

Our Ref: AJ

Summit House  
12 Red Lion Square  
London WC1R 4QD  
DX 37954 Kingsway

[www.mishcon.co.uk](http://www.mishcon.co.uk)

Sally Hunt  
General Secretary  
Association of University Teachers  
Egmont House  
25-31 Tavistock Place  
London  
WC1H 9UT

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**BY FAX & BY POST**

Dear Madam

**The Rules of the AUT**

We act for the following AUT members: Professor Terence Kavanagh, Dr Jonathan G. Campbell, Professor Geoffrey Alderman, Professor John Charap, Professor Ian Reid and Dr Eric Heinze.

*The background*

On 22 April 2005 the Association of University Teachers ("the AUT") passed a number of boycott resolutions. Two were directed at specific Israeli universities, while a third such resolution has been deferred. The boycotts are to take the form described in the "Palestinian call" for an academic boycott of Israeli institutions.

AUT members are "called upon" to boycott:

- Haifa University "until it commits itself to upholding academic freedom, and in particular ceases its victimisation of academic staff and students who seek to research and discuss the history of the founding of the state of Israel;" and
- Bar-Ilan University "until it severs all academic links with the College of Judea and Samaria and with any other college located in an illegal settlement in the Occupied Territories."

The "Palestinian call" is for a comprehensive and consistent boycott of all Israeli academic and cultural institutions. Academics answering this call will (in the language of the "call" itself):

- Refrain from participation in any form of academic and cultural cooperation, collaboration or joint projects with Israeli institutions;

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- Advocate a comprehensive boycott of Israeli institutions at the national and international levels, including suspension of all forms of funding and subsidies to these institutions;
- Promote divestment and disinvestment from Israel by international academic institutions;
- Exclude from the above actions against Israeli institutions any conscientious Israeli academics and intellectuals opposed to their state's colonial and racist policies;
- Work toward the condemnation of Israeli policies by pressing for resolutions to be adopted by academic, professional and cultural associations and organizations;
- Support Palestinian academic and cultural institutions directly without requiring them to partner with Israeli counterparts as an explicit or implicit condition for such support.

AUT members are now expected, by the terms of the boycott resolutions, to respond to this "call".

It is not at present clear what the sanction will be for AUT members who refuse or fail to comply with these resolutions. We note that no guidance has yet been issued to members.

You have instead written to all local association secretaries indicating that the national executive will give guidance on implementation in due course. "Until this guidance is issued, it is stressed that members should be advised not to take any action in relation to a boycott which would place them in breach of their contract of employment."

You are seeking, you say, advice on the legality of the resolutions.

The legal position is clear. The pursuit of a policy of boycott is outside the scope of the AUT's objects. The resolutions are void. In technical legal language, they are *ultra vires* the AUT.

### *The AUT's Rules*

Every trade union is governed by its rules of association. These rules will, among other things, define the union's "objects", that is to say, the purposes for which it exists.

The rules also comprise the contract between the union and its members. Decisions taken by a trade union in pursuit of its objects are binding on the union's members. Decisions taken that are beyond or otherwise unrelated to its objects are *not* binding.

The AUT is a typical trade union. It has a set of Rules, and at Rule 2 its objects are defined as follows (the salient phrases are highlighted for easier reading):

"2.1 The objects of the association are the **advancement of university education and research**, the **regulation of relations between academic and**

**academic-related staffs** in universities and analogous institutions and their employers, the **promotion of common action by those staffs**, and the **safeguarding of the interests of the members**.

2.2 The **objects** of the association **include the furtherance of the political objects** set out in **Schedule 8**. [...]

[...]"

According to Schedule 8, "political objects" relates to financial or other support for a political party or a candidate for political office, or for a campaign against a political party. "Political office" means MP, MEP, or member of a local authority or any position within a political party.

One may therefore distinguish between "Rule 2.1 objects" and "Rule 2.2 objects".

The boycott resolutions do not fall within any Rule 2.2 object. They are not concerned with domestic or European party politics.

The question therefore is whether a call to members to boycott Israeli universities falls within the ambit of the AUT's Rule 2.1 objects. There are four Rule 2.1 objects. The AUT exists to

- advance university education and research;
- regulate relations between academic and academic-related staffs in universities and analogous institutions and their employers;
- promote common action by those staffs; and
- safeguard the interests of the members.

If the resolutions do not fall within one or more of these objects, they are unlawful.

That is to say: they are in excess of the AUT's objects; they are without effect; they cannot be enforced against non-complying AUT members; expenditure of monies in implementing them would be an unlawful use of AUT funds.

*The boycott resolutions are not within the objects of the AUT*

The resolutions plainly do not fall within the first of the Rule 2.1 objects. They do not further university education and research, they positively inhibit them.

The resolutions, equally plainly, do not fall within the second of the Rule 2.1 objects. They are not concerned with the regulation of relations between (in effect) the AUT's members and their employers. They instead seek to interfere in relations between their members and third party universities and academics.

The resolutions, further, do not promote common action by staffs of universities, that is to say, have as their object the organizing of members in pursuit of other Rule 2.1 objects or a Rule 2.2 object. Once again, and to the contrary, they are divisive

measures, setting groups of members against each other, in pursuit of a campaign that has no connection with their common interests.

Last, the resolutions do not, and are not intended to, safeguard the interests of the members. All the evidence, indeed, is that the resolutions will injure members' interests:

- They will expose members to legal action, because their effect is to procure breaches by members of their contracts with their university employers.
- They will interfere with members' academic research, and the maintenance or development of members' ties with universities that have world-class reputations.
- They subject members to the arbitrary rule of (yet to be identified) persons who will have the right to determine whether a member's contact with this or that Israeli academic is of an "approved" nature.
- They expose members to the peril of disciplinary action or other sanction by the AUT should they fail to comply with the resolutions.
- They create uncertainty in the minds of members by the vague and open-ended nature of their language, and thus inhibit and distract members, impairing their teaching and research.
- They specifically discriminate against Jewish members of the AUT (and all rights are reserved in this respect - the resolutions are unlawful on grounds of race and are therefore ultra vires the AUT's rules on that basis also).

It follows that the resolutions and any instructions for implementation are not authorised by the AUT rules. *Indeed, so far from being within the rules, they are contrary, in each particular, to the very purposes for which the AUT exists.*

They are therefore ultra vires and of no effect.

Our clients are entitled to make a formal complaint under Rule 25, or indeed to take proceedings in the High Court. They reserve all their rights.

### *Expenditure of AUT funds*

It follows that if union funds are being spent by the AUT in connection with these resolutions, then that expenditure is not authorised by the Rules. Rule 19.1.1 provides that AUT funds shall be employed for any purpose that, in the opinion of council or the executive committee will further, or tend to further, the objects of the AUT.

Members of the AUT have an interest in preserving the funds of the union and are entitled to insist that the union's funds are used strictly in accordance with Rule 19.1.1.

Further, officers of the union owe fiduciary duties to the union and are accountable to the union for money misapplied in breach of duty.

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Our clients are entitled to ask the High Court to make an order restraining further expenditure and requiring the relevant officers to reimburse any sums so expended by the union. They reserve their rights.

Please confirm that no such funds have so far been expended. Our clients also request the opportunity, in this regard, to inspect the AUT's accounts. (Please refer to rule 19.3.1).

### *Our clients' position*

Our clients' require the AUT to acknowledge the resolutions' invalidity, confirm that no implementation instruction will be issued, and provide the appropriate assurances in relation to the expenditure of AUT funds.

The resolutions are a threat to the AUT's integrity, as well as to the cause of academic freedom. Our clients are prepared to take the steps necessary to ensure that the threat does not become a reality.

Yours faithfully

### **Mishcon de Reya**

Direct Tel: +44 20 7440 7025  
Direct Fax: +44 20 8203 0981  
E-mail: [anthony.julius@mishcon.co.uk](mailto:anthony.julius@mishcon.co.uk)