and intolerance

It is important to have an understanding of hate crimes and intolerance which can undermine this broader goal of promoting good relations. With due consideration of the relevant issues in this area, the following definition was used in order to shape this guidance:

- Crimes or behaviour motivated by prejudice, hatred or intolerance that intentionally demean individuals and groups defined by their ethnicity, race, religion and belief, sexuality, gender, conscience, disability, age or lawful working practices and which give rise to an environment in which people will experience, or could reasonably, fear harassment, intimidation or violence.

This definition is based on the following understandings:

- The term ‘hate crimes’ can be defined as any crime committed against a person, a group or the property of a person or group where the motivation for the crime is hatred of, or prejudice against their gender, sexual orientation, race, religion, disability or age.7

- An essential part of tackling hate crimes involves understanding and dealing with the underlying issues that can lead to such activity. A key underlying issue is intolerance, which covers behaviours that can, intentionally or unintentionally, manifest themselves as hate crimes. Academic freedom is an important component of academic life and flourishes best where there is tolerance and respect of a wide range of views and beliefs. Intolerance is the opposite of this.

- By understanding and dealing with intolerance, HEIs can pre-empt instances of hate crime or intolerant behaviour on campus.

- Hate crimes and intolerance can manifest themselves in many ways. Such manifestations include verbal abuse, incitement, harassment or victimisation, threats to staff or students, negative coverage of particular groups through formal or informal institutional communications or conflicts between different groups and individuals within the higher education context. They can also take the form of actions such as vandalising property belonging to the HEI or its staff or students. For example, offensive graffiti, defacing posters, physical assaults on staff and/or students, the presence of ‘no-go’ areas on campus and threatening campaigning activities, (for example, violent protest or the dissemination of inflammatory literature).

The above list indicates just some examples of hate crime and intolerance that HEIs may experience. It is of the nature of intolerance that its manifestation changes: in future years, hate crimes and intolerance may take new forms.
Activity in this area constitutes action that crosses the boundaries of respect and tolerance between people and groups. Such activity can prevent staff and students reaching their full potential, and can also breach equality legislation. Whatever the source and nature of hate crime and intolerance, such activity can have a detrimental impact on the efficient running of institutions.

The key principle for dealing with hate crimes and intolerance on campus is to understand that all staff and students have the right to work, study and live without fear of intimidation, harassment and threatening or violent behaviour. The key ingredient for the preservation of academic freedom is tolerance and respect for diversity.

HEIs should ensure that staff and students are protected from intimidation, harassment and threatening or violent behaviour, while at the same time upholding freedom of speech and freedom of enquiry under the law. A key part of ensuring this lies with the need to promote good relations.

The need to promote good relations

In order to tackle hate crimes and intolerance on campus and to ensure that future incidents do not occur, HEIs need to be proactive in dealing with the issues and to place the promotion of good campus relations at the heart of any activity. This may at first appear to be daunting. An ideal starting point, however, is to develop a thorough understanding of existing and forthcoming anti-hate crime legislation, and to strengthen good relations on campus by following the spirit and method of the positive duty required by the Race Relations (Amendment) Act 2000 (RR(A)A). This is a particularly useful approach for HEIs as the positive duty requires, among other things, the promotion of good relations between people of different racial groups. Although hate crimes and intolerance are not confined to issues of race, extending the approach required under the RR(A)A to other areas can pre-empt other forms of intolerance and help towards the promotion of good relations. It should be noted that HEIs will shortly also have comparable general duties to promote good relations between the sexes, and between disabled and non-disabled people.

The benefits of this approach are wide-ranging. As HEIs have had to meet the requirements of the RR(A)A since 2002, they will be familiar with this positive duty. By enhancing and extending the promotion of good relations on campus, HEIs will be strengthening their work under race equality along with other areas of equality. Furthermore, an HEI that achieves good campus relations can find that it reaps many benefits, such as improved staff and student recruitment and retention levels, a healthier working environment and improved reputation at a local, national and international level.
Particular manifestations of hate crimes and intolerance

1.14 It is important to be aware of the context in which hate crimes and intolerance operate in the UK, the wider trends this behaviour can follow, and the effect it can have on institutional life. The following are a few examples.

Organised political intolerance

1.15 Over the last few years there has been a European trend of increasing organisation by far right parties such as the British National Party (BNP), Combat 18 and the National Front. Inherent in the policies and practices of such far-right parties is a systematic belief that people from black and minority ethnic backgrounds, disabled, and lesbian, gay, bisexual and transgender sections of society are not entitled to the same rights as their white, heterosexual counterparts. The leaders of these parties have acquired multiple public order convictions. However, more recently parties such as the BNP have attempted to organise within the political mainstream by broadening their aims to encompass general issues of social concern, such as housing, crime and education.

1.16 The threat to values of liberalism and democracy posed by political extremists has been recognised by government ministers. For example, under the Police (Amendment) Regulations 2004, members of the police are forbidden from being or becoming members of the British National Party, Combat 18 or the National Front. As police forces, like HEIs, are subject to the ‘general duty’ under the RRA, this indicates a growing recognition of how such activity can undermine good relations.

Religion

1.17 Hate crimes and intolerance can also be detected in the area of religion and belief, which can be misappropriated and used as a means of legitimising discrimination, extremism and intolerance.

1.18 Religious hate crimes and intolerance can lead to intimidation, harassment or victimisation. Such activity can be targeted against the rights of people on the basis of gender, sexual orientation, religious or political affiliation and disability. In much the same way as political extremism, religious hate crimes and intolerance can curtail an individual’s freedom to participate in civil society.
There has been a discernible rise in religious hate crimes and intolerance over the last decade. A wide range of religions have been the target and the perpetrators have come from both religious and non-religious backgrounds. Activities that have been attributed to members of particular religious groups can lead to reprisals on these groups as a whole. For example, while there have been terrorist attacks which have been claimed to have been carried out in the name of Islam (for example, the attack on the World Trade Centre on 11 September 2001 and the London bombings of 7 July 2005), these have led to a significant increase in the number of attacks against people of the Islamic faith as a whole. Such behaviour can flourish only in a climate where Muslims are treated with suspicion or hostility.

Many surveys have noted that there has been a particular growth in the level of intolerance and discrimination against those of the Muslim and Jewish faiths:

- `Islamophobia’ – Fear and dislike of Islam and Muslims has been on the rise in some parts of the world, particularly since the events of 11 September 2001 and July 2005. This is often referred to as `Islamophobia’. The problem has been exacerbated by inflated warnings in the media about Islamic fundamentalism on campuses. This negative climate can affect the lives of Muslims on HEI campuses. Muslim students have, in a number of cases, been victims of hate crimes and intolerance on campus.

- Anti-Semitism - anti-Semitism is hostility towards or prejudice against Jews or Judaism and has also been on the rise globally over the last few years. The UK has seen the number of anti-Semitic assaults and other incidents increasing steadily since 2001. These incidents have included violent attacks on synagogues, cases of suspected arson and several attacks on Jewish cemeteries in 2003, 2004 and 2005. As with instances of Islamophobia, such negativity can also affect the lives of Jews on HEI campuses.

Over the past few years, there has been a concerted effort by a variety of organisations to promote good relations between different groups in society. A recent mapping exercise of positive contacts between Jews and Muslims, for example, described a substantial number of initiatives, including, discussion groups, activities with schools and youth associations and work to promote a greater understanding of different communities. The exercise concluded that a key place in Britain where positive initiatives take place is in certain parts of higher education, through both HEI and students’ union-initiated activities. There are comparable intitiatives on campuses involving other faiths too. More generally, there is now a wide range of inter faith initiatives in Britain at national, regional and local level which promotes good relations, of which details are available from the Inter Faith Network for the UK, who have also produced a good practice “code” on Building Good Relations between People of Different Faiths and Beliefs. The Network’s most recent publication, Looking After One Another: The Safety and Security of Our Faith Communities, also contains recommendations for dealing with emergency situations.
Homophobic hate crimes and intolerance

1.22 Homophobia is the hatred, intolerance, or fear of lesbian, gay and bisexual and transgender people which in turn can fuel myths, stereotypes, discrimination and violence against people who are lesbian, gay or bisexual. Homophobic hate crimes and intolerance includes a range of behaviour, from physical attacks, offensive writing and graffiti, to much less perceptible forms of discrimination, which can be difficult to isolate and tackle. For example, while overt racist comments would be considered wholly unacceptable in higher education staff common rooms, there is often less resistance to homophobic jokes or banter.

1.23 Homophobic hate crimes can include a range of behaviour, such as verbal abuse, property damage, threats and actual assaults. In 2004, 15 of Britain’s police forces reported an increase in the number of homophobic hate crimes, while in the UK there has been a 23 per cent increase in such activity. A notable example of homophobic hate crimes was the bombing of the Admiral Duncan pub in Old Compton Street, London, in April 1999.

Animal rights extremism

1.24 While the large majority of animal rights protesters campaign in a lawful manner, a small group of extremists use illegal means to intimidate those involved in regulated scientific experiments involving the use of animals. Such harassment includes the targeting of both companies and research institutes (including HEIs) involved in animal sciences. It can also extend to secondary and tertiary targets such as customers, relatives and suppliers.

1.25 Activities range from vandalism, threatening mail, email, faxes and phone calls, to hoax explosive packages, serious assaults (including attacks on Muslim students over Halal food) and, in extreme cases, the use of explosive devices against property. It is estimated that security measures to defend against acts of animal rights extremist activity cost British HEIs an average of about £175,000 each per year.

Hate crimes and intolerance in the area of disability

1.26 There is a growing national awareness of hate crimes and intolerance against people with disabilities, with numerous studies consistently identifying a high level of abuse and harassment. Research conducted by the Disability Rights Commission (DRC), in 2003, found that one in four disabled people – and nine out of 10 people with learning difficulties – have endured verbal or physical abuse and harassment, while a survey by the DRC found that half of those interviewed had been the target of a hate-motivated crime, such as verbal abuse, intimidation or physical attack, because of their disability.
DRC (Scotland) publishes an annual *Disability Awareness Survey*. Its 2002 survey found that 26 per cent of disabled people had experienced harassment in public in relation to their disability, with one in 20 stating that they often experience harassment in this area.²⁶

These factors, coupled with the increase in the numbers of students with disabilities in higher education, mean that HEIs should ensure that staff and students are aware of the mechanisms in place in HEIs for reporting hate crimes and that appropriate support is given to victims.
Introduction to the legal framework

2.1 Domestic law in England, Wales and Scotland, along with European law, offers some guiding principles that can be useful in managing issues of hate crime and intolerance. The following key pieces of legislation are of particular relevance and will be outlined in this section.

Special status of higher education institutions
Education Act 1986
Education Reform Act 1988

Anti Discrimination Legislation and the Positive Duty under the Race Relations (Amendment) Act
Employment Equality (Sexual Orientation) Regulations 2003
Employment Equality (Religion or Belief) Regulations 2003
Race Relations Act 1976
Race Relations (Amendment) Act 2000
Sex Discrimination Act 1976
Disability Discrimination Act 1995, as amended
Equality Bill 2005

Qualification of rights
Public Order Act 1986
The Crime and Disorder Act 1998
Protection from Harassment Act 1997
Criminal Justice Act 2003 and Criminal Justice (Scotland) Act 2003

2.2 The law protects the rights of staff and students to engage freely in the expression, development and debate of diverse ideas and views. The development of equalities legislation and, in particular, the extension of the requirement to promote good race relations to other areas, is complementary to these rights. However, HEIs should be prepared to take action if ideas or views infringe the rights of others, discriminate against them, or if any activity constitutes a criminal offence, incites others to commit criminal acts or is contrary to the civil or human rights of individuals or the HEI.
Special status of higher education institutions

Section 43 of the Education Act 1986

HEIs must take reasonable steps to ensure that freedom of speech within the law is secured for members, students, employees and visiting speakers. This duty includes taking reasonable steps to ensure that the use of the HEI’s premises is not denied to an individual or group on the grounds of views or beliefs held by the individual/group, or the policy or objectives of the group.

This means balancing the same considerations and qualifications as those applying to the right to freedom of speech [see ‘Freedom of Expression’ below].

Section 202 of the Education Reform Act 1988

HEIs must ensure that 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 any privileges they may have at an institution. These rights must also be exercised within the law and will be subject to similar restrictions as those applying to the right to freedom of speech.

Rights and freedoms

Human Rights Act 1998

The Human Rights Act 1998 incorporates the European Convention on Human Rights into national law. HEIs must carry out their functions in accordance with the rights guaranteed by the Convention.

The Convention rights most likely to be engaged in this context are set out below. None of these rights is absolute which means they can, where necessary, be restricted but only on the grounds set out within the specific Convention Article.

One of the most relevant sections for use in the context of hate crime and intolerance is Article 17, which states the Convention does not grant anyone the right to do anything which is aimed at depriving others of their Convention rights, or at limiting those rights. For example, racist speech directed at harassing or forcibly removing a group from campus, or which aims to make the lives of a particular group intolerable, is not protected under the right to freedom of expression.
Article 9: Freedom of thought, conscience and religion

2.9 Students, staff and other individuals have the right to freedom of thought, conscience and religion, including freedom to change religion or belief, and freedom to practice their religion or belief in worship, teaching, practice and observance. The freedom to practice or manifest religion or belief is subject to limitations in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. The right to freedom of thought, conscience and belief is absolute; it is only the right to manifest religion or belief that can be limited in any way.

- Hammond v DPP [2004] A man with sincere religious beliefs preached in a public place against homosexuality. A crowd gathered, resulting in violence. He was charged and found guilty under section 5 of the Public Order Act 1986 (see below). This interference with his human rights was held to be proportionate because his conduct went beyond legitimate protest, provoked violence and disorder, and interfered with the rights of others.

Article 10: Freedom of expression

2.10 Individuals have the right to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas. Freedom of expression enjoys a special position under the Convention as it is viewed as one of the essential elements of democracy.

2.11 Nonetheless this right is subject to limitations including those set by law and 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 rights of others, or for preventing the disclosure of information received in confidence. Given the special position afforded to this right under the Convention, it should be interfered with only as a last resort and if there are clear and justifiable reasons for doing so.

- Percy v DPP [2001]. A peace demonstrator who was convicted of an offence for defacing a US flag in front of a vehicle carrying US army personnel had her conviction quashed as it was incompatible with her right to freedom of expression.

- Norwood v DPP [2003] A member of the BNP was convicted of a religiously aggravated breach of section 5 of the Public Order Act for placing in the window of his house (in clear view of the street) a poster with the words “Islam out of Britain” and “Protect the British People”, together with a picture of the World Trade Centre in flames. His appeal was rejected because his conduct was motivated by hostility towards members of a religious group, and that protecting the rights of others, including freedom of religion, was a reasonable restriction of his rights under Article 10.
Article 11: Freedom of assembly and association

Individuals have the right to freedom of peaceful assembly and to freedom of association with others, subject to limitations in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

Article 14: European Convention on Human Rights

This article provides an over-arching principle of non-discrimination and can only be used in relation to the other Convention rights. It entitles an individual to exercise his or her rights under the Convention without discrimination on any grounds, including sex, race, colour, language, religion, political or other opinion, national or social origin or association with a national minority. Unlike the rights mentioned above, the prohibition on discrimination is unqualified and cannot be restricted.

Anti-discrimination legislation and the positive duty under the Race Relations (Amendment) Act

Legislation specifically prohibits discrimination on the grounds of race, gender, religion or belief, sexual orientation or disability. Employers can be held to be vicariously liable for the actions of their employees. Therefore an HEI must ensure that staff are trained in these issues and requirements:

- Employment Equality (Sexual Orientation) Regulations 2003;
- Employment Equality (Religion or Belief) Regulations 2003;
- Race Relations Act 1976;
- Race Relations (Amendment) Act 2000;
- Sex Discrimination Act 1976;
- Disability Discrimination Act 1995, as amended; and

The legislation prohibits discrimination in all HEI functions, such as terms of employment, the recruitment, retention and progression of staff and the admission, progress and assessment of students including the benefits, facilities and services and the imposition of any penalty or detriment. Discrimination includes:

- Direct discrimination – treating a student or employee less favourably on the grounds of a qualifying characteristic such as race, gender, religion or belief, sexual orientation or disability. For example, dismissing a member of staff because of their religious views, disability, race, and so on.
• Indirect discrimination – applying a provision, criterion or practice (or under the more formal requirement or condition in the area of colour or nationality) which put or would put students/staff members of a particular race, gender, ethnic or national origin, religion or belief, or sexual orientation at a disadvantage, and which cannot be justified as a proportionate means of achieving a legitimate aim. An example of this would be requiring female members of the catering staff to wear knee-length skirts as part of a uniform. Such a dress code would indirectly discriminate against some members of staff whose religion or culture would require them to keep their legs covered.

• Harassment – subjecting a student/staff member to unwanted conduct on the grounds of race, gender, ethnicity, or nationality, religion or belief, sexual orientation or disability which has the purpose or effect of violating his or her dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her/him.

• In deciding if conduct has this effect, all of the circumstances must be considered, including the perception of the victim. An HEI will be liable for acts of harassment committed by its employees unless it can show that it took reasonable steps to prevent harassment (for example, by implementing proper procedures and training). For example, failure to remove racist graffiti in a reasonable timeframe could constitute harassment.

• Victimisation – treating a student/staff member less favourably because he or she has made a complaint of discrimination, or has given evidence or information in connection with such a claim. Victimisation could include ignoring a colleague for making a complaint against another colleague, taking steps against a colleague’s promotion, or the unfair allocation of duties.

Race Relations (Amendment) Act 2000

2.16 This legislation introduced a three-stranded general duty for all public authorities (including HEIs) to have due regard in carrying out their functions to the need:

• to eliminate unlawful racial discrimination
• to promote equality of opportunity
• to promote good relations between persons of different racial groups.

2.17 This general duty is known as a ‘positive duty’, as it requires public authorities to pre-empt discrimination before it occurs and to take steps to ensure it does not occur. If HEIs fail to comply, they could be issued with a compliance order by the Commission for Racial Equality (CRE) and potentially face legal proceedings. The governing body of a HEI is responsible for ensuring compliance with the RRA.
The impact of this legislation obliges HEIs to take steps to promote good campus relations and the general duty should be a factor to take into consideration when dealing with incidences of hate crime and intolerance on campus.

HEIs should also note that the positive duty to promote good relations under the RR(A)A will soon be accompanied by comparable duties to promote good relations between disabled and non-disabled people and between the genders under the Disability Discrimination Act [2005] and the Equality Bill (currently before Parliament).

Disability Discrimination Act 1995, as amended

If disability-related hate crime is committed by a member of an HEI against another member, be they student or staff, and the HEI concerned has not put appropriate mechanisms in place to combat this type of behaviour, it may be liable for a claim of harassment or less favourable treatment under the Disability Discrimination Act (see section 4.38 of the DRC's Code of Practice for Employment and Occupation, and Chapter 4 of the DRC’s Code of Practice for Post-16 education). To protect disabled employees the concept of harassment was introduced to the DDA when changes were made to the legislation in October 2004 (see paragraphs 8 and 21 to 24 of the ECU’s Disability Discrimination and the DDA: Understanding the Amendment Regulations 2003).

Qualification of rights

An individual’s rights can be lawfully restricted if their behaviour constitutes a criminal offence. The following offences may be relevant when dealing with incidences of hate crime on campus:

Public Order Act 1986

This Act outlaws the following:

- acts or threats of violence: riot, violent disorder or affray.
- causing fear or provocation of violence: a person using threatening, abusive or insulting behaviour towards another, or displaying threatening, abusive or insulting material, may be guilty of causing fear or provocation of violence if he or she intends or causes a fear of violence, or intends to provoke or causes a fear that violence will be provoked.
- harassment, alarm or distress: using threatening, abusive or insulting words or behaviour, or disorderly behaviour, or displaying threatening, abusive or insulting material, within the hearing or sight of a person likely to be caused harassment, alarm or distress. Higher penalties apply to the more serious offence of intentionally causing harassment, alarm or distress.
incitement to racial hatred: using threatening, abusive or insulting words or
behaviour, or displaying, publishing or distributing threatening, abusive or
insulting material intended or likely to stir-up racial hatred. Racial hatred is
defined as hatred against a group of persons defined by reference to colour, race,
nationality or ethnic/national origins.

The Protection from Harassment Act 1997

A person convicted of harassment may be made the subject of a restraining order.
The order can impose exclusion zones, which the subject is prohibited from entering.

Under this Act harassment is defined as:

- pursuing a course of conduct which amounts to harassment of another, which the
  harasser knows, or ought to know amounts to harassment.
- Causing fear of violence – pursuing a course of conduct that causes another to
  fear that violence will be used against him/her.

In Scotland, there is no criminal offence of `harassment". However, a `non-
`harassment order' can be made in civil proceedings, which has a similar effect to
the restraining order referred to above. Breach of a non-harassment order is a
criminal offence.

The Crime and Disorder Act 1998

This Act increased the penalties applicable to offences if they are racially aggravated
or if there is a religious element to a crime. As long as some of the motivation is
wholly or partly racial, the offence will count as a racially aggravated offence.

The Criminal Justice (Scotland) Act 2003 includes a similar provision for offences
aggravated by religious prejudice.

An offence is racially or religiously aggravated if:

- at the time or immediately before/after committing an offence, a person
  demonstrates hostility towards the victim based on the victim’s actual or
  presumed membership of a racial or religious group, or;
- the offence is motivated (wholly or partly) by hostility towards members of a racial
  or religious group because of their membership of that group.
It is necessary to be aware of the legal position on what constitutes acceptable and lawful behaviour in order to develop strategies and practices to deal with hate crime and intolerant activity. However, it is also important to note that the legislation only constitutes minimum legal requirements and that in the interests of promoting equality and diversity HEIs should be moving beyond the minimum, so to best ensure that equality and diversity are a reality on HE campuses. It is worth stressing that an HEI that fails to protect its staff and students from incidences of harassment could be held vicariously liable for the activities of their staff.

**Forthcoming legislation**

**Racial and Religious Hatred Bill**

The Racial and Religious Hatred Bill provides protection for people of all faiths and those of no faith by creating a new offence of Incitement to Religious Hatred, and will operate in England and Wales under Part III of the Public Order Act 1986. Once implemented, the offence would apply where threatening, abusive or insulting words or behaviour are used by someone who intends to stir up hatred against a group of people defined by reference to religious belief or lack of religious belief, or it is likely that such hatred will be stirred up.27

It should be noted that the provision will not prevent people from offending, criticising or ridiculing faiths. Rather, protection will be provided from incitement to hatred against people because of their faith.

**Dealing with hate crime and intolerance on campus**

Legal principles can provide useful strategic tools with which to manage hate crime and intolerance on campus and can enable effective prevention. Furthermore, HEIs are one of the few institutions which were established to promote free speech. Academic freedom is a right enshrined in law. As these principles form part of HEIs’ existing statutory duty under the RR(A)A and forthcoming duties with regard to gender and disability, the management of hate crime and intolerance may be viewed as building on existing approaches in ensuring equality for staff and students.

Using these legal principles as a starting point, HEIs should consider what systems should be in place to deal with instances of hate crime and intolerant activity in the following areas:

- long-term activity designed to help promote good relations between all people in the HEI
• pre-emptive action by the institution to tackle specific hate crime and intolerant activity in the wider institutional context

• immediate action to deal with hate crime and intolerant activity.28

2.33 These indicate a need to adopt a multi-layered approach that is consistent with the institutional ethos, vision and mission and with equalities legislation.

The importance of reasonableness and proportionality

2.34 When making a decision on how to deal with an incident of hate crime on campus, HEIs will need to into account the concepts of reasonableness and proportionality.

2.35 The Commission for Racial Equality advises that, if a right under the European Convention on Human Rights is to be restricted or limited in any way, then it will be necessary to show that:

• the decision has been reached after careful consideration
• the decision is based on evidence
• the decision is necessary to prevent crime or disorder, or otherwise to protect the rights and freedoms of others
• the decision is proportionate.29

2.36 Although the CRE guidance has been produced for local councils, schools and community organisations on maintaining and promoting good race relations during an election period, it is recommended including the points in 2.35 as part of the institutional approaches outlined below. In essence, any action taken must be a reasonable response to the perceived or actual threat from hate crime and intolerant activity and must be proportionate to the situation. HEIs need to be able to show that any decision has been based on consideration of all available information and is sound.

2.37 If a reasonable decision is taken and documented as a result of evidenced balancing of all the relevant issues, an HEI should be able to defend its actions against any subsequent claim.

Long-term preventive action

2.38 HEIs should create strategies that enable them to promote good relations between people from different backgrounds and beliefs and pre-empt acts of hate crime and intolerance on campus. They should consider the variety of ways in which hate crime and intolerance can occur and take account of changes in legislation when developing and updating such strategies. The following actions are recommended:
• **Understanding the legal context**

It is important that HEIs have a good idea of the present and prospective legal environment in this area, and how legislative provisions serve to assist institutions in carrying out their functions.

• **Understanding issues in this area**

As part of a pre-emptive approach, it is recommended that HEIs obtain a good level of awareness of the causes, forms and consequences of hate crime and intolerant activity within the HE context.

• **Reviewing and strengthening existing structures**

It is recommended that HEIs review existing policies and procedures such as: student regulations, guidelines for dealing with harassment, disciplinary, grievance and complaints procedures and methods of communicating with staff, students and stakeholder organisations, and ways in which good relations on campus are being promoted. This will help to identify any deficiencies that may have an impact on work against hate crime and intolerant activity. It should be noted that the RR(A)A requires HEIs to assess policies, provisions, criteria and practices to ensure there is no adverse impact on people on the grounds of race. This exercise is a valuable review and change-management tool. It is therefore recommended that HEIs use a similar process of impact assessment in the area of hate crime and intolerant activity as this will complement existing impact assessment processes that the HEI is undertaking.

• **Effective consultation**

An integral part of progressing work in this area is effective dialogue and consultation with groups and individuals likely to be adversely affected by hate crime and intolerant activities. It is therefore important that HEIs consult with staff, students' unions, recognised trade unions, external agencies and the wider community, including the police. This approach is complementary to the requirement to consult under the RR(A)A. Further information on effective consultation techniques can be found in the *Communication and Consultation Toolkit for Higher Education Institutions* produced by Joint Negotiating Committee of Higher Education Staff and the Equality Challenge Unit.

• **Commitment and mainstreaming**

Counteraction against hate crime and intolerance may involve using institutional processes at short notice. It is important then, that all elements of this work are embedded within the strategic framework of the HEI. Embedding requires HEIs to show that they are committed to dealing with hate crime and intolerant activity as it affects institutional life.
Responsibilities

2.44 As part of the course of action outlined above, responsibilities should be clearly identified. Outlining responsibilities will enable staff and students to identify whom to contact, should they experience or witness hate crime and intolerance on campus. There should also be appropriate cover in place in case of the absence of key personnel.

2.45 HEIs will normally have in place clear regulations including a notification procedure requiring campus organisations, where possible, to give notice of activities they propose to undertake. This would normally be an agreed protocol negotiated between the HEI, the trade unions, students’ union and other appropriate stakeholders. HEIs should ensure that such protocols contain a clear statement that the right to assemble, demonstrate, protest and speak within the law is not to be infringed but that hate crime and incitement to commit illegal acts will not be tolerated.

Training to raise awareness

2.46 In order to ensure that all staff realise how hate crime and intolerance can affect institutional life, it is recommended that HEIs provide training to raise awareness of the issues, their respective rights and responsibilities and institutional policies and procedures. If HEIs have training programmes in place on equality issues, it may be possible that hate crime and intolerance can be dealt with within existing arrangements. Similarly, HEIs should liaise with students’ unions and student stakeholder groups and include briefings in student induction programmes to ensure that students are aware of their rights and responsibilities in this area. HEIs that have good links with external organisations such as faith groups can invite representatives from these groups to inform programmes and possibly take part in training activities.

Equal opportunities policy

2.47 An HEI’s equal opportunities policy or equality policy should outline the institution’s mission, stance and activity in relation to equal opportunities. It should also identify how the HEI would react against activity that seeks to undermine good relations between different groups on campus. As a means of showing what this would mean in practice, the equal opportunities policy should outline the rights and responsibilities of staff, students and third parties with potential and actual links to the HEI, such as visitors. By including such information in the equal opportunities policy, it will be clear to see how the HEI will deal with hate crime and intolerant activity as it arises. The equal opportunities policy should also outline clear, well-publicised complaints procedures, with contact details of key personnel, to enable incidences to be reported promptly and without fear of reprisal or harm.
As with all documents, the policies contained in them can only be effective if they are implemented appropriately. In this sense, the equal opportunities policy should be seen as a first step, with subsequent activity undertaken in order to promote good relations on campus. The same would apply to policies that come under the equal opportunities policy’s heading, such as an institution’s race equality policy. Appendix A lists policies that HEIs should consider when working on anti-hate crime and intolerance issues.

Celebrating good work

As a means of celebrating diversity within the institutional environment, HEIs should consider ways in which work by staff and students that helps to promote good relations should be rewarded by the institution. Rewarding success can take the form of partnership events and diversity awards events with stakeholder organisations and equality groups in the local community.

Medium-term remedial action

Action under this heading will arise when there appears to be local, regional or national issues that could affect the HEI in the future. Such activity – for example, attacks on local laboratories by animal rights activists or attacks on religious places of worship occurring in the same region as an HEI – could necessitate direct intervention by the institution. The following actions are recommended:

* Consultation

In order to find out the extent of the issue and how it could affect the institution, HEIs should consult with local internal and external stakeholder groups and individuals who have been or may potentially be victims of such activity. Hate crime and intolerant activity may involve potential or actual victims and could lead to members of the campus community being fearful of their safety. HEIs should therefore ensure that any information provided is treated sensitively and that confidentiality is maintained where appropriate.

* Campaigns

In order to supplement training and other efforts to raise awareness, HEIs should consider using appropriate communication methods to highlight key messages on what activity is tolerated within the institutional environment, what staff and students should do in the event of hate crime and intolerant activity and who at the HEI should be contacted.
• **Consider pre-emptive action**

As a means of ensuring that HEIs are not affected by potential activity concerning hate crime, it is recommended that HEIs consider pre-emptive action that can reduce the risk of such activity occurring on campus. A central theme of this area involves the use of effective consultation not only internally, but also externally with relevant organisations that may be able to help. A collaborative approach, where different bodies can work together to promote good relations and deal collectively with negative activity, can have a far greater effect than that of an HEI working in isolation.

**Immediate crisis interventions**

An HEI should prepare for a situation where hate crime and intolerant activity threatens to affect staff and students, by having in place effective policies and processes. The following steps are recommended:

• **Use of an emergency working group**

The HEI may consider convening an emergency working group to consider all available information and decide upon an appropriate course of action. A possible model of an emergency working group is suggested below and consists of a representative from senior management, the students’ union, the recognised trade unions at the HEI and representatives from relevant communities and organisations. This group should have close links with the vice-chancellor/principal’s office.

• **Consideration of information**

When considering what the appropriate course of action should be, the following factors should be taken into account:

- the HEI’s equal opportunities policy and associated codes
- consultation of those likely to be affected by the activity in question
- all available evidence
- the relevant legislative provisions; and
- the likely impact of any decision on campus relations.
• Consultation with relevant organisations

If appropriate, the emergency working group should consult with relevant external organisations, such as the police, who might be able to provide further support and assistance.

• Learning from the experience

It is recommended that HEIs evaluate the effectiveness of any actions they have undertaken to deal with emergency situations in order to inform future activity and keep a log of all action taken by the HEI.
Diagram 1: A suggested responsibility flow chart

University Council or Board of Governors

Vice Chancellor or Principal & Senior Management Team

- Ensure that all managers understand their responsibilities
- Ensure that all staff and students are aware of their rights and responsibilities
- Work with outside agencies including the police, faith groups etc. to provide united solutions
- A possible model of an emergency working group:
  - A member of the senior management group
  - The equality officer
  - A trades union representative
  - A students’ union representative
  - A personnel officer
  - The Security Manager
  - Head of Student Services
- Complaints and observations from staff or students reported to security staff or named individuals who are members of the emergency working group
- It may be possible if protocols are in place for the senior manager to take action without reference to the emergency working group

- Equality Committee and equality officer to ensure all policies and procedures suitable and in place
- Take appropriate action
- Evaluate
Part 3 considers various scenarios that could give rise to hate crime and/or intolerance and outlines what steps could be taken to deal with them. This guidance does not constitute legal advice although legal opinion was sought on some of the issues. Rather it looks at ways in which an HEI can best deal with issues of hate crime so as to promote good relations on campus. HEIs should consider incidences of hate crime on a case-by-case basis and seek legal advice where necessary.

Not all the examples given below constitute hate crime. They do however give a broad range of circumstances and experiences where the issue of apparently conflicting rights surface and give examples of applying legal principles and promote the exploration of best practice.

The following topics are covered:
- meetings
- lawful speech
- protests
- individual/group behaviour
- display of notices, distribution of literature and electronic communications
- banning of groups
- students’ unions; and
- working in the local context.

The following guidelines will be used for exploring best practice in these nine areas and are useful to bear in mind when making a decision on how to deal with an incident of hate crime on campus:

- The role of HEIs in promoting (within the law) the expression, development and debate of diverse ideas and views without fear of reprisals.
- The aim of promoting tolerance and good relations between groups from different backgrounds or with different views or beliefs.
- The rights of students and staff members to work, study and live with dignity and without harassment or intimidation.
- The principle of proportionality; action taken to restrict activity should be no more than is strictly necessary to protect the legitimate rights of individuals or others.
- The relative consequences of a decision; is it likely that the decision could cause real harm or distress to one party while only inconveniencing the other party.
- The recognition that if an expression of views or beliefs is highly offensive with the potential of developing into harassment, or may constitute criminal activity, the balance is likely to lie in favour of restricting that activity.
Meetings

3.5 Example

In the run up to a local election, a student debating society asks for permission to hold a meeting in a lecture theatre. A guest speaker from a far-right party is invited to speak. The speaker’s party has a history of incitement to racial hatred and several senior members of the party have been convicted of incitement to racial hatred and other violent offences. None of the staff members has actually attended any previous presentation given by the guest speaker, but they are concerned that he may create a hostile environment for staff or students or may contravene the law.

3.6 Issues

- The HEI is under a general positive duty to promote race equality.
- The HEI must not discriminate against students or members of staff on the grounds of race, religious beliefs or sexual orientation.
- HEIs should be encouraging the exploration and debate of divergent views and opinions.
- The guest speaker may have a right to express his views and staff and students may have a right to hear and debate them provided that in doing so there is no threat to public safety, no likelihood of disorder or crime and no interference with the rights and freedoms of others.
- The HEI has a duty to prevent public disorder on campus.
- The speaker’s conduct could amount to a public order offence, such as using threatening, abusive or insulting words or behaviour within the hearing or sight of a person likely to be caused harassment, alarm or distress or incitement to racial hatred.

3.7 As no staff or student member should feel intimidated or harassed on campus, the HEI must decide whether the impact of having a guest speaker from a far-right party would place student and staff members in that position. A proper investigation would mean examining the wider impact on campus and community relations of allowing a member of such a party to speak and taking into consideration the duty to promote good race relations between people of different racial backgrounds. A starting point would be to examine the HEI’s equal opportunities policy and other associated policies.
Legally, the HEI should balance all relevant factors when deciding if permission should be granted, including the likelihood that the guest speaker may act in a way which constitutes harassment; that is, making hostile statements about people on the grounds of race, gender, ethnic or national origin, religion or belief or sexual orientation or disability which have the purpose or effect of violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

It is also necessary to examine whether the speaker would incite racial hatred, commit some other public order offence and whether the meeting might result in disorder. In coming to a decision on this it could be useful to look into the history of this speaker and/or the organisation they represent, using the criteria contained in the HEI’s equal opportunities policy and other associated policies. Given that the party has a clear history of extreme and intolerant behaviour, it would seem legitimate to exclude the speaker from campus.

**Lawful speech**

**Example**

During a lecture on the history of Kashmir, an academic expresses strong opinions on the state of India. His remarks are felt to be offensive and insulting by some Indian students present, who make a complaint of harassment.

The lecturer is also involved in a boycott of Indian institutions because of India’s role in Kashmir and a campaign is mounted against him on the basis that it is indirectly discriminatory.

**Issues**

- The HEI must not discriminate against students or members of staff on the grounds of race. Most relevant here would be the issue of harassment (see 2.24)

- The HEI is under a general duty to promote race equality.

- HEIs should be encouraging the exploration and debate of divergent views and opinions.

- 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 either their jobs or any privileges they may have had at an HEI.
Proportionate interference with the lecturer’s right to freedom of expression is permissible where necessary to protect the rights and freedoms of others.

3.12 The HEI has to determine whether the comments made about the actions of the Indian state would constitute harassment or have an adverse impact on Indian students. If a complaint of this nature is made it should be fully investigated through the HEI’s complaints procedures and reasons for any decision should be clearly stated and disseminated. There should also be a full and open dialogue with appropriate student representatives.

3.13 Unless academic freedom is being abused, for example, by stirring up public disorder, or by infringing the rights and freedoms of others there will not be occasion to restrict the academic’s freedom of expression. Therefore expressing opinions on the actions of the Indian state is unlikely to justify any interference by the HEI or to amount to unlawful discrimination towards the students present. It may, however, be necessary to take into consideration the manner in which the subject was discussed and the genuine concern of any students should be taken into account. For example, there may be concerns with regards to the manner in which the subject was approached. This may be an area in which guidelines could be drawn up between departments and the HEI showing the need for due sensitivities of language.

3.14 In the second part of the example, an academic boycott of Indian institutions associated with the government and the state is of itself unlikely to constitute discrimination or harassment on grounds of race or national origin, unless the way that it is conducted or the way that the underlying views are expressed genuinely creates a hostile environment for individuals of Indian nationality (or, depending on the precise circumstances, the Hindu faith). An academic has the right to choose not to associate with public instruments of a particular regime.

3.15 The legality of an academic boycott of institutions must be distinguished from taking adverse decisions against individuals because of their race or nationality. The latter would obviously be discriminatory and the specific wording of any boycott would have to be examined in close detail.
Protests

Example

A university student animal rights group stages a protest outside its university’s biomedical research facility. They gather at the gates to the building, but do not enter university premises. Their protest is peaceful but both members of university staff and students entering the site complain that they feel intimidated by the presence of the demonstrators and the placards they carry.

A few days later, the group is infiltrated by protesters who are less committed to non-violent means and who threaten members of staff by saying that they know where individual members of staff live. The university does not know the identities of the protesters.

Issues

- HEIs should be encouraging the exploration and debate of divergent views and opinions.

- The animal rights protesters have a right to freedom of expression, including the right to receive and communicate information provided that in doing so there is no threat to public safety, no likelihood of disorder or crime and no interference with the rights and freedoms of others.

- The animal rights protesters have a right to freedom of peaceful assembly and association, provided that in doing so there is no threat to public safety, no likelihood of disorder or crime and no interference with the rights and freedoms of others.

- The HEI must maintain a campus on which students and staff can participate in lawful activities unimpeded.

As long as the protest is a peaceful one, which does not seem likely to result in public disorder or involve the implied or actual use of threats or violence, the mere fact that staff and students feel intimidated is unlikely to justify a ban on the protesters.

Once the protest spills over into the threatening and intimidating behaviour described in the second part of the example, the protest may be interfered with, provided the response is proportionate.

References should be made to the equal opportunities policy and other associated policies to see whether any of the behaviour described above contravenes it.
If the individuals making the threats can be identified and are found to be students or staff, they could be disciplined. If the individuals cannot be identified, then the group should be given the opportunity to disassociate itself from such actions and stop them. If they continue the HEI may have grounds to place restrictions on their right to protest.

**Individual/group behaviour**

**Example**

An administrator who works in the university’s open-plan admissions office is a member of a religious group which interprets the Christian scriptures literally. She believes that homosexuality is a sin and has chosen the extract from the Bible, *Leviticus 18:22*, as her screen saver. The extract states, “You shall not lie with a man as with a woman; it is abomination”. Staff are generally free to personalise their screen savers and, provided that they are not obscene, the university does not seek to regulate their form and content.

This text is within the view of her colleagues, one of whom is a gay man who complains to their manager about the offensive nature of the screensaver. The female employee does not otherwise allude to her colleague’s homosexuality.

**Issues**

- The HEI is obliged to maintain an atmosphere on campus where staff can perform their duties unimpeded.

- The right to free expression of religious and political views has to be protected.

- An HEI should preserve a culture that encourages debate and the free exchange of ideas.

- The HEI can be held liable for discrimination/harassment of its employees by other employees on the grounds of religion or belief and sexual orientation unless it can show that it took reasonable steps to prevent harassment.

- The HEI’s equal opportunities policy and/or harassment policy advocates an inclusive environment of mutual tolerance and seeks to prevent unlawful discrimination; this is needs to be publicised so that all employees are aware of its content.
The HEI has a duty not to discriminate against members of staff on the grounds of sexual orientation, and can be held vicariously liable for acts of discrimination (including harassment) of its employees by other employees on the grounds of sexual orientation. At the same time the religious employee has an absolute right to freedom of thought, conscience and religion, but a qualified right to manifest those beliefs.

The HEI needs to determine if this employee’s action is unlawful, for example if it amounts to harassment on the grounds of sexual orientation (see 2.24 for definition of harassment) or if it breached the institution’s equal opportunities or harassment policies.

If the HEI believes that there is a breach it may be justified in taking steps to moderate or terminate such conduct, provided these steps are no more than is necessary to pursue the legitimate aim identified. If it is agreed that the screen saver creates a hostile working environment, and this is a reasonable response in the circumstances, then the university would be justified in requiring the screen saver to be removed, with appropriate disciplinary action, if the religious employee refuses to do so.

The importance of communication of an HEI’s equal opportunities policy (and other relevant policies, such as a harassment or respect in the workplace policy) would be a relevant factor here. If a policy is clearly drafted and accessible to all employees and students, the university would be within its rights to restrict this employee’s manifestation of her religious beliefs.

Adequate training and awareness-raising of the policies and any subsequent codes of practice on tolerance and respect would also be a necessary tool which could be used to prevent this type of incident occurring in the future.

Displays of notices, distribution of literature and electronic communications

Example

Members of an anti-abortion group, some of whom are members of staff and students of the university, put flyers on notice boards, in common areas and under doors of student rooms in halls of residence. In addition to strong wording urging women not to have abortions and referring to abortion as murder, the flyers contain graphic pictures of an abortion and claim abortion is immoral and should be illegal.
They also email staff who work in the university’s medical centre which offers an abortion referral service. The emails, which do not identify the sender but originate from the university’s system, address members of staff personally stating that acts of violence such as abortion beget violence and those who help women obtain abortions are vulnerable to being attacked.

3.30 Issues

- The HEI should be protecting the rights to freedom of expression and to manifest religious beliefs.

- HEI medical staff are entitled to protection from harassment.

- Employees can reasonably expect privacy in the workplace, including the privacy of communications and the extent to which the HEI can intercept or monitor emails.

3.31 Abortion is legal in the UK and therefore all women in the UK have a right to seek to have an abortion should they wish to. At the same time, the group is entitled to express its views, unless the manner of expression or content of those views is unlawful or breaches the rights of others.

3.32 The HEI has a responsibility to protect staff members and students from harassment. The literature distributed by the group, while shocking, is unlikely to amount to an obscene publication on its own. However, putting flyers under halls of residence doors or emailing threats to those who work in the HEI’s medical centre are not acceptable forms of behaviour and could amount to harassment.

3.33 An HEI should ensure it has policies in place so that all staff and students are aware of standards of acceptable campaign literature. Insofar as members of the group are resident students, they can only be prevented from distributing the literature to the extent that, for example, it breaches the university’s right to quiet enjoyment of its property by causing a significant nuisance. In these circumstances, the university may be justified in prohibiting the distribution of the literature in that manner, but should accommodate an alternative means of distribution, for example by allowing the students to affix a limited number of posters to notice boards.

3.34 The emails sent to the staff of the medical centre may amount to harassment, cause fear or threaten violence. In order to deal with this the university may take appropriate action in order to ascertain the identity of the sender and to take appropriate steps to penalise the activity and prevent a recurrence. The HEI should make clear provision for the monitoring and interception of staff and student communications in its email/internet policy and not give licence to invade the privacy of all staff and students, but only those whom it reasonably believes are sending the offending material or only those messages, which it reasonably suspects, contain such material.
Banning of groups

Example

Members of an extreme political organisation, who are not students or staff, come to a university campus to distribute flyers and put up posters promoting their policies and views and generally to canvass support. A number of students complain that they believe this to be contravening the HEI’s equal opportunities policy and that some students have been intimidated and threatened by members of the organisation in the past.

Issues

- The HEI is under a general duty to promote race equality and could be liable for failing to deal with a situation where harassment is taking place.

- The organisation’s conduct could amount to a public order offence such as using threatening, abusive or insulting words or behaviour likely to cause harassment, alarm or distress or incitement to racial hatred.

- The organisation has a right to express its views, to freedom of peaceful assembly and association. Students have a right to hear and debate them provided that in doing so there is no threat to public safety, no likelihood of disorder or crime and no interference with the rights and freedoms of others.

- Different considerations will apply if the relevant part of the campus is public or private property.

The rights of freedom of expression and peaceful assembly can be interfered with if necessary to protect public safety, prevent crime or disorder or protect the rights and freedoms of others. Therefore the rights of any extreme political organisation to make its presence felt on campus would have to be seen within these parameters.

HEIs would have to examine the literature given out by the group to determine if there is a reasonable risk that there is a breach of the law or that they could constitute a breach of the HEI’s equal opportunities policy. In order to ensure that staff and students are able to voice their concerns over any such incidences a clear complaints and reporting procedure should be set in place. All relevant evidence should be taken into consideration and equality groups, trade unions and the students’ union should be consulted.
If it is decided that the group poses a threat to staff or students and/or may partake in activity which is unlawful, the HEI will be justified in taking action to remove it from campus. In order to deal with situations where this may be necessary, security staff should be fully trained (in consultation with the local police) in evicting people from campuses.

Any offensive display in the form of flyers, posters or graffiti should be removed immediately. An HEI can be held liable for harassment if it does not remove offensive materials within a reasonable time-frame.

If the campus is private property, and if it was felt the group’s behaviour was in contravention of the HEI's equal opportunities policies, the group could be asked to leave. If the part of the campus where the group congregate is public property, then the HEI may have to rely on the police to intervene.

Where the group’s activities amount to the criminal offence of harassment (which requires a course of conduct designed to harass an individual, or identifiable group of individuals), an injunction may be obtained to prevent the group from congregating even on public land, but this is more difficult to secure than on private land. Where the group has a clear history of hate crime and intolerant behaviour, it is legitimate to exclude them from campus.

**Students’ unions**

**Example**

The HEI has a special arrangement with colleges in the Republic of Cyprus, from which a large number of students are recruited to the HEI every year. A group of 50 Greek-Cypriot students forms a student Cypriot Society, which is affiliated to the students’ union. Its constitution states that the objective of the club is to promote Cypriot culture and values and it publishes a newsletter from time to time, which is frequently critical of Turkish rule in Northern Cyprus (which is not recognised by the international community). The Society refuses membership to a student based on the fact that he is of Turkish-Cypriot origin. The student complains of racial discrimination and insists that the institution should ban the group and the publications produced either collectively or by individuals.

**Issues**

- The HEI has a duty to take reasonably practicable steps to ensure that the students’ union operates in a fair and democratic manner.

- Students’ unions must require clubs to accept the principles of equality as a precondition of funding.
The HEI must ensure that the students’ union implements a complaints procedure, which provides an effective remedy when a complaint is upheld following investigation.

Clubs with a membership of 25 or more members whose membership is regulated by a constitution have a duty not to discriminate against individuals on racial grounds in the terms on which they are prepared to admit individuals to membership, or by refusing to accept an application for membership (section 25, Race Relations Act 1976). This duty does not apply where the main object of the club is to enable the benefits of membership to be enjoyed by persons of a particular racial group defined otherwise than by reference to colour (section 26, Race Relations Act 1976).

Students have the right to freedom of expression and of peaceful assembly and association and the HEI cannot interfere with this right unless it is justified.

Students’ unions are autonomous from HEIs. An HEI does however have a statutory duty to ensure that the students’ union conducts itself in a fair and democratic manner (section 22, Education Act 1994). This includes specific requirements that HEIs take reasonable steps to ensure that the students’ union adopts a complaints procedure available to all students who have a grievance or complaint against the union.

Clear guidance should be provided by the students’ union or by the HEI on the constitution of clubs to avoid breach of the law. This includes acting in a way that is compatible with the Human Rights Act 1998 and the RR(A)A. Though the students’ union is not a public authority which comes within the ambit of these two Acts, they are indirectly applicable to the union because of the HEI’s duties under the legislation. The conduct of a students’ union should be compatible with both the RR(A)A and the Human Rights Act 1998.

In the circumstances outlined in this example, the students’ union would have to investigate any claims of discrimination through its procedures. The club’s actions in refusing to accept the application for membership would have to be seen in light of its constitution and the relevant legislative provisions. The society’s actions in refusing to accept the application for membership may amount to unlawful direct discrimination on racial grounds. However, the conclusion may be otherwise if the society’s constitution had stated expressly that the essential character of the club was Greek-Cypriot and that the primary object was that that this racial group should enjoy the benefits of membership.

An HEI and students’ union should have policies in place which state when and how clubs can be dissolved and this could include a clause about failure to comply with legislative requirements or an HEI’s equal opportunities policy could resolve in dissolving groups.
With regard to the offensive nature of materials, they would become unlawful if it were targeted at particular individuals or a racial group so as to incite racial hatred or otherwise cause fear or provoke violence. Referring to the general duty of the RR(A)A will be a relevant factor here. Generally students have the right to freedom of expression, which includes criticising a particular regime.

Working in the local context

Example 1

As part of their course, a group of drama students write and produce a play for performance on university premises. The play is a fictional story of a young Muslim boy who grows up in Britain but is converted to a particular interpretation of Islam by the local imam. It deals with his subsequent involvement in terrorist activities. The university campus is based in a predominantly Muslim area, and the university has a large number of Muslim students. Before the opening of the play, Muslim students and members of the local mosque complain that it is highly offensive and demand that the university cancels all performances.

Issues

- HEIs should be encouraging the exploration and debate of divergent views and opinions. The drama students have a right to freedom of expression, including artistic expression, provided that in doing so there is no threat to public safety, no likelihood of disorder or crime and no interference with the rights and freedoms of others.

- A person commits a criminal offence if he or she uses threatening, abusive or insulting words or behaviour or displays, publishes or distributes threatening, abusive or insulting material intended or likely to stir-up racial hatred.

- The HEI is under a general duty to promote race equality.

The drama students have a qualified right to freedom of expression. The Muslim students have a right to freedom of religion, which could be undermined if material offensive to their faith was depicted.

However, HEIs should be working to ensure that the Muslim student population and the local community do not feel alienated by the performance of the play. Proper dialogue between the HEI, the objectors and the faculty involved should be facilitated.
This is also where the importance of working in the local context and having established links to community and faith group representatives is essential in order to reach a resolution that most people feel comfortable with.

The actual content of the play and script would have to be analysed and it would be necessary to determine whether the play deals with issues governing the Muslim faith, or is a political play about terrorism albeit set partly in a mosque? This will enable an informed decision as to whether or not the play’s content either does or is likely to breach the relevant legal provisions, particularly those under the Public Order Act 1986.

The HEI would therefore need to assess if there is a real risk of public disorder or other threat to public safety if the play is permitted to proceed. In the absence of any of these factors, there are unlikely to be lawful grounds for cancelling it.

Example 2

A university begins to get complaints from overseas minority ethnic students that they have experienced racial abuse, threats and even violent assault from young members of the local community. The university does not have a history of such incidents and is alarmed by the response from the local police who seem unwilling or unable to act.

Issues

- The university has no jurisdiction outside of campus.
- The students concerned have the status of adult private citizens.
- The alleged incidents are criminal acts.

The university wishes to exercise its duty of care for all its students including its highly valued international students. The vice-chancellor could make contact at the highest level with the local police and state the moral and business case for better police response to these incidents. The duties of the police under the RR(A)A and the crime and disorder legislation could also be emphasised.

One possible result could be that the police respond by setting up a local group which includes appropriate members from the university and the students’ union, the police, the local councils and community groups. The members of the group should be sufficiently senior to be able to make decisions and authorise the allocation of resources. This group would be able to take reactive and proactive measures to improve the personal safety of students.
3.61 Action taken by this group might include:

- personal safety advice to students in hard copy and on websites
- providing resources for a higher police profile in the area which includes the provision of community police support officers
- a mobile police office making regular visits to the campus, something which is particularly helpful for students with mobility impairments
- an initial increase in the reports of incidents in response to appeals for all incidents to be reported
- gaining the co-operation of local groups and schools, including the local supermarket and their security staff
- work in local schools by university students and staff supplementing the work already taking place
- joint funding and operating initiatives for CCTV cameras
- the police apprehending a number of perpetrators
- anti-social behaviour orders applied to a number of perpetrators
- some violent perpetrators imprisoned for assault and theft.
A typical HEI portfolio of policies would cover the following strands of equality:

- gender equality and equal pay
- racial equality
- religion or belief
- disability in employment
- disability for students including the Special Educational Needs and Disability Act, 2001
- sexuality
- age

These strands may be covered separately or in overarching policies such as:

- equal opportunities in employment; and
- equal opportunities for students

There will also normally be a policy on:

- dealing with harassment.
The following organisations may be useful if seeking further information and guidance:

**HE sector organisations**

- Association of Heads of University Administration
  http://www.ahua.ac.uk
  Tel: 0161 275 8060

- Association of Managers of Student Services in Higher Education (AMOSSHE)
  http://www.amosshe.org.uk/
  Tel: 0121 222 2332

  http://www.aua.ac.uk/about/committees/equalityadvisorygroup/
  Tel: 0161 275 2063

- Equality Challenge Unit (ECU)
  http://www.ecu.ac.uk/
  Tel: 020 7520 7060

- Higher Education Equal Opportunities Network (HEEON)
  http://www.heeon.ac.uk/
  Tel: 07967 145270

- Standing Conference of Principals
  http://www.scop.ac.uk
  Tel: 020 7387 7711

- Universities and Colleges Employers’ Association (UCEA)
  http://www.ucea.ac.uk/
  Tel: 020 7383 2444

- UKCOSA – The Council for International Education
  http://www.ukcosa.org.uk/
  Tel: 020 7288 4330

- Universities UK
  http://www.universitiesuk.ac.uk/
  Tel: 020 7419 4111
Trade Unions

Advisory, Conciliation and Arbitration Service (ACAS)
http://www.acas.co.uk/
Tel: 020 7210 3613

AMICUS
http://www.amicustheunion.org/
Tel: 020 8462 7755

Association of University Teachers
http://www.aut.org.uk/
Tel: 020 7670 9700

British Dental Association
http://www.bda-dentistry.org.uk/
Tel: 020 7935 0875

British Medical Association
http://www.bma.org.uk/
Tel: 020 7387 4499

The Educational Institute of Scotland
http://www.eis.org.uk/
Tel: 0131 220 3151

GMB
http://www.gmb.org.uk/
Tel: 020 8947 3131

NATFHE
http://www.natfhe.org.uk/
Tel: 020 7837 3636

TUC
http://www.tuc.org.uk/
Tel: 020 7636 4030

T&G
http://www.tgwu.org.uk/
Tel: 020 7611 2500

UNISON
http://www.unison.org.uk/
Tel: 0845 355 0845

Promoting good campus relations: dealing with hate crimes and intolerance
Students’ union

National Union of Students (NUS)
http://www.nusonline.co.uk/
Tel: 020 7272 8900

Other

Gender - Equal Opportunities Commission
http://www.eoc.org.uk/
Tel: 0845 601 5901

Race - Commission for Racial Equality
http://www.cre.gov.uk/
Tel: 020 7939 0000

Disability - Disability Rights Commission
http://www.drc-gb.org/
Tel: 08457 622 633

Sexual orientation - Stonewall
http://www.stonewall.org.uk
Tel: 020 7881 9440

Religion and belief

A comprehensive list of religious, faith and belief organisations can be found in the ECU publication *Employing People in Higher Education: Religion and Belief* (downloadable from www.ecu.ac.uk).
End Notes


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[17] The Inter Faith Network for the UK, Building Good Relations with People of Different Faiths and Beliefs, 2000

[18] The Inter Faith Network of the UK, Looking After One Another: The Safety and Security of Our Faith Communities, 2005
[21] Independent on Sunday, ‘Hate crimes against gay Britons rise by 23 percent’, 7 November 2004
Further copies of this publication can be obtained from:

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