



an introduction to the services
provided to universities by
Blake Laphorn

2010

“Blake Laphorn is one of the UK’s leading full-service law firms, providing the full range of legal services needed by companies and organisations, with an industry-focused approach through its specialist sector groups. The firm also provides key services for individuals and families. More than 350 lawyers and other specialists deliver these services, based across key locations in London and Southern England. Combining specialist legal expertise with a strong commercial approach, the firm delivers results for its clients, whether they are multinational companies, owner-managed businesses, Government agencies, charities or private individuals”

Taken from Chambers UK, A Client’s Guide to the UK Legal Profession 2010



the natural choice in law

 **Blake
Laphorn**

introduction

- Blake Laphorn is a top 50 full service law firm with offices in Oxford, London, Portsmouth and Southampton.
- Our comprehensive service covers the full range of legal issues which may be met by the university sector.
- Our core team consists of over 20 lawyers specialising in the sector (including one staff member who spent three years as an in-house lawyer with a Russell Group university and another on secondment to another university's TTO) with a wider team consisting of a range of corporate and commercial, charity law, property, litigation, publishing, data protection, pension and employment lawyers all of whom have experience of working within the educational and not-for-profit sector. In addition, the team can draw on the expertise of other lawyers within the firm specialising in private client, tax, IT and regulatory issues.
- Our quality control procedures and commitment to our staff have been externally recognised through ISO 9001 and Investors In People. We have a major presence in London in addition to our regional offices and, as a member of TAGLaw[®], we have access to an international network of likeminded firms.
- The team is recognised in *Chambers UK, A Client's Guide to the UK Legal Profession* for its expertise in the university sector.
- Our clients include the University of Surrey, the University of Reading, the University of Bath, the University of Southampton, the University of Winchester, the University of Oxford and over 20 Oxford colleges.
- We act for a number of University student unions, including the University of Portsmouth Union and the Oxford Union

the services we provide

From the challenges posed by increased financial pressure and the structuring and commercialisation of knowledge transfer to the threats of greater competition and the increasingly litigious student, we understand the legal issues facing universities today.

We believe that this understanding is key to you achieving a successful and cost effective outcome. The services we provide combine our expert legal knowledge and extensive higher education-specific experience to make sure your legal issues are resolved to your satisfaction.

impact

HEIs continue to act as key drivers in the focus on skills shortages in the new economy with the ability to deliver impact via research and applied innovation, increasingly in clean technologies. We understand the legal and fiscal challenges the impact agenda raises and how HEIs are responding in the new environment.

added value

We are aware of the increasing imperative on HEI's to significantly reduce legal spend and secure innovative fees proposals to deliver value for money (VFM). We will tailor service provision to meet each HEI's requirements.

governance

“There appears to be a general expectation within the sector that the comparatively modest rate of consolidation which has occurred during the last few years will accelerate in the context of growing international competition, the need for investment in new technologies and continuing pressure on resources.”

Professor Alan Ramsden, *Patterns of Higher Education Institutions in the UK*

Ramsden’s prediction in 2001 continues to prove prescient with mergers becoming much more frequent (and some high profile amalgamations failing during the negotiations).

Increased numbers of incorporations have also changed the sector and the general administrative and governance aspects of operating a university have become increasingly complex.

We advise on all aspects of governance and our experts have recently advised on a number of high profile sector transactions including:

■ incorporations, amalgamations and mergers

Advising the University of Winchester on a constitutional restructuring, including the transfer of all assets, and including a permanent endowment (consents of Privy Council and Charity Commission involved).

Advising on an educational agreement between a UK university and a Japanese college involving an agreement to provide teaching facilities and land for a student residence in return for financing to build more teaching accommodation.

Advising Peter Symonds College on the transfer of an HE/FE college out of Local Authority control.

Advising on the sale of an independent higher education college associated with a UK university.

■ charity law and dealings with the Charities Commission

Advising on the duties responsibilities and liabilities of governing bodies for a number of higher education institutions.

Advising several Oxford colleges on structures required for the conduct of conferences for third parties taking into account charity law compliance and tax and VAT implications.

Advising several Oxford colleges on trading for income generation including advice on structures and compliance issues.

Establishing a number of ‘library scheme’ structures for Oxford colleges.

Advising a significant number of Oxford colleges on the process and requirements of registration as registered charities under the Charities Act 2006.

Negotiating recognised centre status for a body affiliated to the University of Oxford.

Advising another University of Oxford recognised centre on its governance and a major restructure of its charitable and corporate structure.

Advising to a higher education college on policies for the admission of students and safeguarding students and staff.

Advising to a student union on its relationship with the university and trading issues and structures.

contacts: Elizabeth Davis, Adrian Pashley, Alison Talbot, Joss Saunders

student issues

“The risk of student complaints and of possible legal action is steadily increasing, with a widespread prediction that top-up fees will increase student demands and expectations and, therefore, result in a rise in complaints.”

Professor Neville Harris, University of Manchester School of Law

The well-documented development of a US-style litigation culture between universities and their students has led to increasing concern within the sector. With the claimant culture developing beyond its traditional personal injury boundaries and into areas such as teaching standards and examination performance, universities are correctly identifying the need to obtain risk mitigating advice as well as the more obvious litigation support.

Our team is well placed to help with both, and examples of some of the recent issues we have dealt with are set out below:

■ student issues (complaints etc)

Acting for a number of universities and colleges providing advice regarding, and prosecution of, student disciplinary cases.

Advising on the creation and implementation of procedures to ensure that higher education institutions have robust and transparent procedures in place to deal with student complaints.

Advising on disciplinary offences, involving: the investigation process; evidence gathering; allegation drafting; and case presentation.

Advising on the obligations of students who are maintained on a regulatory student register, involving: consideration as to the regulatory process; professional obligations; rigour of the university investigation; credibility of evidence provided; and reputational risk. Provision of a Legal Advisor service to clients to ensure the integrity of a disciplinary process.

Providing specialist advice on the limitations of a student disciplinary scheme on the grounds of unfair procedure, inappropriate application and lack of compliance with the principles of the Human Rights Act 1998.

Defending of personal injury claims by students.

Providing training and advice to the Office of the Independent Adjudicator.

Providing specialist litigation, alternative dispute resolution and mediation advice.

■ regulated courses and accreditation

We have been involved in the consultation process with a number of healthcare regulators relating to the Government's proposals for regulation of health professionals.

Detailed consultative advice to university departments about the Government proposals.

We have developed a training package for higher education sector clients to:

- provide training to students regarding the requirements of professional regulation, professional competence, regulatory compliance and statutory interpretation
- provide advice to training institutions regarding the compliance of proposed training packages with the Government's proposed development in areas of professional regulation and consultation with the professional regulator

- assist higher education providers with training, advice and consultation as to how the opportunities of the proposals can be maximised
- prepare training programmes for students, to deliver either on behalf of university clients or to deliver directly to students.

■ **entrepreneurial and student services**

Providing advice and representation at campus located student legal advice centres.

Establishing and resourcing a student entrepreneurship clinic.

contacts: Stephen Murfitt, Alison McClure, Chris Alder

employment

“Staff in higher education will see their salaries increase by a minimum of 6% by the end of the year - way ahead of the rate of inflation. HE pay will also increase by significantly more than for nurses, doctors, teachers and local government staff during the same period.”

Alastair Smith, Chairman of the Universities and College Employers Association

Despite assessments such as that of Mr Smith above, lecturers' pay remains a controversial and unresolved issue for the sector. Of course, salaries are only part of the employment picture and the ever present risk of employment related litigation looms large.

The need for a flexible workforce can lead to a complex range of contractual employment arrangements within the higher education sector. Fixed-term, part-time, term-time and annualised hours contracts are common. The team advise on all aspects of typical and atypical contractual arrangements and is expert in handling all aspects of employment matters.

Our team includes lawyers who specialise in employment immigration matters and in the practical application of the TUPE Regulations 2006 (transfer of undertakings). With staff being recruited from overseas for permanent or temporary posts and an increase in the contracting out of services such as facilities management, these are issues that higher education providers must be alert to.

Recent experience includes:

■ contracts and procedures

Advising a university client upon its terms of employment with academic staff.

Advising a university client upon a contract for services for self-employed contractors working overseas.

Advising a further education college in relation to holiday rights and accrual of benefits during maternity leave for lecturing staff.

Advising a further education college in respect of harassment and disability discrimination, disciplinary procedures in respect of allegations of gross misconduct against senior management.

■ employment claims

Representing a higher education establishment in relation to a claim brought in the Employment Tribunal by a senior manager for constructive unfair dismissal.

Advising a higher education establishment in relation to a grievance brought by a secretary alleging bullying and harassment. Advising upon the grievance appeal process and subsequently advising on the counter-grievance that was brought by the accused employee. Successfully representing a constructive unfair dismissal claim brought by the accused employee.

Negotiating severance terms for senior personnel in various higher and further education establishments.

Advising a university client in relation to the dismissal of a porter on long term sick leave, including advice on unfair dismissal and issues under the Disability Discrimination Act.

Advising a further education college in relation to the dismissal by reason of redundancy of a disabled employee.

contact: Max Craft, Alison Melton

pensions

“The position of the higher education sector at the boundary of public sector and private sector is interesting and has some consequences for possible pension scheme models in the future.”

*Pension provision in the higher education sector –
special consultation by the HE Employers' Pension Forum – June 2008*

For the time being, pension provision in the higher education sector continues to buck the trend in that it is normally provided on a final salary basis (whether through the Teachers Pension Scheme (TPS), Universities Superannuation Scheme (USS), the Local Government Pension Scheme (LGPS) or self-administered trusts (SATS) set up by the relevant institution).

It is clear that many of those working in the higher education sector regard final salary provision as an important part of their remuneration package, particularly for academic and academic-related staff. However, employees are working and living longer. This has meant that the cost of providing final salary benefits has increased significantly. Over the coming years, this will lead to pressure for change to the traditional pension model that currently operates in much of the sector.

We have experience advising on a wide range of schemes within the higher education sector including the TPS and LGPS. We also act for a number of universities (or their pension trustees) in relation to self-administered trusts.

Specific examples where we have assisted clients on pension issues in the higher education sector include:

- negotiating a withdrawal agreement for a university client to deal with a section 75 debt that was triggered by its incorporation
- dealing with the backlog of part-time worker pension claims for a number of colleges participating in the LGPS and TPS
- negotiating a funding plan with the trustees of a pension scheme sponsored by a university (which included the trustees being granted a charge over various assets owned by the institution)
- dealing with the pension aspects of compromise agreements where higher education sector clients have terminated the employment of senior academic and non-academic staff.

contact: John Hamilton

property

“55% of 2007-2008’s accommodation will be developed in private partnerships or directly by the private sector.

It can be predicted that private providers and private sector partnerships will account for the majority of all “university” accommodation by 2010”

Summary findings of NUS/Unipol Survey December 2006

The ability of a university to manage and develop its property estate effectively and to provide adequate low cost residential accommodation for its students will be an important determining factor in its success and key to its ability to attract a vibrant student population.

Our team has developed a broad range of expertise acting for universities in areas of law relevant to these issues including:

■ **property development**

Advising a number of Oxford colleges and the University of Winchester on major development schemes, joint ventures with commercial partners, joint equity schemes, construction and planning issues, site acquisitions and disposals and sales and leasebacks.

■ **property related tax**

Advising on tax effective arrangements, including VAT mitigation schemes.

■ **property portfolio management**

Advising Oxford colleges and the University of Winchester on management of portfolios of commercial, residential and agricultural property including landlord and tenant issues.

■ **town and country planning**

Advising on maximising planning potential of property portfolio.

■ **student unions**

Advising on constitutional issues and lease arrangements.

■ **student accommodation**

Advising on the construction of student accommodation (circa 400 units) by a developer on a lease back basis. Approx value of contract over £40 million with passing ground rent related to student rental payment return.

Advising on letting terms to students of residential accommodation and operating a landlord’s forum.

■ **health and safety**

Advising on a health and safety case concerning the overall safety of the University’s combined heat and power system.

Advising in relation to an investigation by the Environmental Agency into the operation of a prescribed process without the appropriate PPC.

Advising on an investigation by the HSE into a serious scalding injury to a contractor.

Advising on health and safety liabilities relating to spin-out companies occupying university property and conducting research using university facilities.

Advising the Genetic Modification Safety Committee of the University of Southampton on several issues relating to spin-out activity.

■ **environmental issues, sustainability and climate change**

Environmental advice relating to buildings containing asbestos and advising in relation to an investigation by the Environment Agency concerning glass fibre.

A range of climate change initiatives, including commercial arrangements for emissions reductions, carbon and ecological impact consultancy, energy management contracts and carbon offsetting arrangements.

contact: John Deech, Andrew Miscampbell, John Steel, Robert Wassall, John Mitchell, Nicola McConville

construction

“By 2011, funding for higher education will have increased by over 30% in real terms since 1997, this increased investment will ensure that universities and colleges have the resources they need to continue widening participation and reaching out to new talent by working more closely with schools and employers.”

John Denham, Universities Secretary

Construction by universities directly reflects the relative increase in funding and the needs of increased participation. The demands imposed by sustainable construction requirements and the need to build striking and iconic structures that attract students has meant that construction projects in the sector are becoming ever more complex and expensive.

Our team can help to ensure that the risk for the university is minimised and that the prospect of on-time and on-budget delivery is enhanced. Below are recent construction projects within the sector with which we have been involved.

- Advising several Oxford colleges on a series of developments ranging from refurbishment of existing college premises to construction of new accommodation and other facilities; advising on building contracts and ancillary documents (bonds, warranties, guarantees and appointments) on each project.
- Advising a university on the development of sports facilities in cooperation with local authority and grant funding from Sport England.
- Advising on major new build of accommodation and mixed use premises for a major university on brown-field site in east London.
- Advising several high profile schools on the construction of new building including accommodation and leisure facilities (some being closely linked with VAT planning schemes).
- Advising a further education college on terms of appointment of team of professional consultants for a new build project.
- Acting for a higher education college in negotiating terms of project management agreement in relation to construction of new sports halls and related facilities.
- Advising various sixth form colleges in relation to the building project and finance documentation for major new build projects, including science centres, learning resource centres, performing arts facilities and sports facilities.

contact: Richard Wade, John Steel, John Deech, John Mitchell, Andrew Miscampbell, Robert Wassall

commercialisation and knowledge transfer

“Universities are shifting up a gear when it comes to working with business and making an economic impact. In percentage growth terms, collaborative research with industry in the UK is growing at a faster rate than the Chinese economy”

Ian Pearson, Science and Innovation Minister

The commercialisation of IP generated within universities has held the attention of government for a number of years with successive initiatives being implemented to drive this area forward. As professional advisors to a number of leading research universities we have been at the forefront as this sector has developed.

Alongside this, the environments in which universities operate are now much more commercial and the risk of failing to take appropriate advice can no longer afford to be taken.

Our lawyers have industry recognised expertise in all aspects of these issues including the following.

■ IP exploitation and technology transfer

Providing spin-out realisation advice to the University of Surrey in relation to the disposal and IPO of Surrey Satellite and Technology Ltd and Modern Water Plc respectively.

Advising on initial and follow on funding for a number of spin-outs of the University of Reading, including two separate funding rounds for Whitfield Solar in 2009

Advising on the spin-out of Intelligent Sustainable Energy Ltd and Oxford Yasa Motors (University of Oxford, Isis Innovation)

■ IP Protection

Advising the University of Bath on the structuring of agreements relating to research carried out for external commercial bodies, including questions of liability; IP ownership, exploitation and licensing; and adherence terms on the University joining a major multi-party international joint-venture.

Advising the University of Bath in relation to the joint ownership and exploitation of IP rights between higher education institutions and funding bodies.

Advising on university IP policies.

Drafting licences to, and other arrangements with, newly formed spin-out companies, licences in of commercially held IP rights for use in commercial collaborations and assignments and revenue-sharing agreements.

Advising on IP law generally including entitlement and ownership, research exemptions and European data exclusivity provisions.

■ Commercial partnerships and alliances

Acting in connection with the creation of CommercialISE, a collaborative programme between the Universities of Oxford Brookes, Brighton, Buckinghamshire Chilterns, Kent, Greenwich, Portsmouth Higher Education Corporation, Reading, Chichester, Cranfield, Kingston and Sussex to support the exploitation of the knowledge base of the south east of England's HEIs.

Acting in relation to the strategic commercial partnerships entered into by the University of Surrey with IP Group Plc and the University of Reading with ANGLE Plc (and its subsequent re-structuring).

Acting in relation to industry collaborations and joint venture commercial arrangements (various universities and HEIs).

■ Contracts and agreements

Acting as a resource for the University of Bath's Research and Innovation Team, providing on-site assistance with the negotiation and drafting of agreements.

Advising the University of Reading on contracting and technology licensing matters.

contact: Martin Kay, Simon Stokes, Sheilah Mackie, Jimmy Desai

enhancing university funding

“One of my main priorities for the [Higher Education Funding] Council [of England] in 2009 is to support and encourage the sector to use all of its huge capacity to train, research, innovate and inspire, reaching into local communities to offer practical help to individuals and businesses through these tougher economic times while laying the foundations for the future”

John Denham, Universities Secretary

With detailed knowledge of the legal issues surrounding many of the alternative sources of finance used by Universities to supplement public funding, and having particular expertise in charitable matters, we feel we are well placed to provide specialist and detailed advice in relation to funding related issues.

In particular we have proven expertise in relation to:

■ capital projects

Advising a university on the development of sports facilities in cooperation with local authority and grant funding from Sport England.

Funding arrangements for the construction of a new student village on a university's own freehold premises.

■ philanthropic donation

Advising the University of Oxford on securing and structuring legacy donations.

■ industry collaboration

Advising on IP exploitation and technology transfer - further details on page 12

contact: John Steel, Alison Talbot, Martin Kay, Simon Stokes, Sheilah Mackie

other commercial matters

“Our aim is to partner our established distance learning expertise with the power of the internet to provide as mobile, flexible and personalised learning as possible, whatever your current educational level, personal circumstances or technological abilities.”

Brenda Gourley, Vice Chancellor of the Open University talking about making resources available on iTunes U

Universities engage in an increasingly large range of innovative commercial activities including conference services, online and distance learning services, publishing activities, franchising and outsourcing. These activities bring benefits but also risks.

Our Commercial team is expert in all aspects of commercial law and examples of some of the relevant commercial projects we've acted on recently include:

■ data protection and freedom of information (FOI) issues

Providing advice to the University of Southampton on all aspects of data protection and FOI and the interaction between the two regimes, advising on dealing with data subject access requests and requests under the FOIA.

Implementing a new on-line university residence application programme.

Advising on data sharing arrangements with local councils and bus companies for an integrated travel management system.

Providing training seminars to academic and administrative staff on data protection and FOI issues.

■ outsourcing

Advising on the outsourcing of catering services, and the outsourcing of conference services so that a college's conference offering is managed externally.

■ publishing

Advising a university on the exploitation of copyright assets through licensing to a joint venture vehicle for online publishing.

Advising on publishing and associated commercial arrangements.

contact: Simon Stokes, Jimmy Desai, Elaine Heywood

the universities and HEI team

governance		
Elizabeth Davis	elizabeth.davis@bllaw.co.uk	023 8085 7011
Adrian Pashley	adrian.pashley@bllaw.co.uk	023 8085 7004
Alison Talbot	alison.talbot@bllaw.co.uk	01865 254241
Joss Saunders	joss.saunders@bllaw.co.uk	01865 254220
student issues		
Stephen Murfitt	stephen.murfitt@bllaw.co.uk	023 8085 7233
Alison McClure	alison.mcclure@bllaw.co.uk	023 8085 7345
Chris Alder	christopher.alder@bllaw.co.uk	023 8085 7208
employment and pensions		
Max Craft	max.craft@bllaw.co.uk	023 8085 7451
Alison Melton	alison.melton@bllaw.co.uk	023 8085 7065
John Hamilton	john.hamilton@bllaw.co.uk	023 8085 7089
property, construction and health and safety		
John Deech	john.deech@bllaw.co.uk	01865 254208
Andrew Miscampbell	andrew.miscampbell@bllaw.co.uk	01865 254207
John Steel	john.steel@bllaw.co.uk	023 8085 7035
Robert Wassall	robert.wassall@bllaw.co.uk	023 8085 7012
John Mitchell	john.mitchell@bllaw.co.uk	023 8085 7231
Richard Wade	richard.wade@bllaw.co.uk	01865 254244
Nicola McConville	nicola.mcconville@bllaw.co.uk	01865 254221
commercialisation and knowledge transfer and other commercial matters		
Martin Kay	martin.kay@bllaw.co.uk	020 7814 6919
Simon Stokes	simon.stokes@bllaw.co.uk	020 7814 5482
Sheilah Mackie	sheilah.mackie@bllaw.co.uk	023 8085 7039
Jimmy Desai	jimmy.desai@bllaw.co.uk	020 7814 5421
Elaine Heywood	elaine.heywood@bllaw.co.uk	023 8085 7124
Enhancing university funding		
John Steel	john.steel@bllaw.co.uk	023 8085 7035
Alison Talbot	alison.talbot@bllaw.co.uk	01865 254241