

Contributed by Mills & Reeve

Higher and further education institutions require a full range of legal advice.

The sector remains very much in the news and policy issues continue to have an impact on those advising education clients. Current debate includes academic standards and quality in higher education. Widening participation and equality of access for all also continues to be a major policy driver.

These remain times of great change in the further education sector, from the creation of two government departments and new Instrument and Articles of Government, to consolidation of teaching and learning provision effected through college mergers and the professionalisation of teaching under the auspices of the Institute for Learning. DIUS and DCSF continue to drive forward their plans for further education to help develop the nation's skills, economic and social success.

Real estate

Delivery on sustainability and green agenda targets is of increasing importance to educational institutions. Replacing or refurbishing ageing estates will be central to that aim. Continued public and private sector funding will have a significant role to play.

The drive to greater energy efficiency and energy capture is a growing trend in construction work, and achieving a BREEAM (Building Research Establishment Environmental Assessment Method) rating of 'Good' and above is increasingly important. The appointment of consultants and contractors will be more challenging as the public procurement position gets tougher following recent European Court judgments and as new legislation comes into force in 2009 strengthening the remedies available.

The past year has been a busy one for PFI projects. 2008 saw one of the largest transactions yet in the education sector with Aston University's campus redevelopment project. As student numbers rise, many universities are looking to private finance as a way of meeting their accommodation needs, and student accommodation is increasingly viewed as an asset class in its own right.

Banking and finance

Lending to the education sector has been viewed by banks as low risk and hence the credit crunch has not dramatically affected banks' willingness to lend. However, recent months have seen a tightening of margins, rates offered being based on the currently higher LIBOR rate rather than base rate and an increased use of non-utilisation fees. The more difficult conditions surrounding raising finance in the private sector are also affecting the pricing of financing schemes that involve a private sector body raising the money.

Charity law

The sector is digesting the raft of guidance notes and consultations on public benefit. The guidance on fee-charging charities is controversial, and test cases may need to come forward to the new Charity Tribunal. Research funding is another difficult area that has come into focus with the changes to the taxation of charities in the Finance Act 2006.

Employment

The statutory dispute resolution procedures (due to be removed in 2009) have been fuelling an increase in the number of formalised grievances and complaints by staff, set against a backdrop of continuing tension over pay awards and tighter performance management. As the rights of particular groups of staff, such as fixed-term and agency workers, become clearer, institutions have been looking more closely at the types of working relationships created to assist the provision of a workforce which is sufficiently flexible to meet the peaks and troughs of the annual academic cycle.

The Equality and Human Rights Commission established towards the end of 2007 has been supporting high-profile cases in the education sector as the age discrimination legislation beds down. Universities and colleges must also manage positive duties such as the need to eliminate unlawful harassment and discrimination and promote equality of opportunity.

Data Protection/Freedom of Information

Students and staff, as well as members of the public and the press, are increasingly exercising their rights to access information afforded by the

Data Protection Act 1998 and the Freedom of Information Act 2000 (note, for example, the decision notice concerning University College London and the request it received for information in the wake of the MMR controversy).

Student issues

A revised Code of Practice for student complaints and appeals has been published by the Quality Assurance Agency for Higher Education (QAA): <http://www.qaa.ac.uk/academicinfrastructure/CodeOfPractice/section5/default.asp> and a research project into the use of mediation for grievances and disputes brought by members of staff and students is being supported by HEFCE: <http://www.staffs.ac.uk/idr>.

From early 2009 there will be an obligation on education institutions to administer a new immigration points-based system that applies to all non-EU students. Especially applicable to further education, new regulations for those dealing with children and vulnerable adults are due to come into force in autumn 2009.

Disability discrimination is a growing area of legal work. What amounts to a "reasonable adjustment" and a "competence standard" is likely to be subject to clarification in the courts. In the higher education sector, the QAA will issue a revised Code of Practice concerning disabled students and the legislature is likely to keep refining the law as it applies to general qualifications bodies.

City academies

The demand for city academies remains buoyant, with £45 billion budgeted by the government to be spent by 2020. The latest initiative is the drive by the Department for Children, Schools and Families to increase the pool of potential sponsors, with Ed Balls, the Secretary of State for Children, Schools and Families, keen to encourage universities, further education colleges and successful schools to sponsor academies.

International

The international market, particularly the Middle and Far East, is continuing to be a focus of attention for higher education institutions. The key to exploiting the potential that the international arena holds is in diversifying the types of joint ventures that are invested in, and greater focus on aspects of due diligence towards the partner institutions.

Health

Medicine is a booming area for growth, fuelled by domestic and international collaborations within higher education and also between universities, industry and the NHS. The Darzi Review's backing for Academic Health Science Centres, such as Imperial College Healthcare, clears the way for some interesting developments both academically and organisationally.

HEI spinouts

Government reports such as Lord Sainsbury of Turville's *Race to the Top* and *Innovation Nation* demonstrate the continued emphasis on improving the quality of innovation and technology as a way to ensure the future competitiveness of the UK in the global market. 2006-07 saw 226 spinouts formed based on IP generated by UK higher education institutions (up 7% on the previous year) with over 1,200 higher education spinout companies remaining active. Survival rates for those spinouts active after more than three years were also up by 35% from 2003 to 2004. Regarding intellectual property issues, increasing pressure on finances will focus attention on ownership issues, problem solving, dispute resolution and revenue protection.

Opportunities and challenges ahead

Universities UK's report (*The future size and shape of the higher education sector: threats and opportunities – July 2008*) identified three key issues:

Finance – increased competition for public funds and the prospect of increased contributions from students.

External factors – the UK's position in the international market is under threat as competition from other countries and private providers grows.

Employer engagement – the role played by employers in higher education may increase, for example, in co-funding courses.

These and other issues will have a bearing on the legal matters undertaken over the years ahead.