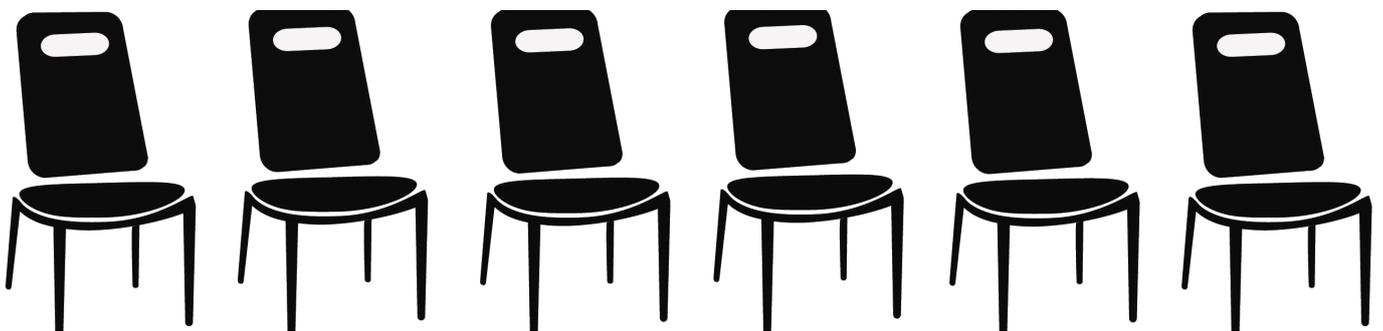


Gender Segregation at Events and Meetings

Guidance for Universities
and Students' Unions



GUIDANCE · LEGAL FRAMEWORK

Gender Segregation at Events and Meetings

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About this publication

What is the aim of this publication?

This publication aims to provide greater clarity about gender segregation at events which take place at or under the auspices of universities and students' unions.

Who is it for?

This guide is for universities and students' unions in England, Scotland and Wales.

What is inside?

The guide covers the legal obligations under equality law that universities and students' unions have in relation to gender segregation at events and meetings, including:

- legal obligations under equality law
- what is permissible on a segregated basis
- exceptions from equality law for religious practice and observance.

When was it published?

This guide was published in July 2014.

Why has the Commission produced it?

The Equality and Human Rights Commission promotes and enforces the laws that protect our rights to fairness, dignity and respect.

What formats are available?

This guide is available from www.equalityhumanrights.com. For information on accessing a Commission publication in an alternative format, please contact: correspondence@equalityhumanrights.com.

Introduction

The purpose of this document is to provide greater clarity about the circumstances in which segregation according to gender is prohibited under equality and human rights law at events which take place at or under the auspices of universities and students' unions, including those organised by university societies or associations.

Arrangements for gender segregation at such events must comply with the various requirements of the Equality Act 2010 ('the Act') and the Human Rights Act 1998 ('the HRA'). In our view, the law is clear about what is permissible and impermissible in the great majority of instances.

Universities, students' unions and student associations are all prohibited by the Act from discrimination based on protected characteristics,¹ including gender and religion or belief.

Universities also have obligations under education law² and human rights law to protect and promote freedom of speech on their premises, as far as is reasonably practicable within the law, in relation to students, employees and visiting speakers. This duty operates with regard to university premises and to other premises which are used by students' unions.

Segregation by gender is clearly not permitted in universities' normal academic, teaching and research activities. This guidance addresses the question of whether, in order to meet the religious needs of attendees or external speakers, universities can lawfully permit any form of gender segregation at events on university premises (or those used by students' unions or student societies) which are accessible by students and/or members of the public.

Overall legal position

- Many universities understandably seek to facilitate participation in university-based activities by students with diverse religious beliefs, by accommodating their religious needs where possible. Gender segregation is not permitted in any academic meetings or at events, lectures or meetings provided for students, or

¹ Age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation (section 4 of the Equality Act 2010 and subject to exceptions in Part 6 in relation to Education).

² Section 43 of the Education Act (No 2) 1986.

at events attended by members of the public or employees of the university or the students' union.

- Gender segregation is permissible during collective religious worship because it is not subject to equality law.
- Exceptions within equality law also permit religious organisations to provide services to benefit persons of one sex, or separate services for persons of each sex, in some circumstances.
- There are other express exceptions under equality law confined to communal accommodation, toilets and changing facilities, sports and welfare provision together with the potential for positive action measures, but there is no further exception that would permit segregated seating in any other circumstances.
- The legality of any decisions about segregation will ultimately be for the tribunals and courts to determine in each individual case.

Who has legal obligations under equality law?

Universities have duties under the Act as education providers,³ employers⁴ and as service providers;⁵ thus they must not unlawfully discriminate against their students, employees and customers.

As publicly funded bodies, universities must also exercise their public functions in compliance with equality law.⁶

Universities' duties as education providers under the Act cover all aspects of education from admissions procedures and provision of education to 'affording students access to benefits, facilities and services' on an equal basis. The Act also requires universities not to discriminate in terms of subjecting the student to 'any other detriment'. The Equality and Human Rights Commission's Technical Guidance on Further and Higher Education explains these requirements.⁷

³ Set out in Part 6 EA 2010 as explained in our Technical Guidance on Further and Higher Education at: www.equalityhumanrights.com/publications/guidance

⁴ Set out in Part 5 EA 2010 as explained in our Code of Practice on Employment at: www.equalityhumanrights.com/publication/employment-statutory-code-practice

⁵ Set out in Part 6 EA 2010 as explained in our Code of Practice on Services, public functions and associations at: www.equalityhumanrights.com/sites/default/files/publication_pdf/servicescode.pdf

⁶ Set out in Part 6 EA 2010 as explained in our Code of Practice on Services, public functions and associations at: www.equalityhumanrights.com/sites/default/files/publication_pdf/servicescode.pdf

⁷ See Chapter 10 of the Equality Act 2010 Technical Guidance on Further and Higher Education.

Students' unions have duties under the Act as associations – and at times as employers and service providers – and thus they must not unlawfully discriminate against students, employees, customers, members or guests.

Student societies may be formed under the auspices of students' unions to represent certain categories of students or to promote certain activities. Examples include Christian societies and rugby clubs. Students' unions usually have rules which dictate which societies may be formed and whether societies may be affiliated with the students' union. Student societies could be acting as 'service providers' under the Act and, if they have more than 25 members and admit members under a selection process in accordance with their rules they will also be acting as 'associations' under the Act. They are thus subject to the same legal obligations under equality law as student unions.

Conduct which is unlawful under equality law occurs when an individual:

- is treated less favourably because of a prescribed protected characteristic (direct discrimination), or
- is, or would be, unjustifiably disadvantaged for reasons connected to any protected characteristic as a result of a generally applied policy or practice (indirect discrimination), or
- is subjected to unwanted conduct, related to a protected characteristic, that he or she reasonably perceives as having the effect of violating his or her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment (harassment).

What obligations under equality law apply to university meetings?

When arranging, facilitating or conducting meetings or events, or when issuing an invitation to speak at or attend an event, equality law prohibits universities, students' unions and student societies from acts of direct or indirect discrimination against or harassment of students, members or guests. In this context, a university could be acting as an education provider (in relation to students), as a service provider (in relation to members of the public) and as an employer (in relation to employees).

Equality law applies to meetings or events on the premises of the university, or in premises used by the students' union (including outside the university's premises). It may also apply to premises being used by a student's society even if unconnected to the university or students' union.

Any seating arrangement amounts to direct discrimination if it results in disadvantage to any participant (actual or potential) because of gender.

Disadvantage occurs wherever an individual, male or female, might reasonably take the view that they had been treated less favourably because of gender. Thus a woman who is not permitted to occupy a particular area of the lecture hall because it is reserved for men is disadvantaged because she cannot sit wherever she chooses (or vice versa). The provision of a non-segregated area within the lecture hall does not prevent that disadvantage arising to either gender. Similarly, a woman or man who decides not to attend a meeting due to segregation also suffers disadvantage.

If the event's organisers or the external speaker place pressure on any woman to sit separately from men (or vice versa) this would also amount to unlawful harassment.

Equality law protects individuals from discrimination because of their religion, but protection against religious discrimination cannot be exercised in order to claim rights or privileges that would disadvantage others. Instead, it acts only as a shield against discriminatory treatment. An individual or group could not successfully claim direct religious discrimination on the ground of the failure or refusal of a university to provide gender segregated seating at an event or venue. This is because the reason for the university's action or omission does not relate to any person's religious belief.

Any claim of indirect religious discrimination would have to show that the prohibition of segregation is a policy or practice that, although equally applicable to everyone, particularly disadvantages those whose religious beliefs or doctrines require gender segregation. Such a claim would not succeed where a policy or practice that creates a disadvantage for a group can be justified as necessary and proportionate. In this case, it will be justifiable in order to prevent unlawful sex discrimination.

Voluntary segregation

Genuinely voluntary gender segregation does not cause disadvantage and is therefore permissible. In order to protect themselves from liability in relation to a claim for discrimination, universities and students' unions would need to satisfy themselves thoroughly that any gender segregation was wholly and demonstrably voluntary, both at the booking stage and during the event, and should be mindful of the impracticability of attaining in this regard a level of certainty which would be likely to satisfy a court.

To be voluntary, all attendees would need to be at liberty freely to choose where they wished to sit without any direction, whether explicit or merely an implicit expectation. Segregation is *not* voluntary where any one individual feels that their choice is constrained due to a pressure to conform to separate seating arrangements of any form in the venue, regardless of whether they have been explicitly directed or instructed as to where they can sit. Involuntary segregation will constitute unlawful discrimination on the part of the organisers of the event, except where it falls within the exception for religious worship and practice described below.

Thus, attendees must have the freedom to choose where they may sit (except where specific seating is designated for speakers, or space is designated for other legitimate reasons, for example to meet childcare or disability access requirements).

What is permissible on a segregated basis?

Segregation by gender will constitute unlawful discrimination except for in a few specifically defined purposes falling within one of the exceptions under the Act. The general rule is that exceptions in the Act must be interpreted narrowly because they are a departure from the fundamental principle of equal treatment.

Limited exceptions permit gender segregation for providers of further and higher education, where the education institution is not a single-sex establishment.

Exceptions under the Act allow for:

- **communal accommodation** in residential accommodation such as dormitories or other shared sleeping accommodation to be provided on a single-sex basis if that is required for reasons of privacy and if other relevant conditions are satisfied.⁸
- **sport sessions involving a high degree of physical contact** such as judo or self-defence classes to be offered separately. The Act also permits separate events to be organised for men and women in relation to those sporting competitions in which physical strength, stamina or physique are significant factors in determining success or failure.⁹
- **positive action measures** to be adopted by universities as education or service providers. There is no obligation on universities to do so, but they may if they

⁸ See Schedule 23, paragraph 3 of the Act for further details.

⁹ See section 195 of the Act for further details.

choose to deploy the positive action provisions of the Act.¹⁰ These permit targeted provision in order to overcome or minimise a disadvantage faced by a particular student group or to tackle low participation by that group. In order to qualify as lawful positive action, the benefit provided to the disadvantaged group must be a proportionate means of addressing the disadvantage or of encouraging participation. 'Proportionate' in this context is generally measured in relation to the scale of disadvantage or level of participation, is balanced against business needs and the action must be the means least likely to disadvantage those of the other sex.

Exemptions permit service providers and associations to provide for:

- **welfare provision** which is targeted through single-sex services to meet the distinct needs of men and women. Advice sessions can be provided for women only or men only if they will meet the separate needs of one gender. Other examples might include facilitating discussion or learning on gender specific or personal issues, such as sexual health. This exception is subject to similar provision being made for both sexes.¹¹
- **toilets, changing facilities or any service involving intimate personal health or hygiene** to be provided on a single-sex basis under an exception from the service provision duties that exempts services intended for use by more than one person at a time, where a woman might reasonably object to the presence of a man (or vice versa).¹²
- **associations** of any size or character (such as student societies) to restrict their membership to those who share a protected characteristic, including gender or religion or belief. A female-only association may restrict access to a benefit, facility or service to female associates and may restrict guest invitations to women. (This exception also applies to religious associations as described below.) Thus universities and students' unions can lawfully permit associations which are established for a single sex or for a particular religious community to use university facilities and advertise their events through university channels.

¹⁰ Section 158. See Commission guidance, 'What equality law means for you as an education provider – further and higher education' at section 1.7. Positive action is not the same as positive discrimination which is unlawful.

¹¹ See Schedule 3, part 7, paragraph 27 of the Act for further details.

¹² See Schedule 3, part 7, paragraph 27 of the Act for further details.

Exceptions from equality law for religious practice and observance

Equality law does not apply to religious worship. A religious student society or association may organise a gender segregated event, for the duration of any religious service.

Once such events or meetings go beyond religious worship or practice, equality law applies and the courts are likely to consider any gender segregation taking place to be unlawful, subject to any specific exception below. Although the law in this area has yet to be clarified, we recommend universities and students' unions protect themselves from liability for discrimination by prohibiting gender segregation at all meetings which go beyond acts of religious worship or practice, including meetings which follow on from acts of religious observance unless an exception below applies.

Services relating to religion in premises used for religious purposes¹³

A religious organisation is permitted to provide services to benefit persons of one sex, or separate services for persons of each sex, for the purposes of that religion, in premises permanently or temporarily occupied or used for those purposes. This exemption does not apply if the organisation's sole or main purpose is commercial.

'Religious purposes' are defined as practising or advancing the religion, teaching religious practice or principles; enabling followers to receive benefits or engage in activities within the framework of that religion; or fostering or maintaining good relations between those of different religions. For the exception to apply, it must be necessary to provide such services separately or only to persons of one sex, in order to comply with religious doctrines, or to avoid conflicting with the convictions of a significant number of the religion's followers.

Wider exceptions for organisations relating to religion or belief¹⁴

Non-commercial religious organisations when undertaking defined religious activities are also permitted to restrict their membership and the use of their premises on the basis of religion or belief or sexual orientation, subject to satisfying certain

¹³ See Schedule 3, paragraph 29 exemption from the duties contained in section 29 Equality Act (services and public functions) .

¹⁴ See Schedule 23, paragraph 2, exemptions from Parts 3 (services/public functions), 4 (premises) and 7 (associations) of the Equality Act. Also Schedule 16 exempts single characteristic associations from contravening the provisions of the Equality Act concerning associations contained in sections 101 and 102, but not based on colour.

conditions.¹⁵ They can also restrict both participation in their activities (whether on or off their premises) and also access to the goods, facilities and services that they supply to individuals of the same religion and belief subject to the same conditions.

Religious purposes are defined as for the exception above. The extent of these exceptions has yet to be tested in the courts. Universities should bear in mind the primary duty on education providers not to facilitate or aid discrimination and the rule of interpretation that exceptions should be narrowly construed.

What steps must universities take to prevent unlawful gender discrimination?

Universities and students' unions must not knowingly facilitate discrimination by others at the request of an external speaker or an individual attending or wishing to attend an event.

Universities have a duty to publish¹⁶ and keep up to date a Code of Practice which addresses the conduct of events at its premises and at those used by students' unions and their societies. Other than in exempt circumstances referred to above, this should prohibit gender segregation at meetings and include preventative measures.

In order to comply with their duties under the Act, it may well be sensible for Universities to request on a form used to book premises for events, information about the purpose of the meeting and the seating arrangements.

Information would not need to be requested about seating arrangements for a meeting held for the purposes of religious observance undertaken by the adherents of a particular faith (as segregation is permissible in those circumstances). Where religious worship is followed by a guest speaker, or a meeting to which others are invited, it is recommended that information is requested about the purpose of the meeting and about the seating arrangements (as segregation is not permissible unless an exception applies).

If there is reason to suspect a risk of unlawful segregation, further investigation would be required.

¹⁵ See Schedule 23, paragraphs 2(6), 2(7) and 2(9) of the Act for the relevant conditions. The exception in relation to sexual orientation does not apply when the religious organisation is acting for and under a contract with a public authority (Schedule 23, paragraph 2(10)) and when the religious organisation is disposing of its interest in the premises by way of sale (Schedule 23, paragraph 2(12)).

¹⁶ Education (No.2) Act 1986, s.43(3).

Some universities monitor requests for meetings via a central point of contact, which can approve or decline meeting requests, impose conditions and agree to their publication through official channels, as well as liaising with students' unions.

Should unlawful segregation occur during the event,¹⁷ the university cannot ignore a complaint about it. However, apart from highlighting in advance the consequences to the organising association of unlawful discrimination, and asking marshals to insist that segregation is ended, it may be that there are no further practical steps the university could take during the event. The university remains legally obliged to take any available alternative reasonably practicable steps that would prevent the discrimination continuing.

If the university only learnt of the compulsory gender segregation after the event, then it would need to take steps to ensure that it did not re-occur in the future, in order to avoid infringement of the Act.

What steps must students' unions take to prevent unlawful gender discrimination?

Students' unions are obliged to protect freedom of speech under education law and act in accordance with anti-discrimination duties under equality law. These obligations apply to their activities on the premises they occupy permanently or temporarily within and outside the university establishment. These legal obligations are also likely to apply to activities carried out in premises otherwise unconnected with the students' union or the university but which are occupied by associations affiliated to students' unions.

Students' unions maintain their own protocols and policies regarding meetings. These protocols and policies will be aligned with those of the university and should include a system for monitoring planned speaker events with a view to identifying arrangements that may breach equality law through the imposition of segregated seating. In this context, students' unions may have overlapping responsibilities with those of the university, but the overlap does not preclude both organisations from potential liability under the Act.

How does this guidance fit with universities' legal obligations towards speakers?

This guidance takes into account the university's legal obligations to secure freedom of speech under both the HRA (Article 10) and the Education (No 2) Act 1986.

As a public body, a university is obliged to act consistently with the HRA right to freedom of expression. In some circumstances, students' unions may also be subject to the HRA. Freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by a public authority. These rights are not absolute and, in the context of public meetings, they can lawfully be constrained in order to protect the rights of others.

Section 43 of the Education (No 2) Act places a positive duty on universities to ensure that meetings are open to individuals, including external speakers, regardless of their belief. The duty imposed by the section is to secure freedom of speech only to the point, however, of taking such steps as *are reasonably practicable* to ensure that freedom within the law.

External speakers cannot insist on gender segregation as a condition of participation in university events because gender segregation is unlawful in those circumstances and therefore would not constitute a reasonably practicable step.

Doesn't human rights law protect individuals from interference with their right to religious freedom?

Human rights law protects and preserves religious freedom and the rights of individuals to associate with whomever they wish based on shared religious beliefs (Articles 9, 11 and 14).¹⁸ For these reasons, other than in very limited circumstances, the law would not permit or compel universities to interfere in the internal affairs of religious organisations, or judge the legitimacy of particular religious beliefs. These circumstances would be limited to where the rights of others are infringed.

Religious freedom includes the freedom to hold, express or otherwise manifest religious belief and freedom from unjustifiable discrimination carried out on the ground of religion.

The courts have recognised the right to manifest religious belief as one of fundamental importance. However, unlike the right to hold a religious belief which is absolute, neither the right freely to manifest a religion or belief nor the right to freedom of expression are absolute rights. They are limited by the legal obligation to protect the rights and freedoms of others. Specifically, they are subject to the stipulation that the protection of those freedoms cannot be at the expense of permitting discrimination against others. In the context of gender segregation, therefore, these rights are circumscribed by the requirement not to discriminate against others on grounds of sex.

Universities already accommodate the requirements of members of different religions in a range of ways, including by providing rooms or facilities for worship and by meeting dietary needs. That is not only good practice but on occasion could be required by equality law, where unjustifiable indirect religious discrimination would otherwise occur in the provision of university education, or access to associated benefits, facilities or services. There are many situations where it would be reasonable for universities to accommodate the way in which a person manifests his or her belief, provided it is appropriate, practicable or necessary to do so and does not breach the rights of others.

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