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Achieve more. Together.

# AHUA Perspectives

Legal updates for the world of higher education

## Taking up the baton as new national sponsors

Dear colleague

I am delighted to bring you some perspectives on the world of higher education in this briefing as we take up the baton as the new national sponsors for the Association of Heads of University Administration (AHUA).

It is a significant moment in time for the higher education sector in the UK, contending with a multitude of legal, political and regulatory issues.

In England, there is now a new regulatory framework, a new regulator (the Office for Students) and a new research funding body (UK Research and Innovation), established under the Higher Education and Research Act 2017.

The General Data Protection Regulation will also come into force across the UK on 25 May 2018.

Our sponsorship of AHUA is a collaborative activity with two other law firms with whom we work in the higher education sector in the UK, namely our friends at Anderson Strathern in Scotland and Carson McDowell in Northern Ireland.

In this briefing, commercial partner Martin Priestley gives some reflections on Brexit and pensions partner Clare Grice looks at the legal reasons for continued defined benefit pension provision. We also look at a recent judgment of the High Court in respect of legal proceedings brought by a student who was concerned about the teaching he had received.

We are delighted to include the perspectives of Alun Thomas, a partner at Anderson Strathern who leads their work in the higher education sector in Scotland.

In future editions, we will include articles from other areas and jurisdictions, including from our friends at Carson McDowell in Northern Ireland.

However, do let us know what you would find of interest !

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“Persistent financial pressure faced by employers in respect of defined benefit (DB) pension provision has resulted in an ever increasing trend to move to defined contribution (DC) and away from DB for future service.”

# Higher Education Pensions:

## DB or not DB?

Persistent financial pressure faced by employers in respect of defined benefit (DB) pension provision has resulted in an ever increasing trend to move to defined contribution (DC) and away from DB for future service.

Employers in the higher education sector are not immune from this pressure, and indeed DB pensions issues are key items on institutions' risks registers. Yet DB pension provision is still prevalent within the sector.

There are a number of reasons for this, not least of all legal. But does this mean from a legal perspective that institutions are bound to continue to offer DB?

### Higher Education Sector Pension Schemes

There are five main DB arrangements within the Higher Education Sector:

1. The Universities Superannuation Scheme (USS)
2. Superannuation Arrangements of the University of London (SAUL)
3. The Teachers' Pension Scheme (TPS)
4. The Local Government Pension Scheme (LGPS)
5. A university's own DB pension scheme established under trust (in this article, referred to as a University Scheme), excluding SAUL

### USS

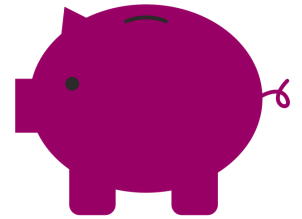
USS is a multi-employer pension scheme, and is one of the largest private sector pension schemes in the UK by fund size. It is largely pre-92 institutions that offer USS membership - to academic and academic related staff (although some institutions have extended this to professional services staff) - but a number of post-92 institutions offer USS to certain employees (particularly in order to attract and retain talent).

Like many DB pension schemes, the USS has a significant deficit, with each employer participating in USS currently paying a contribution rate of 18% of salary for each USS member it employs.

Participation of an institution in USS is optional. However, where employees of an institution participating in USS are eligible for USS membership, due to the 'exclusivity' provision in the USS rules that institution cannot offer the employees a choice of a DC alternative. To do so would be a breach of the USS rules and would require the institution to leave the USS.

Exiting the USS would trigger the payment of a debt under Section 75 of the Pensions Act 1995. A Section 75 debt is the institution's share of the entire USS deficit calculated on a 'buy-out' basis (i.e. the costs of securing the benefits in full with an insurance company), its share of any liabilities that are not attributable to any employer remaining in USS ('orphan liabilities') calculated on the same basis, and the costs associated with calculating and collecting this debt. The Section 75 debt is therefore likely to be a significant amount.

Section 75 is a key legal reason as to why institutions remain in USS. Under the USS rules, an institution is able to cease participating in USS and therefore cease offering USS pension provision at any time, but this



action would trigger the payment of the Section 75 debt, which is immediately payable unless conditions are satisfied and agreement is reached with USS to allow the deferral of its payment, or to apportion it, under the relevant legislation.

## SAUL

Like USS, SAUL is a multi-employer pension scheme. Originally established for non-academic employees of the University of London, there are now 50 institutions participating in SAUL.

As at the last actuarial valuation there was a large deficit in SAUL, with the current employer contribution rate of 16% of salaries. Like USS, an institution wishing to exit SAUL would be faced with the Section 75 debt issue.

## LGPS

The LGPS is a funded public sector pension scheme. Institutions classed as Higher Education Corporations (HECs) (post-92 institutions) are regarded as 'Scheduled Bodies' under the LGPS regulations. As a Scheduled Body they are required to enrol any employee not eligible for another public sector scheme (therefore non-academic staff who are not eligible for the TPS) into the LGPS.

Pre-92 institutions may also offer certain employees LGPS membership, particularly following a transfer of employees. Such institutions are regarded as 'Admitted Bodies' for the purposes of the LGPS regulations.

As a funded scheme, each Scheduled and Admitted Body is required to fund any deficit within its relevant LGPS fund. The latest LGPS valuations in 2016 led to significant increases in LGPS contribution rates for many institutions (contribution rates are specific to each institution and reflect the funding position of the specific LGPS fund in which they participate).

## At a glance...

### USS: Key Facts

- Established under trust
- Governed by its own specific rules and overriding pensions legislation
- Administered by a sole trustee, USS Limited, which has the power to amend the USS rules with the agreement of the Joint Negotiating Committee (which is made up of UUK and UCU appointees)
- Contribution rate is the same for all employers and depends on the funding position after each triennial valuation that must be undertaken in accordance with the Pensions Act 2004

### SAUL: Key Facts

- Established under trust
- Governed by its own specific rules and overriding pensions legislation
- Administered by a sole trustee, SAUL Trustee Company, which has the power to amend the SAUL rules with the agreement of the University of London and the SAUL Negotiating Committee (which is made up of individuals nominated by the University of London, Unite and Unison)
- Contribution rate is the same for all employers and depends on the funding position after each triennial valuation that must be undertaken in accordance with the Pensions Act 2004

“Persistent financial pressure faced by employers in respect of defined benefit (DB) pension provision has resulted in an ever increasing trend to move to defined contribution (DC) and away from DB for future service.”

# Higher Education Pensions:

## DB or not DB?

As an Admitted Body, the institution generally has a choice whether to offer LGPS membership. However, on ceasing to employ active members in the LGPS, an institution would become an ‘exiting employer’ and would be liable to pay an ‘Exit Payment’. The Exit Payment is akin to a Section 75 debt, although there is more flexibility with regards to the period over which the Exit Payment may be paid (depending on the administering LGPS authority in question).

Whilst non-academic employees of post-92 institutions have a statutory right to LGPS (which cannot be removed), it is possible to give such employees a choice of pension provision. The increasing cost of employee contributions to the LGPS has made it unaffordable for many employees and therefore institutions have looked to offer such employees alternative DC provision, with either no employee contributions required, or a low rate minimum contribution level. This has the result of reducing LGPS costs for the institutions as well as removing the financial risk associated with DB accrual for individuals opting for the DC alternative. An Exit Payment is unlikely to arise with this approach as not all employees will opt for the DC alternative, but nevertheless the institution will need to keep this position under review.

An approach being considered (and implemented) by some post-92 institutions, who are concerned about the increasing costs of LGPS pension provision and the significant associated financial risk outside of their control, is to set up a subsidiary company that employs the non-academic staff working at the institution. Under the LGPS regulations, a subsidiary of a Scheduled Body has the choice whether to offer LGPS provision and can therefore choose to provide only DC pension provision to such employees.

### TPS

Like LGPS the TPS is a statutory DB scheme, but unlike the LGPS it is unfunded. This means that it operates on a ‘pay as you go’ basis, with contributions being paid from employers and employees to the sponsoring government department which then meets the cost of pensions in payment.

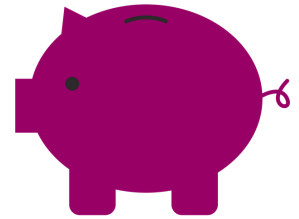
Like the LGPS, the employer contribution rate is set on the basis of periodical actuarial valuations. Whilst the TPS is an unfunded scheme, it does have a notional deficit and this is relevant to the calculation of the employer contributions to TPS. The employer contribution rate is made up of a standard part to cover the cost of accruing benefits as well as a supplementary contribution to fund the deficit. Currently the employer contribution rate is 16.4% of salary, and it is possible that this will increase further (the earliest any contribution increase could apply is April 2019).

Institutions classed as Higher Education Corporations (HECs) (or post-92 institutions) are considered as statutory employers for the purpose of the regulations governing the TPS, and they have no choice but to provide qualifying employees (those in a teaching role) with TPS membership. There is no process under the TPS regulations under which a statutory employer could exit the TPS.

Whilst subsidiaries of HECs are not allowed to participate in the TPS, we have not heard of any post-92 institutions establishing subsidiaries as a way of providing an alternative pension provision to TPS.

### University Schemes

University Schemes have historically been established by pre-92 institutions for the benefit of their non-academic staff. Whilst University Schemes are subject



to the specific provisions of their governing rules and overriding pensions legislation, it is fair to say that institutions can exert a good deal more control over these schemes than they can with the other arrangements discussed above (in respect of which they have very little control or influence), including deciding whether to continue to offer employees DB accrual under them.

As such, due to the financial challenges being faced by University Schemes many institutions have already closed their own schemes to new entrants or to future accrual entirely and have moved to DC provision for non-academic staff.

## Drivers for change

There have been many developments in the wider pensions environment as well as in the Higher Education sector itself that have caused institutions to look closely at pension provision, and there are a number of drivers for change to such provision in its current form.

In addition to the legal challenges described above, employment law implications must be considered before proposing any future benefit change. Whilst the sector has seen a growing number of institutions offering DC schemes to employees, the recent industrial action over proposed changes to USS has demonstrated that pension provision continues to be an emotive issue and that any proposal to move away from DB (certainly for existing staff within the sector) has the potential to cause serious damage to industrial relations.

The Mills & Reeve pensions team has significant experience in advising Higher Education institutions on their pensions issues, including the options discussed in this article. If you would like to discuss any of these then please do not hesitate to get in touch with Clare Grice who heads the Pensions Practice.

## At a glance...

### LGPS: Key Facts

- A public sector pension scheme established under statute
- Scheme rules set out in regulations – these can only be amended with the approval of Parliament
- Administered, managed and funded (in accordance with the LGPS regulations) at regional level through 90 local pension funds
- Contribution rates vary for each employer and depend on the strength of the employer's covenant and the funding position at each triennial valuation of the local fund (some are better funded than others)

### TPS: Key Facts

- A public sector pension scheme established under statute
- Scheme rules set out in regulations – these can only be amended with the approval of Parliament
- Administered by Teachers' Pensions in accordance with the TPS regulations
- Contribution rate is the same for all employers – whilst TPS is an unfunded scheme part of the contribution rate is to fund the notional deficit

## Any questions?

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“With less than a year to go until the UK leaves the European Union, Brexit remains high on the agenda of the UK’s world leading universities and many are acting now to mitigate some of its potential downsides.”

# Brexit: Universities breaking down walls

*“Politicians in Europe may choose to go their own way, but we as academics choose to move in the other direction. We don’t build walls between our universities and societies, we break them down.”*

Caroline Pauwels, rector, VUB

In announcing the partnership between the leading Belgian institution the Vrije Universiteit Brussel (VUB), the University of Warwick and L’Université Paris Seine, Caroline Pauwels recently spoke for many within the European higher education sector in expressing her frustration with Brexit.

With less than a year to go until the UK leaves the European Union, Brexit remains high on the agenda of the UK’s world leading universities and many are acting now to mitigate some of its potential downsides.

Why is Brexit causing consternation amongst the UK’s academic leaders and what are our universities doing in response?

## A bespoke UK-EU future partnership?

Throughout the post-referendum period, the UK government’s stated aim has been to negotiate a post-Brexit bespoke special partnership with the EU which preserves a high degree of access to the single market and which enables the UK to take advantage of as many of the benefits of EU membership as possible.

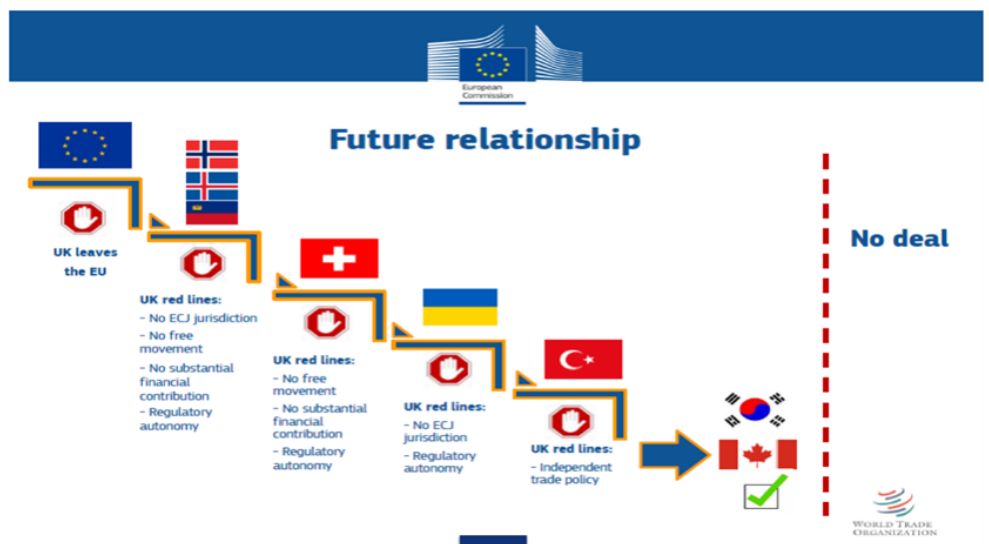
Government policy is also broadly to bring an end to the

free movement of people between the UK and EU, end the jurisdiction of the ECJ within the UK and reduce the amount the UK pays into the EU budget each year.

Unfortunately (although perhaps not surprisingly), the EU’s response has been to consistently reject the UK’s suggestion of a special partnership as cherry-picking.

Instead, the EU has insisted that the effect of the UK government’s “red lines” is that the only possible form of future UK-EU partnership is a free trade agreement along the lines of those agreed with South Korea or Canada (with some potential add-ons). No bespoke arrangement granting, for example, preferential access to the single market is possible.

The diagram below was originally presented by chief negotiator Michel Barnier to the European Commission in December last year and eloquently illustrates the EU’s position.





## Consequences for UK universities

So what does this all mean for the sector?

It has been widely reported that Brexit presents the UK's universities with three principal challenges.

Firstly, post Brexit UK universities are likely to have reduced access to EU research funding. Whilst the UK government has committed to funding all existing projects under Horizon 2020, it has stopped short of committing to apply for associate membership of its successor programme FP9. This is significant as, according to Universities UK, 14.2% of all UK research income came from EU sources in 2014/15.

Secondly, it appears almost inevitable that Brexit will lead to some drop off in the number of EU students choosing to study in the UK post 2020. According to Universities UK there are around 134,000 students from the EU currently studying in the UK. Depending on the outcome of negotiations, post-Brexit, EU students could be charged the same (much higher) level of fees payable by other international students and could also lose access to Student Loans Company loans.

Thirdly, universities are already experiencing difficulties in recruiting and retaining staff from the EU and this trend is likely to increase. This is irrespective of the fact that the UK has not yet left the EU and despite the fact that the government and the EU appear to be close to agreement as to the future rights of EU citizens in the UK. There are also many reports of EU universities poaching academic staff from the UK who are concerned about continued access to EU research income.

## Closer links

Faced with these challenges, an increasing number of UK universities have chosen to deepen their existing links with EU partners. Below are some of the leading examples.

On 12th December 2017, Oxford University announced a new research partnership with four institutions based in Berlin. The aim of the tie-up is to establish the Oxford-Berlin Research Centre and tellingly the President of one of the Berlin institutions Sabine Kunst stated in her press release that "through collaboration with a top British university we hope to put together a targeted, collective strategy to circumvent any possible consequences of Brexit".

The research centre will be used as a platform for academics and researchers from Oxford and Berlin to work together in Berlin on new research projects. It's also a stated objective of the Centre that it will be able to apply for funding from both UK and German sources (and I assume EU sources also).

In a similar vein, in November 2017 the universities of York and Maastricht announced a major new partnership between the two institutions. The plan for this partnership is to enable the partners to establish joint research projects, teaching collaborations, knowledge and student exchanges. The universities have publicly stated that their long terms aims are to offer more shared teaching programs including joint degrees and to establish more collaborative research centres.

In Belgium, the reaction from the Catholic University of Leuven has been to push for more collaboration. In January 2017 the Rector of Leuven, Rik Torfs, suggested that UK and EU universities should set up joint associations and called for UK universities to form

“Faced with these challenges, an increasing number of UK universities have chosen to deepen their existing links with EU partners.”



# Brexit:

## Universities breaking down walls

groups to be based on the continent of Europe as ways of maintaining access by UK universities to EU research projects.

In France, L'Université Paris Seine, the University of Warwick and the Vrije Universiteit Brussel have teamed up to form a partnership which will lead to the sharing of teaching staff and facilities to secure continued access to European research funds and students. This comes in response to an invitation from Paris Seine to an initial group of 15 applicants to establish a base in France. This ties in also with the desire of French institutions to attract excellent international research expertise and more international students to France.

Also in France, in January 2018, the French national centre for scientific research (CNRS) and Imperial College London announced that they will soon be opening a joint research centre. The Centre is being established to further collaboration between the two institutions in the field of maths and will be based in London with the aim of encouraging closer links between the two universities. The French press have reported that the Centre will have the same legal status as the CNRS itself.



### Other approaches

In addition to the joint partnerships mentioned above, there are many anecdotal reports of UK universities increasingly focussing on establishing and promoting joint programmes with EU partner universities and increasing their investment in digital infrastructure to enable them to offer online distance learning programmes to, amongst others, EU students.

Equally, UK universities have not forgotten about the importance of other parts of the world to them and in many cases are redoubling their internationalisation activities. Perhaps the most exciting example of this particular trend was the decision by the University of Birmingham to open a new campus in Dubai.

### Bridges not walls

From recent reports of the Brexit negotiations, it is clear that much remains to be agreed over the next few months and the shape of the UK's future relationship with the EU may not surface until very close to March 2019.

The above examples show that Professor Pauwels is correct in her analysis that universities break down walls rather than build them. Whilst we await the outcome of the Brexit negotiations between UK and EU politicians, universities are not sitting on their laurels but are busily acting to formalise existing EU relationships and to explore ways in which they can mitigate any potential loss of EU research funding and students post March 2019. In other words, universities are breaking down walls even before they have been built. Let's hope this legacy of closer cooperation and bridge building is the real legacy of Brexit for the sector.

Any questions?

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“Mr Justice Foskett was careful not to impose a ‘counsel of perfection’ on the teaching standard required”.



# Negligent teaching?

## High Court dismisses allegations

In February this year the High Court gave judgment<sup>1</sup> dismissing a claim brought in 2014 by a former student for allegedly negligent teaching received in 1999/2000. The Claimant, Mr Siddiqui, had read History at Oxford University (the “University”) and claimed in excess of £1 million against the University for what he alleged was an “appallingly badly” taught element of his course. He claimed his result on this element deprived him of a higher 2:1 or first class degree and that this had adversely affected both his subsequent legal career and his health. The University applied to have the claim struck out in 2016, on the basis that it was “hopelessly bad on the merits and also plainly time barred.” The High Court, at the preliminary hearing stage considered Mr Siddiqui’s claim had sufficient merit to allow the case to proceed to trial.

### **Negligent teaching?**

Mr Siddiqui’s allegations focussed on the teaching on a specialist subject on India. He alleged that the teaching of this element of the course was poor, due to a number of academic staff being absent on sabbatical, and that the University had been negligent in running the course with the same number of students in the knowledge that this would affect the quality of teaching.

The University acknowledged that one academic had been left to take every tutorial for the 16 students enrolled on the special subject that year when in most years this job would be split between two academics. The University denied, however, that the course was of a negligent or inadequate standard as a result.

Mr Justice Foskett in his judgment was careful not to impose a “counsel of perfection” on the teaching standard required and found that the professor who taught the module was an excellent teacher who had “put his shoulder to the wheel” despite pressures

placed on him. In seeking to apply the relevant standard of tuition, the Court commented that it was in no doubt that the tuition given by the University in previous years would be “distinctly higher” than that which could be regarded as merely reasonable. However, in the absence of any other benchmark, the Court had to consider the standard of tuition in academic year 1999/2000 against that in previous years.

Although it was recognised that under-achievement by a group of individuals could not in itself constitute evidence of negligent teaching, the judgment goes into some detail on the evidence of Mr Siddiqui’s fellow students on the module at that time. The judge concluded that there was no evidence that teaching of the specialist subject fell below reasonable standards.

### **Could the alleged negligence have caused loss?**

Although the Court found, on the facts and evidence, that there had been no breach of the standard of teaching required of the University, Mr Justice Foskett went on to consider flaws in the Claimant’s case in relation to causation. The Court noted that the Claimant faced an “impossible task” in seeking to link the alleged breach with his poor result in the examination and his overall degree grade. Mr Justice Foskett’s reasoning was as follows:

- in mock examinations the Claimant had performed well, and this was after receiving the teaching he later complained was inadequate;
- the Claimant had also been warned by a tutor after his mock examination that lack of familiarity with some of the course documents had let him down in some instances;

<sup>1</sup> Faiz Siddiqui v The Chancellor, Masters & Scholars of the University of Oxford [2018] EWHC 184 (QB), 7 February 2018

“The Court noted that the Claimant faced an ‘impossible task’ in seeking to link the alleged breach with his poor result in the examination”

# Negligent teaching

## High Court dismisses allegations

- a low 2:1 final degree was in line with other results the Claimant had obtained;
- any impact on the Claimant’s legal career had been caused by the intensity of competition for places at American law schools and his insufficient scores on the Law School Admissions Test;
- the Claimant, at the time of the examination, had submitted a medical note stating that he was suffering from a “severe episode of hay fever” which was considered by examiners who raised his mark in the special subject paper, which lifted his degree class from a 2:2 to a 2:1.

The Claimant admitted to preparing on the basis that all he “needed to cover was being covered in classes [and] tutorials” and it was noted by the Court that the Claimant had taken a calculated risk in reading course materials selectively.

### Could the alleged negligence have caused psychiatric harm?

In addition to the loss claimed in respect of his legal career, Mr Siddiqui argued that the shock of receiving his results coupled with the “torment of his inability to explain his poor performance” led to a recognised psychiatric injury in the form of an acute adjustment disorder, which had plagued his career ever since. The Judge accepted that Mr Siddiqui had “suffered intermittent bouts of severe depression over the years for which he is entitled to sympathy and understanding”, however these difficulties could not be attributed to his degree result received 17 years ago.

The judge also rejected an allegation that the Claimant had made a member of staff aware that he had depression, anxiety and insomnia in 2000 and that the

examining authorities therefore ought to have taken this into account.

### Was the Claimant too late in bringing the claim?

The significant delay in bringing the claim (Mr Siddiqui sat his final exams in 2000) is a surprising feature of this case and provided a further significant hurdle for the Claimant. Actions for negligence must generally be brought within 6 years of the date of damage and claims for personal injury (the “psychiatric harm” element of the claim) must normally be brought within three years of that date. These “ordinary” limitation periods can be extended in certain cases to three years from the Claimant’s “date of knowledge” of certain relevant facts. In addition, in claims for personal injury, the limitation period can also be extended at the discretion of the court where this appears “equitable” and having regard to any prejudice to the parties to the case. Mr Siddiqui contended that he experienced a “lightbulb moment” in October 2013 when he realised that his psychiatric disorder had been a direct result of the University’s teaching and he submitted his claim within three years of obtaining this knowledge. Although the Court found that Mr Siddiqui had, in fact, sufficient knowledge to bring his claim against the University in 2001, it dismissed the claim on the merits in any event.

### The future of student claims?

Mr Justice Foskett in his judgment emphasised that the hurdles in establishing a claim for compensation based on inadequate tuition are “great and often insurmountable.” However, his judgment also recognises that in the present climate, where students incur significant debt to complete their higher education, the quality of the teaching provided will



come under even greater scrutiny. Mr Justice Foskett seemed to anticipate the potential for more disputes in future and tasked students and providers with finding a “better way” to resolve these disputes:

*“Litigation is costly, time- and emotion-consuming and runs significant risk of failure... There must be a better way of dealing with this kind of issue if it cannot be resolved by the individual concerned simply accepting what has happened and finding a positive way forward”.*

It is open to students to bring a complaint to the Office of the Independent Adjudicator for Higher Education (OIA), having exhausted a higher education institution’s internal complaints procedure. In the Siddiqui judgment the OIA was not mentioned, perhaps since under its current rules the OIA will only consider complaints lodged with it within 12 months of the date when the institution notified the student of its final decision.

Consumer law can also be relevant where allegations are made about the adequacy of teaching, amongst other matters. Under the new regulatory framework, the Office for Students has responsibility for ensuring that registered higher education providers maintain their conditions of registration, including a requirement that providers demonstrate that they have given due regard to relevant guidance on compliance with consumer law.



Any questions?

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“The devolved nature of education in Scotland has led to further divergence of paths from those followed in the rest of the UK”

# A view from the North

Despite sharing borders, currencies and passports, the UK's Higher Education Institutions (HEIs) couldn't be any more fragmented. Many HEIs are now supported by different governments, each of which adopts varying approaches to both the national and international market for students and research.

There are a number of differences between how Scottish and English HEIs function. This article will take a look at just some of these differences and more specifically the challenges Scottish HEIs are currently facing.

## Funding

As many are aware, Scotland and England adopt a strikingly different approach to student fees which has created a significant funding gap north and south of Hadrian's Wall. In addition, while Scottish HEIs still operate a cap on student numbers, their colleagues south of the border are able to recoup much greater returns both from each student and from increasing student numbers. Although Scottish further education colleges have been hit hard by mergers and funding restraint over recent years, the University sector has thus far escaped the same level of cuts whilst, nonetheless, funds remain very tight.

## Governance

Governance is another challenge faced by Scottish HEIs. The devolved nature of education in Scotland has led to further divergence of paths from those followed in the rest of the UK. Whilst other institutions remain free to appoint Chancellors and Chairs of Court according to the needs of the individual institution, the Higher Education Governance (Scotland) Act of 2016 has introduced the notion of elected Chairs of University Courts.

Scottish institutions scrambled to appoint Chairs before the new regime came into place, but in the future the Act dictates that elections will need to be held to appoint a Chair to the court. The fact of an election dictates that there shall be a competition and which prompts the question, how many will be happy to put themselves up for the role knowing that there can only be one winner?

## Brexit

Scotland's HEIs are already experiencing the impact of the Brexit vote. Scotland was one of the parts of the UK that did not vote for Brexit and Scottish universities are already beginning to feel the impact of the vote to leave the EU. Approximately 25% of research staff in Scotland's universities are from the EU and European research money was worth £94m to Scottish Universities in 2014 / 2015.

Under the current regime, EU students are treated the same as the indigenous Scot and pay no tuition fees. Whilst commitments have now been given on funding for those students who came from Europe to study before Brexit there is still uncertainty as to how EU students will be treated after 2019. Numbers of inquiries are falling rapidly. Given that 15% of post graduate research students currently come from the EU, uncertainties about immigration and freedom of movement have a large part to play in recruitment and retention numbers. We have found ourselves being asked to address sessions of worried staff to explain the current and future scenarios when all is so very far from clear.

## Widening Access

Scottish politicians are active in seeking to address issues related to widening access. Our First Minister's goal is that by 2030, students from the most deprived

20% of backgrounds should represent 20% of entrants to higher education. Universities are seeking to address that issue in different ways but all are now required to report on this issue as part of the funding process with the Scottish Funding Council in their annual outcome agreements. Articulation, the process by which students start their studies at the local further education college but then complete a degree course with an associated University is seen as a key model in encouraging greater access to University qualifications.

### **Anderson Strathern's expertise**

We have a solid background in the higher education sector and have worked with some of Scotland's largest and oldest institutions for many years. Our 40-strong education team operate from both of our Edinburgh and Glasgow offices and deal with a range of education clients from Universities and higher education bodies as well as FE colleges, schools and education authorities.

Any questions?

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## About Mills & Reeve

Leading national law firm Mills & Reeve are a leading provider of legal services and commercial advice to the education sector. We have 119 partners and over 400 other lawyers across six offices: Birmingham, Cambridge, Leeds, London, Manchester and Norwich.

We have supported our education clients in their international activities in over 75 jurisdictions. In 2017/18 we invested in additional partner appointments to continue to support our clients with their international, technology and life sciences activities.

We have also continued to invest in our work on public law, regulatory, corporate and commercial matters to support our clients with their opportunities and challenges arising from the decision of the UK to withdraw from the European Union and the new regulatory frameworks under the Higher Education & Research Act 2017 and the EU General Data Protection Regulation.

We are the only law firm to be named for fifteen consecutive years in the Sunday Times 100 Best Companies to Work For.

**MILLS & REEVE**

Achieve more. Together.