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TACKLING PLAGIARISM THE LEGAL PITFALLS

Plagiarism is on the increase in HE today. A national survey in 2004 found that 97% of respondents regarded plagiarism as a problem in the sector generally, whilst 72% considered it a problem within their own institution. There seems to be a range of reasons why this particular form of academic misconduct is so prevalent now: the shift from examination-based assessment to coursework, the promotion of "cut-and-paste" as a valid learning technique for some subjects at GCSE, and cultural differences in studying methods used by some overseas students may all have made the opportunities to plagiarise more frequent, and made more widespread the belief that, somehow, plagiarism is not cheating.

Institutions will want to tackle plagiarism cases speedily and robustly, but will also need to do so lawfully and fairly if their decisions are not to be challenged in the courts or before the OIA. There have been reports of some innovative grounds for challenging findings of plagiarism (including the student who argued that his institution had been negligent in failing to detect his plagiarism sooner), but very often the basis of challenge has been all too

familiar - lack of clarity in the charge or the evidence, procedural unfairness and disproportionate penalty.

No agreed definition

If students are to be penalised for plagiarism, then the institution must first ensure that they understand the offence. This can be problematic if different departments have different definitions, particularly for students on combined courses. Institutions should consider whether it is possible to adopt one definition of plagiarism for all their provision. If not, then the reasons why different standards apply in different disciplines need to be explained to and understood by students.

Lack of clarity

Students may understand what plagiarism means in the context of work which they produce alone, but may not be clear as to how that definition applies in the context of group work. They may understand that copying text is plagiarism, but not that copying ideas is also impermissible. Institutions will need to ensure that the concept of plagiarism that they adopt is sufficiently clear and adaptable to address these differing situations.

Lack of awareness/understanding

It follows that ensuring students are aware of the institution's position on plagiarism, and that they understand how it applies in practice, is of paramount importance in defending any subsequent decision to take action. Putting a section about it in the student handbook and asking students to sign a plagiarism statement when handing in assessments may be enough when dealing with the most obvious and blatant cases, but will not suffice in more ambiguous cases or where the student protests that (s)he did not understand that what (s)he did was wrong. Additional steps that institutions might consider include covering the subject in study skills sessions, or using examples to demonstrate how plagiarism works, or repeating warnings when coursework is handed out, not just when it is collected.





Procedural unfairness

There are compelling reasons why institutions might want to adopt fast-track methods to deal with cases of suspected plagiarism. Delay can be prejudicial both to the student(s) concerned, and to the academic reputation and integrity of the institution. However, the laudable desire for speedy resolution should not compromise the fairness of the proceedings. In essence this means that in all cases students are entitled to:

- Know the case and the evidence against them;
- Have the opportunity to rebut it;
- Have the case considered by an independent and impartial tribunal; and
- If appropriate, know why the tribunal finds against them.

Standard of proof

What standard of proof should be adopted in plagiarism hearings: the criminal standard of "beyond reasonable doubt", or the civil standard of "on the balance of probabilities"? It is generally accepted that the criminal standard is too strict for internal disciplinary proceedings. However, it is also considered that the more serious the charge, the more satisfied the committee need to be that the offence has been committed.

One way of expressing this is to say that there is a sliding scale and that for very serious offences, especially those involving dishonesty, a higher standard, approaching that of criminal cases, should be applied. Another approach is to take the basic civil standard but to say that the more serious the offence, the less probable it is that it happened - therefore the committee needs to be more thoroughly convinced that it did happen, by stronger evidence. This does not strictly alter the standard of proof, but requires the committee to take more care to satisfy itself that a serious offence was actually committed, on the balance of probability.

In practical terms, the key is for the academic misconduct committee to ask themselves whether they are satisfied

that the work in question was plagiarised, and if so, why? By applying this practical test, the committee will be forced to question the evidence presented by both sides and arrive at a reasoned and reasonable judgment on it. If the committee simply feels that the work has been plagiarised, but cannot really articulate why, then arguably they should not find the case proved.

Institutions can take heart from the fact that, generally, both the Courts and the OIA will give judicial deference to the institution's judgment on whether or not a piece of work is plagiarised. However, they will be far quicker to intervene if the way the institution has approached the issue is unclear or unfair. Ensuring that students know what is expected of them and know the consequences if they fall short is as always the key to tackling plagiarism robustly and effectively.

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CONFLICT RESOLUTION FREEDOM TO SPEAK ONE'S MIND!

The distinctive nature of governance and flat organisation structures in HE means that disputes often escalate rapidly to the highest levels. Experience in both the private and public sectors has demonstrated that effective dispute resolution processes can provide satisfactory outcomes for all parties and may restore collegiality in place of conflict. Mediation can assist to resolve disputes in a variety of scenarios within educational institutions, involving academic staff, support staff or students; it is also beneficial in resolving disputes with other bodies or suppliers.

A structured intervention by a neutral third party encourages the disputants to find a way of reaching agreement without the time-consuming, expensive (and sometimes traumatic) uncertainties of litigation, employment tribunals or the OIA, or protracted formal internal investigation procedures.

Student and staff disputes

Disputes between students and their institution have become more complex to manage, as the financial stakes have been raised: these often involve tiers of investigation and hearings. The institution's procedures shape and

define students' expectations of how they will be treated; there are always lawyers willing to take up cudgels on behalf of their clients' 'rights' the moment any of these are perceived to have been breached. Mediation can help to inject a dose of reality into the confrontation, exploring the issues underlying the dispute and what outcomes are actually possible or feasible.

Similarly in disputes with academic staff, mediation may be appropriate at any stage, but especially before the cumbersome stages involving representatives of the governing body. Such an intervention allows both sides to suspend their procedures, pause, take stock and re-frame. It gives the institution an opportunity to gain a better understanding of the disputant's personal views, not filtered through other professionals or representatives and may provide the individual's 'day in court' without the expense involved in an employment tribunal.

Collective and equality issues

Collective grievances, perhaps over working practices or job definition, are usually suitable for mediation. In unionised environments, opinions often become polarised, with HR/Personnel viewed as on the side of management,

not an 'honest broker'. The confidential nature of the mediation environment may encourage union representatives to express frank opinions to their members, in private, which may assist in restarting stalled negotiations. Equality and diversity disputes are often conflicts arising from differences in culture, values and belief systems. The manner in which institutions handle such disputes sends important messages to staff.

Attempting to resolve conflict informally may avoid the potentially adversarial stance inherent in formal complaints procedures; a sensitively conducted mediation is more likely to rebuild working relationships.

Performance management

Exerting 'performance management', particularly when not supported by well-defined appraisal processes, often brings managers into conflict with a staff member. The manager has usually allowed poor performance to pass unremarked for some time, then when (s)he attempts to rectify matters, the staff member complains of bullying or harassment. The manager feels unable to progress matters, the staff member may take sick leave on the grounds of stress and the situation becomes stalemated. Mediation may bring the



parties together and enable them to agree feasible outputs, targets and review periods, or even a severance package 'without prejudice'. At worst, if the staff member then goes 'sick' for several months, since an attempt has been made to resolve the situation mutually, capability review processes may more safely be activated. Grievances and disputes between colleagues are suitable for mediation when the conflict is recognised in its early stages and can be 'nipped in the bud'. Bullying and harassment allegations are always traumatic, and the protracted nature of formal investigations often compounds the misery, including impacting on other team members. Unless there is a clear disciplinary case, intervention by a neutral third party may facilitate a reconciliation, an apology, perhaps as a catalyst for a team-building event to reinforce the learning.

Limitations

Not all disputes are suitable for mediation and timing is also important. The period before an impending ET or other court case is clearly defined: both parties are aware of what lies ahead, so unless a point of principle needs to be established in the court, it is worth attempting to mediate. The success of the process will depend on the parties' genuine willingness to make some movement to resolve the matter. If one is determined to have 'vindication' at any price, mediation is unlikely to resolve the situation, although it is likely to clarify the parties' positions directly and lead to a better understanding in advance of the next stage of the formal or legal procedure. Some individuals are emotionally fragile: a mediation may be the first time that they have actually confronted or understood their own performance shortfalls; the mediator will use their professional judgement to decide whether to proceed or what format might be appropriate for bringing the parties together in a 'safe' environment. Shorter, more frequent sessions, allied to coaching for the manager, may bring more sustainable results than the traditional one-day event.

Hence mediation is complementary to committee structures and formal disciplinary and grievance procedures: it enables the parties to reach outcomes that are satisfactory to all without undermining the rights or authority of either. And should such agreement not be reached, and the dispute resume its progress through formal channels, it is likely that the issues in the dispute will be more clearly defined and understood as a result of the mediation process, facilitating a better solution at a later stage.

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UNIVERSITY CHALLENGE COMMERCIALISING ACADEMIC RESEARCH

The track record of UK universities in producing world class scientific research is undisputed but the process of turning ideas and knowledge into products, services and cash can be elusive. Martineau Johnson have a long history of supporting institutions and fund managers through the process.

University Challenge scheme

For innovation to flourish, research and design skills have to meet money and business flair in the right combination. Among the many government-backed initiatives set up to tackle the problem, one of the best known is the University Challenge scheme, an open competition run by the DTI to assist universities, either individually or in syndicates, to establish venture capital funds for investment in "spin-out" technologies. University Challenge funds aim to provide a half-way house between publicly-funded academic research and arms-length commercial funding. Fifteen government awards were made in the first round and a further five in the second. A total of 57 institutions benefited and we currently act for 4 university challenge funds. These projects are now well established and the process of assessing whether

or not University Challenge has achieved its objectives, has begun. There have been some notable successes. Many university spin-out companies which started life as modest University Challenge investments have managed to attract significant venture capital investment from the private sector. There are even instances of University Challenge companies floating on the Alternative Investment Market.

On the other hand, the inability of University Challenge funds to "follow their money" (i.e. invest again in the same company) because of the £250,000 cap on each investment is a source of frustration for fund managers. Another common criticism is the variable quality of the investment opportunities coming forward from universities. Some managers put this down to the availability of "softer" sources of funding through grants and awards.

There is no doubt that University Challenge has helped raise the profile of the technology transfer function within the education sector and has encouraged collaboration and knowledge-sharing among university technology transfer offices.

The Schedule 22 dispute

This new unity was demonstrated in the stand-off between UNICO, the body which represents the technology transfer organisations within universities, and the Revenue over tax measures contained in the Finance Act 2003. Historically universities had used careful structuring to ensure that no income tax charges would arise for academics who took shares in the spin-out companies they set up, but under Schedule 22 academics were classed as employees of the university rather than investors and the value of their shares became subject to income tax. Worse than that, the value of the shares on which tax would be charged included the (unrealised) value of any intellectual property transferred to the spin-out company. So there was the prospect of a tax charge to individuals with no money to pay it. Confusion reigned and for a period some universities stopped setting up new spin-outs altogether. UNICO stepped in and successfully lobbied the government for changes (introduced under the Finance Act 2005) to permit the value of IP transferred by the university into the spin-out company to be ignored when assessing the value of shares acquired by an academic. The charge to income tax remains, but the



THINK BEFORE YOU ERADICATE LEGAL CONSTRAINTS ON RESPONDING TO CALLS TO CLAMP DOWN ON CAMPUS EXTREMISM

intellectual property rights problem has effectively been resolved in the academics' favour.

If the UNICO experience shows anything, it is the continuing potential for universities to influence the innovation debate and the benefits to be had from doing so. To secure significant amendment to a new tax regime after it has come into force is quite an achievement.

At a time when the education sector may be feeling under pressure - from league tables, funding constraints and a host of other issues - it may be reassuring to know that in the technology transfer arena at least the education lobby remains strong.

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In the wake of the tragic events of 7 July, there have been exhortations to stamp out alleged extremism on British campuses.

The recently-published report by Anthony Glees and Chris Pope contends that terrorist and extremist activity is endemic in universities, which it claims presents a real threat to national security. In his article in *The Times Higher* on 23 September, Professor Glees stated that higher education has a particular role to fulfil in containing and preventing extremism. Ruth Kelly subsequently called on universities to crack down on extremism in a speech to university heads. It is important, however, to understand the constraints imposed by the law before taking steps to resolve the putative problems of extremism or terrorism (assuming there is a consensus with regard to what these terms mean) for example, by seeking to limit the activities of particular sections of the student community, or singling out particular students for scrutiny.

Discrimination

Institutions are bound by equality legislation, which renders unlawful discrimination on grounds including race, religion or belief. Race is defined very broadly to cover race, colour,

nationality, ethnic or national origins. Consequently, anti-extremist procedures adopted by institutions that amount to less favourable treatment of students (including applicants) because they are members of a particular race or religion may make the institution vulnerable to a claim of direct discrimination; for example, requiring applicants from particular national or ethnic origins to comply with more onerous admissions screening than that applied to other applicants.

Breach of human rights

Under the Human Rights Act (HRA), institutions are required to act in a manner compatible with the rights guaranteed under the European Convention of Human Rights (ECHR). Some rights, such as freedom of expression, assembly and the right to manifest one's religious beliefs are more likely to be engaged in the context of combating terrorism than others. The right to freedom of expression is accorded particular significance under the ECHR and is considered indispensable in a democracy. The rights to freedom of assembly and to manifest one's religious beliefs are also regarded as prerequisites for a pluralistic and tolerant society. These rights are not absolute and can therefore be interfered with by the

institution for limited purposes only, such as the prevention of disorder and crime, the protection of health and safety or the protection of the rights of others. Even if the institution intervenes for permitted purposes, the intervention must be no more than is necessary to achieve that purpose. The institution's measures must be proportionate to the legitimate aim pursued.

Banning religious groups or vetoing particular speakers, in the absence of clear evidence that such activities are unlawful or pose a risk of disorder or a threat to the rights of others, may therefore be a breach of the HRA.

The HRA also confers a right to enjoy all the Convention rights without discrimination on broad grounds including race, colour, language, religion, political or other opinion, national or social origin, association with a national minority or other status. Discrimination occurs where individuals who are in similar situations are treated differently by the institution, if the difference in treatment does not have a reasonable and objective justification.

An example of an objective justification would be the prevention of racist beliefs being promulgated, subject to the requirements of proportionality.

An institution which imposes more stringent conditions for using its facilities on a particular group of students than others may be in breach of the HRA, unless those conditions are justified, for example by reference to

that group's previous record of causing disorder.

Judicial review

Judicial review is the mechanism by which the court supervises the exercise of power by public authorities, including education institutions. Judicial review ensures that institutions' powers are used for a legitimate purpose and in a fair, reasonable and proportionate manner. Any disciplinary action taken against students in response to the exhortations to eradicate extremism should:

- Have a clear basis in fact - any decision at variance with the facts or for which there is no factual foundation cannot be sustained.
- Be in accordance with the institution's procedures, following a decision made by an impartial decision maker.

Failure to comply with these requirements could render the institution susceptible to a claim for judicial review, which may result in the decision being quashed.

Institutions have, in the context of carrying out their functions, a general duty to have due regard to the need to eliminate unlawful race discrimination and to promote equality of opportunity and good relations between people of different racial groups, enforceable by

judicial review. Steps taken to stamp out terrorism, if ill thought out, may be injurious to the promotion of good relations between different racial groups and consequently, a breach of this duty.

Defamation

Labelling in oral or written form a student as an extremist or a recruiter for terrorist organisations could, in certain circumstances, damage the reputation of the student and lead to a claim of defamation. While truth is an absolute defence to any such claim, terms such as "extremist" are subjective and it may be difficult to prove the veracity of the label. Where an institution identifies particular groups such as student societies, rather than individuals, as extremist or terrorist, generally a claim of defamation cannot be brought by that group because it will not have a legal personality. Individuals within the group may bring claims only if they are specifically named by the institution, or they are otherwise identifiable.

Defamatory statements made by the institution that are reasonably capable of being understood to refer to a particular student could give rise to a claim by that individual.

If the institution's defamatory statements are unjustified, the institution may nevertheless be able to use the defence of qualified privilege. This is available where the institution has a duty to make the defamatory statement to the person to



TAXING DEVELOPMENT THROUGH THE PLANNING SYSTEM

whom it is made, and recipient has a corresponding interest or duty to receive it. If the institution is motivated by malice, the privilege is deemed to have been abused and the defence is destroyed. If staff genuinely, though mistakenly, believe that particular students are engaged in extremist behaviour, and report this belief to those within the institution who have a genuine professional interest in knowing it, for example in accordance with the disciplinary procedures, then the institution will have a defence of qualified privilege.

Institutions can generally carry on their business without fear of successful claims of defamation. Nevertheless, if as a result of press speculation or reports such as that published by Professor Glee, a climate of fear and suspicion is created on campus, labels may be imposed on students for reasons that may not always be benevolent or in good faith. This may give some substance to allegations of defamation.

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Both central and local government continue to look at ways to fund the social and physical infrastructure needed to support growth and regeneration. One such means is the planning gain supplement advocated in the Barker Review. This is a tax on the uplift in land values obtained when planning permission is granted. We anticipate that the Chancellor will clarify whether the government intends to impose such a tax in his pre-budget report due in early December. In the meantime, local authorities are taking matters into their own hands by proposing locally-raised infrastructure tariffs (imposed as part of the planning application process) to

fund schools, hospitals and roads. Milton Keynes has now gained agreement from 20 large landowners, as well as builders, to impose a levy of £18,000 for each house completed, known as the "roof tax" and Northamptonshire County Council has commissioned research to draw up proposals for a tariff to fund facilities. Other local authorities across the country will be watching these developments carefully and may themselves follow suit. We will be reporting in more detail on this issue as soon as the government announces its intentions.

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TACKLING CLIMATE CHANGE

ENERGY EFFICIENCY

The quality and performance of buildings have been a key issue for the FE/HE sector for some time, with institutions under pressure to find new ways of accommodating increasing student numbers and to ensure on-going quality of existing building stock. With energy efficiency increasingly becoming central to the government's thinking as it looks to achieve its climate change objectives, and new rules shortly to come into force which will drive forward environmental change in the property sector, institutions should ensure that it plays a full role in the design and use of their buildings.

The strategic framework

In its Energy White Paper of 2003, the government recognised that the best way of addressing its energy goals - reducing CO₂ emissions, maintaining reliable energy supplies, promoting competitive energy markets and ensuring homes are affordably heated - is to use less energy. So it set energy efficiency at the heart of UK energy policy, and now expects more than half the emission reductions in its climate change programme - around 10 MtC per annum by 2010 - to come from energy efficiency.

To deliver these savings, the White Paper recognised the need for measures addressing key areas of our economy, identifying energy efficiency in buildings as highly important and making a commitment to raise standards of efficiency in new building and refurbishments.

Closely related to the White Paper was "Energy Efficiency: The Government's Plan for Action", published in April 2004. The plan set out how the government intended to deliver the energy efficiency strategy set out in the White Paper. Of relevance to the FE/HE sector were:

- Implementation of the Energy Performance of Buildings Directive, notably its requirement for energy certification and labelling of buildings.
- A revision to Part L of the Building Regulations, intended to raise the standards of new and refurbished buildings.

Energy Performance of Buildings Directive

Introduced in January 2003 for implementation into the national law of member states within 3 years. The Directive demands minimum energy performance standards for new

buildings, and also for large existing buildings (more than 1000 m²) undergoing major renovation. It also requires the presentation of energy performance certificates (EPCs) when buildings are constructed, sold or rented out, and requires EPCs to be displayed in "public buildings" over 1000 m².

Building regulations

In September this year, the government announced proposals for implementation of the EPBD, with detailed technical measures to be introduced by way of revisions to Part L (energy efficiency) of the building regulations. The revisions to Part L, effective from 6 April 2006, reflect the commitment in the Energy White Paper to review the building regulations in the context of climate change.

Building regulations ensure the health and safety of people in and around buildings by providing functional requirements for building design and construction, whilst also promoting energy efficiency in buildings and contributing to the needs of disabled people. Regulations concerning energy were first introduced in the early 1970s as a response to oil embargoes but, over time, the regulatory thrust has switched from conservation of fuel, first to energy efficiency and now more broadly to controlling carbon as part of the UK



climate change programme.

These latest revisions to Part L have yet to be finalised.

They are likely to be in 4 parts: L1A (work in new dwellings), L1B (work in existing dwellings), L2A (work in new buildings, other than dwellings) and L2B (work in existing buildings, other than dwellings). Student accommodation is not classed as dwellings and therefore regulations L2A/B apply.

Part L will provide the legislative vehicle for imposing energy efficient performance standards for new buildings and refurbishments and extensions to existing buildings, by setting out minimum standards (assessed against 5 criteria) for energy efficiency. Included are requirements for setting maximum CO₂ emissions for whole buildings, limiting the effects of solar gain and meeting air pressure standards. These requirements are to be achieved on a performance-based approach, offering designers flexibility to choose solutions that best meet their needs, whilst being cost effective and practical.

What are the practical impacts likely to be?

The revisions to Part L are expected to be the key driver of environmental change in the property sector. The requirement for public buildings to display EPCs may mean that they become a desirable demonstration of good practice in resource management,

which could extend far beyond the public sector.

Interestingly, the government have yet to decide whether "public building" encompasses only buildings that are publicly owned, or whether it includes, more widely, any building accessible to the public (as is the approach, for example, in Sweden). If this approach is adopted, then significant parts of FE/HE campuses (where the public have access) could be caught, e.g. arts centres, sports facilities and galleries. But even if the requirements don't extend that far, enhancing corporate image and reputation with a "green profile" can play an important role in making buildings desirable places to occupy, increasing competitiveness and influencing student choice.

Local authority inspectors will be responsible for enforcement and resources are likely to be stretched by the need to conduct routine inspections. Failure to comply may result in owners of buildings being served with notices requiring alterations to secure compliance, and those notices could be accompanied by fines.

The future

The new standards of energy efficiency required by Part L of the building regulations are likely to be implemented in their current draft form, yet even then will not match the best standards in Europe. The view of government appears to be that the construction

industry in this country is not equipped, in terms of skills, to cope with a steep change in performance. Hence, between now and 2020 the government plans to update the building regulations every 5 years or so in order to deliver incremental increases in the energy standards of new and refurbished buildings.

All of this will bring with it additional cost. However, FE/HE institutions are significant owners and users of buildings, and these developments are just one example of how the education sector has a role to play in addressing global climate change, and how that role will become more central to the government's climate change agenda as it works towards achieving its 2010 targets.

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HARRY POTTER & THE ONYX CASE HOW TO DEAL WITH DISRUPTIVE PROTESTS

There have been various reports of student protest in the press recently. You might say protests are just part of student life and a welcome return to idealism following the conservatism of the 1980s and 1990s. Under the Human Rights Act, institutions are bound to act in a manner compatible with the human rights guaranteed under the European Convention. To the extent that protests are an exercise of the right to freedom of expression or assembly, institutions are required to tolerate them. But what happens if those protests become violent, or interfere with the proper running of the institution, its teaching, research or commercial activities? The rights of freedom of expression and assembly are not absolute and some steps can be taken by institutions:

During the protest

When a protest threatens the security of other students or staff, or disrupts the institution's activities, student trespassers may be committing a public order offence, or in the case of FE colleges, the offence of causing nuisance or disturbance on educational premises, warranting police intervention. As students will normally have a licence to come onto the institution's premises, they are not

usually trespassers. However, where protest poses a threat to safety or is disruptive, that licence may be revoked until disciplinary and/or criminal proceedings have been exhausted. The difficulty with civil actions against groups, such as protesting students, has always been that institutions probably will not know the identity of the students, or others, who are involved. Where those involved are actually committing a trespass, the law has long allowed squatters' proceedings to be brought against "persons unknown". An order is made requiring those present to leave immediately, and is usually served by posting copies in the area where the trespass is happening.

Bailiffs can forcibly remove those concerned, assisted by the police if required. Until recently however, it was only in circumstances where the protest or trespass was actually in progress that these kind of proceedings could be brought against unnamed individuals.

Before the protest begins

Taking action when the protest has begun may be too late. Teaching or other activities may have been disrupted, adverse publicity is likely to have been generated and the institution will have incurred legal costs which it is unlikely to be able to recover.

In 2003 Harry Potter waved his wand

over the problem. In a case brought by JK Rowling and the publishers of the fifth Harry Potter book, the court made an order against unnamed persons offering illicitly obtained copies of the book to newspapers for publication. Subsequently members of the Onyx group, who own large incinerator sites and who faced protest disruption on a Global Day of Action in 2003, sought a similar order. The court adopted the Harry Potter approach and granted an injunction against unnamed persons, preventing them from entering Onyx sites.

The order was made in anticipation of the protests, not once they had started. This new approach has now been approved by the Court of Appeal. So, if institutions get wind of a protest likely to cause serious disruption, consider what effect it might have on the safety of staff or students, or on your institution's activities and think about seeking advice. An anticipatory injunction might just do the (magic) trick.

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HIGHER EDUCATION

BUREAUCRACY BUSTING AND YOUR CONSTITUTION

In line with work in the sector aimed at reducing bureaucracy in regulation, data collection and funding streams, plans are afoot to introduce more flexibility for HE institutions wishing to amend their constitutions.

At present, any amendments must be approved by the Privy Council. For chartered institutions, discussions between the DfES, Welsh Assembly, Privy Council and a number of sector bodies are likely to mean that in future, only core issues of public interest enshrined within the charter and statutes will be monitored by the Privy Council and subject to its approval. The list of core requirements and the method of implementing the proposals will be confirmed by the DfES shortly, but amendments which are likely to continue to require Privy Council consent include, as a minimum, degree awarding powers/university title, powers and objects, academic freedom and equality provisions and governance structures (particularly the functions and constitution of the governing body). Non-core requirements are likely to include provisions on membership of the institution, detailed provisions on the functions and constitution of the senate/court, and academic staff pay and conditions, including the model statute. If, once the proposals are in

effect, an institution wishes to introduce the principles underlying the revised model statute, consultation with staff and other related work will obviously continue to be necessary, even if Privy Council consent is not required. For statutory and designated HE institutions, similar principles are likely to apply to amendments to the instrument & articles of government, which will mean greater flexibility to depart from the Privy Council model articles, and may result in changes to legislation (eg prescribing requirements within the instrument for membership of the governing body). In the FE sector, consultation on amendments to the model instrument & articles has been on hold for some time, but will presumably be re-activated following publication of Sir Andrew Foster's review report, which is expected as Education Brief went to press.

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