

31 May 2022

Dear Members of the NUS UK Board,

Following our letter dated April 20th, we are writing to submit a formal complaint relating to the process for establishing, and the intended conduct of, the investigation into alleged antisemitism within NUS UK. We set out below a summary of our concerns.

1. Use of IHRA definition as a reference point

Paragraph 4.3 of the Terms of Reference (ToR) for the investigation, published by the NUS on May 19th, states that “The IHRA definition of antisemitism (including all of its examples) will inform the investigation”.

The manner in which the IHRA definition is often read and implemented conflates antisemitism with legitimate criticism of the laws, policies, and constitutional order of the State of Israel. This conflation has created a politicised definition of antisemitism which directly threatens lawful speech as protected by the Human Rights Act, including the fundamental right of Palestinians to describe our lived experience of oppression, and the rights of others to advocate on our behalf. It also serves to undermine, rather than support, the combatting of antisemitism.

The deficiencies of the IHRA and concerns over its impact are shared, amongst others, by the [Institute of Race Relations](#); eminent lawyers including ex-Court of Appeal Judge Sir [Stephen Sedley](#); more than 80 UK-based [BAME groups](#), 40 global [Jewish social justice](#) organisations, more than 100 [Palestinian and Arab academics](#), journalists and intellectuals, [Palestinian civil society organisations](#), and a coalition of more than [200 Jewish scholars](#) working in Antisemitism Studies and related fields. It was also rejected by the [University and College Union](#), and was found to be unfit for use in higher education by the [UCL Academic Board](#).

Applying this definition in the planned investigation will make the NUS an active participant in the silencing and alienation of all those who take a clear and moral stand against Israel’s apartheid policies, while failing to achieve the NUS’ purported aim of investigating antisemitism. The IHRA definition is an unacceptable framework for addressing discussion of Palestine and Israel, and there can be no fair process or impartial investigation with it as the reference for defining antisemitism.

We are additionally concerned by the insistence on using the IHRA definition even though, as the ToR acknowledges, NUS policy on the IHRA definition has already lapsed. This insistence on introducing the IHRA definition into a formal investigation by indirect means is potentially contrary to processes of NUS UK and reinforces our concerns about the integrity and impartiality of the investigation and how it has been devised.

2. Publication of the list of allegations made against the President Elect

The decision to publish details of the list of allegations made against the President Elect of the NUS (ToR para 4.1.1) is highly unusual while an investigation is ongoing and serves to prejudice the outcome of the investigation in two main ways:

- a) It publicly attaches accusations to the President Elect, smearing her reputation in the public eye before any investigation has been carried out.
- b) It fails to clarify whether these allegations are being investigated (i) in order to assess only whether the President Elect carried out the listed actions on the basis that they are deemed to be antisemitic in and of themselves or (ii) whether the investigation will consider whether those actions were antisemitic (if they did occur as described) taking into account all of the context and circumstances of such actions.

If it is the former (b(i)), then this is unacceptable. Indeed, if allegations were deemed to be antisemitic in and of themselves, this would threaten the rights and well-being of Palestinian students and others who wish to state the facts of Palestinian oppression and campaign against it.

Furthermore, we reaffirm that participation in activism for Palestine cannot be considered antisemitic unless clear evidence is produced that establishes that such participation was additionally accompanied by clear manifestations of antisemitism. For clarity, the following should not be accepted as evidence of antisemitism and should not trigger an investigation unless there is further evidence manifesting an antisemitic intent:

- i. Supporting the Palestinian demand for justice and the full grant of their political, national, civil and human rights, as encapsulated in international law.
- ii. Criticising or opposing Zionism as a form of nationalism, or arguing for a variety of constitutional arrangements for Jews and Palestinians in the area between the Jordan River and the Mediterranean Sea.
- iii. Supporting arrangements that accord full equality to all inhabitants “between the river and the sea,” whether in two states, a binational state, unitary democratic state, federal state, or in whatever form.
- iv. Evidence-based criticism of Israel as a state. This includes its institutions and founding principles. It also includes its policies and practices, domestic and abroad, such as the conduct of Israel in the West Bank and Gaza, the role Israel plays in the region, or its foreign affairs more generally.
- v. Pointing out systematic racial discrimination. In general, the same norms of debate that apply to other states and to other questions of national self-determination apply in the case of Palestine and Israel. Thus, even if contentious, it is not antisemitic, in and of itself, to compare Israel with other historical cases, including settler-colonialism or apartheid.
- vi. Calling for and participating in campaigns of boycott, divestment and sanctions against institutions and corporations involved in Israel’s violations of Palestinian rights. Such actions are commonplace, non-violent forms of political protest against states.

- vii. Protesting, marching, or demonstrating in a public space, as per rights to freedom of expression and assembly.

3. Extent of involvement of the Union of Jewish Students (UJS)

In the [original announcement](#), first published on April 16th, it is stated that the NUS Board will “be consulting with the Union of Jewish Students in making the appointment [of the investigator]”, “meeting regularly with UJS to hear concerns, receive input...” and “working in collaboration with UJS at every step of the way”. The announcement of the [investigation](#), published on May 19th, confirmed that the “NUS worked closely with the Union of Jewish Students to make the appointment and to agree the Terms of Reference”, and included a statement of endorsement from the UJS.

While the involvement of Jewish student bodies and groups is to be expected, working in such close consultation with any single stakeholder in order to develop Terms of Reference and appoint the person conducting an investigation contradicts both the impartiality of the process and the independence of any investigator appointed.

Moreover, there is much publicly-available evidence to demonstrate that the UJS is not a disinterested party in relation to Palestine and Israel, and specifically, with respect to positions adopted by the NUS on the matter. Of particular relevance is the clear political role played by the UJS in working against the right to call for accountability in relation to institutional and corporate involvement in Israel’s violations of international law – and promoting a narrative that it is inherently antisemitic to [show support](#) for the Palestinian-led movement for boycott, divestment and/or sanctions.

4. Failure to consult with all affected parties, including disregard for Palestinian concerns

The NUS UK Board’s approach towards the Union of Jewish Students stands in stark contrast to its approach in relation to other parties who stand to be affected by this investigation. To our knowledge, no Palestinian students or student groups have been consulted during any part of the process thus far and there is no reference to any other student groups who stand to be impacted by this investigation in any of the NUS UK Board’s communications. This is of acute concern given the acceptance of the IHRA definition as a framework for investigation, which extends the notion of antisemitism to encompass what can and cannot be said in support of Palestinian rights.

A letter dated April 20th, signed by the British Palestinian Council, Palestine Forum in Britain, Association of the Palestinian Community in the UK, and the Palestine Solidarity Campaign, outlining deep concerns ahead of the publication of the ToR, received only a stock response without any engagement with the substance of the letter or a response to the request for a consultation on the matter.

The exclusion (whether actually or in effect) of relevant groups sharing protected characteristics or race, ethnicity and/or religious belief from the process amounts to discrimination on the part of NUS UK.

5. Conclusion

The points of complaint raised above serve to prejudice the outcome of any investigation from the outset, and discredit any report or conclusion even before it is written. As things stand, it is impossible to have any level of confidence in the integrity or impartiality of such an investigation.

We are extremely concerned that under pressure from the Government, extensively publicised through several mainstream media outlets, the NUS has acted in a manner that will have far-reaching implications for Palestinian students as well as all students who support and advocate for Palestinian rights, many of whom are students of colour.

We are concerned that the investigation process and its outcome is likely to be unlawful unless appropriate corrective action is taken urgently, and we reserve our right to take formal legal action, albeit we very much hope this can be avoided.

In light of the complaints that we have outlined, we therefore expect the NUS UK Board to:

1. Ensure that the IHRA definition is not utilised as a framework for this investigation.
2. Give specific assurances about how Palestinians will be consulted regarding the terms of inquiry, given that a number relate to Palestinian political discourse and advocacy on behalf of Palestinians.
3. Clarify publicly that no conclusions have been reached as to what actions are or are not antisemitic either from the list of allegations against the President Elect or more generally.
4. Arrange a meeting with members of the British Palestinian Council, including BPC's student members, Palestinian student groups, and other relevant stakeholders, as a matter of urgency, and prior to the commencement of any investigation .

Sincerely,



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