

# AHUA Perspectives

Legal updates for the world of higher education

## Discussion, Debate and Dissent

Dear Colleague

A new exhibition opens in September at the British Museum under the title: 'I object'. The exhibition has been curated by Ian Hislop (editor of Private Eye) and aims to pull together a number of physical items as examples of dissent from the objects in the museum's collection. One example is an Assyrian brick where the brick-maker has inscribed his name over the official mark of King Nebuchadnezzar.

Literature also helps to preserve evidence of dissent at key points in history. One of the most humbling books I have read this year is the narrative of the activities of the White Rose, the group of students and a professor at the University of Munich who organised a leafleting campaign encouraging opposition to the Third Reich. As those familiar with this incredibly courageous and peaceful protest will know, the dissent in this case was at significant personal cost to those involved.

In the appeal courts, judges are free to give dissenting judgments, if they feel it is necessary to do so. Three of the eleven judges of the UK Supreme Court gave dissenting judgments over whether Parliamentary approval was required for the UK to trigger Article 50 and commence the 2 year period for the UK to leave the European Union.

A free exchange of views and dissent also lies at the heart of institutional good governance. A governing body should ensure that there is an opportunity for robust debate amongst its members about key decisions which have to be taken collectively. It is in the discussion that a range of perspectives can be heard - and weighed - before reaching a collective decision. Each member of the governing body should bring their independent judgment to bear, be free to voice concerns in the discussion and, having listened and reflected, be free to vote for or against a proposal, rather than simply conform to the majority view. A governor's dissent from the decision should be recorded in the minutes of the meeting.

Earlier this year, the Parliamentary Joint Committee on Human Rights (JCHR) published its report into [Freedom of Speech in Universities](#). This followed evidence sessions involving many groups and individuals, most importantly student societies, Vice Chancellors, high-profile public speakers, government ministers and regulatory bodies. We contributed to the written and oral evidence about the law in this area.

The cross-party JCHR affirmed a number of constitutional principles and the importance of freedom of speech in a democratic society. It also concluded that there was no "wholesale censorship of debate in universities which media coverage has suggested". The JCHR did, however, highlight a number of factors inhibiting freedom of speech:

- intolerant attitudes, often incorrectly using the banner of 'no platforming' and 'safe space' policies;
- incidents of unacceptable intimidatory behaviour by protesters intent on preventing free speech and debate;
- unnecessary bureaucracy in organising events;
- fear and confusion over what the Prevent duty entails;
- regulatory complexity;
- unduly complicated and cautious guidance from the Charity Commission;
- concern by student unions not to infringe what they perceive to be restrictions.

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The JCHR also took the initiative in publishing guidance to universities, student unions and student societies about how freedom of speech must be “within the law” in a democratic society.

The Minister, Sam Gyimah MP, has responded by confirming that further guidance will be published. This is awaited.

The new higher education regulator, the Office for Students, requires, as a condition of registration, for the new public Register of English Higher Education Providers under the Higher Education and Research Act 2017 that an institution’s governing documents uphold certain public interest principles, one of which is that “the governing body takes such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider.”

Some topics which will be raised and debated over the coming months will be controversial. The Joint Committee on Human Rights sums it up well:

“In an ideal world, debate would take place in a respectful and orderly fashion. However, provided speech is legal, the right to speak freely includes saying things which may shock or offend others.”

The challenge is where the lines should be drawn. Crucially, attention to the facts, full context and relevant legal frameworks will be of fundamental importance.

This edition of Perspectives includes articles from ourselves and our fellow AHUA national sponsor law firm, Anderson Strathern. We are delighted to include the perspectives of Alun Thomas, partner at Anderson Strathern, on higher education issues north of the border. From the Mills & Reeve team, we have included Richard Noble’s perspectives on the ground-breaking University of Northampton Waterside Campus and Jens Henniker Heaton’s insights into the University of Hull’s exciting £130m student residence project.

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**1 R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant) [2017] UKSC 5**



# No deal: implications for Higher Education and Research

The UK Government issued the first batch of its technical guidance notes on 23 August 2018 setting out the implications of the UK and the EU failing to reach agreement on the terms of the UK's withdrawal from the EU, which will take place on 29 March 2019.

Two of the technical notes relate specifically to aspects of higher education and research, namely the Erasmus + student exchange / mobility programme and the Horizon 2020 research programme. The technical notes state that the UK Government expects an agreement to be reached given the mutual interest of both the UK and the EU in so doing and the progress which has been made to date.

The current Erasmus + programme runs until 2020, as does the Horizon 2020 research programme. The UK Government has expressed its strong commitment and support for both student mobility and collaborative research activities with the other EU member states.

In respect of Erasmus + the technical note states that the UK Government's underwrite guarantee will:

- cover payment of awards to UK organisations for successful bids submitted before the UK exits the EU as previously confirmed; and
- be extended in a 'no deal' scenario where 'UK organisations are eligible...from 29 March 2019 until the end of 2020' and that the Government is seeking to agree the terms of eligibility.

It goes on to state that the October 2018 call for bids from organisations will take place as usual and that 'individual students and young people who wish to participate in Erasmus + funded activities should therefore contact their respective organisations.'

The UK has received some 4.6 billion euros of funding (14.3% of the total) from the Horizon 2020 programme to date. The technical note re-states that the UK Government will guarantee funding for successful competitively won bids for EU projects before the UK leaves the EU, for the duration of the projects. This applies only to UK organisations (including those in a consortium) and the Government is seeking clarification from the European Commission about how best this will be handled in a 'no deal' scenario where the UK organisation is the lead partner in a consortium. The Government's guarantee was extended in July this year where the UK organisation is able to participate as a 'third country'.

The technical note affirms the UK Government's commitment to:

- ongoing collaboration in research, including its White Paper proposals to form 'a cooperative accord with the EU on science and innovation';
- its goal to increase spending on research and development to 2.4% of GDP by 2027; and
- developing a new International Research and Innovation Strategy in partnership with UK Research and Innovation (UKRI).

Please refer to the particular and overarching technical notes for further information about the Government's guidance on a 'no deal' scenario. Clearly there is still a lot to be done and much may as yet change.

Any questions?

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# Northampton and a brand new campus

This Autumn sees the opening of the University of Northampton's brand new Waterside campus. This was a £330 million, state-of-the-art town centre campus development, designed to inspire a new generation of students and help fuel the area's regeneration. With a long heritage dating back to the thirteenth century, the University of Northampton was formally established in 2005. The estate comprised a mixture of old buildings on two sites on the edge of Northampton. A new campus fit for the twenty first century was going to be crucial to the ongoing success of the University.

This was not about making small adjustments but starting from scratch and developing a new modern campus which would be fit for the future. In 2012 the opportunity to realise this dream became a possibility with the availability of a site in one of the most significant redevelopment areas in the UK. The University had the opportunity both to realise its aim of becoming a single-site campus in an exciting innovation area and to regenerate a derelict area of the town. The University took the monumental step of selling its two main sites and building an entirely new campus – Waterside. Set on the river within an area of business innovation, and a short walk across a park to the centre of Northampton, the campus offers modern student accommodation, a sports centre, hotel facilities, a student union and industry-leading academic centres.

In 2013 we helped the University acquire the site in the face of a compulsory purchase inquiry hearing which saw the University do a deal with all of the site's landowners.

That was the first step, the next was to obtain planning permission for both the construction of the new campus and for the redevelopment of the existing campuses into housing, providing part of the funds for the new campus.

Having obtained planning permission the University of Northampton then needed to arrange the bulk of the funding. They raised a £330 million funding package, including loans from the Public Works Loans Board (PWLB) (via Northamptonshire County Council and Northampton Borough Council), and a £231.5 million 40 year bond. The bond and the PWLB loans were guaranteed by HM Treasury pursuant to the UK Guarantees Scheme, which provides sovereign-backed guarantees on a commercial basis to help infrastructure projects.

Our banking and finance team advised the University on the legal documentation required for these financial transactions. I had the privilege of leading the legal team to facilitate the real estate, procurement, planning and construction work.

This Autumn, five years after the initial exchange of contracts, and as a result of the foresight and determination of the University's senior management team, the new campus is opening to receive its first students, a stunning example of modern architecture and innovative space planning fit for the twenty first century - [Waterside Campus](#)

Any questions?

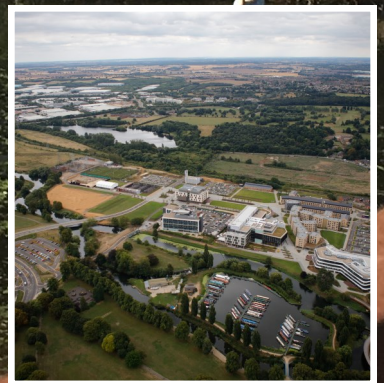
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University of  
Northampton

Creative Hub



# Hull enhancing its on-campus experience

Living in university accommodation is a fantastic way for a new student to start their higher education experience and have the opportunity to make new friends quickly. All University of Hull students are guaranteed secure accommodation close to where they are studying.

To ensure that the University would be able to continue to provide this important guarantee, it launched a £130-million scheme in partnership with the award-winning student accommodation provider, UPP, following a competitive tender process.

We helped the University with all stages of the project, including running the competition, negotiating with the bidders, drafting the contracts and acting as a legal sounding board throughout the process. This project was distinctive in that it was delivered under a “non-OJEU” procurement process and involved both new build and a transfer of the University’s own accommodation to UPP.

The new Westfield Court will offer on-campus accommodation for more than 1,400 students; 462 of the rooms opened this month with the rest planned for 2019. Rooms and apartments all have en-suite or shared bathroom facilities, and there’s a café, shop, laundry facilities and outdoor spaces.

The University wanted to build on the work it had done in recent years to further strengthen the “campus vibe”. Its single site campus provides all that students need, with the library, versatile work spaces, cafés, venues, theatres, bars, a nightclub and plenty of on-campus sport. Therefore it was important that the new rooms were based on campus.

In addition to strengthening its purpose built student accommodation offering, which was the primary purpose, the structure of the deal meant that the University was able to realise value out of its campus estate and, at the same time, ensure that the financing of it did not impact the University’s balance sheet.

The dedication and focus (and good humour!) of the University team was a key reason for the success of the project. We worked closely with the CFO, Director of Accommodation Services, Director of Estates and Head of Legal throughout. The time and commitment they put into the project enabled us to help deliver the scheme in record time and to ensure that all the University’s drivers were reflected in the final deal.

***“This was a landmark capital project for the University and we therefore needed to appoint lawyers who had significant experience in the sector, were “commercial” in their advice and encouraged us to be brave in our decisions. We were delighted with the Mills & Reeve team.”***  
*Stephen Willis, CEO*

The timing of the project was perfect; it coincided with Hull being the UK City of Culture 2017 so there was a real buzz around the University and the significant number of stakeholders were able to spend their lunch breaks inspecting the works of [great masters](#).

Any questions?

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Westfield Courthouse

# The Civic University

## A Scottish Perspective

### Overview

In contrast to the world as it exists for HEIs in England and Wales the position north of the Border has remained relatively stable for Scotland's 19 Higher Education Institutions over the last few years. With Education devolved to the Scottish Parliament the SNP vow to scrap tuition fees was honoured when they first came to power now ten years ago. That means that Scottish domiciled students pay no tuition fees to study at Scottish Universities. Under current EU membership arrangements, EU students also share that benefit and it is only what we call "RUK students" ("Rest of UK"), from England and Wales, who are charged the equivalent fee that would be levied were they to be studying in their home country.

As a result, Scottish universities retain an umbilical relationship with the Scottish Funding Council who continue to play a key role in the distribution of Scottish Government funds and retain much of their reporting function that others will recognise as more akin to the old HEFC regime in England than the newer and yet to be fully explored relationship with the Office for Students.

Student numbers are still capped and, as a result, we are yet to see the sort of open competition that appears to be being experienced south of the border.

### Perceptions

Whilst it is difficult to generalise, and hard evidence is not yet available, my perception is that the view of Higher Education in Scotland remains one of which the population continues to be proud rather than critical. Whilst one institution has recently had to witness its Vice Chancellor announce his retirement following critical coverage of one of his appointments, and to cope with the irony that this was the same Vice Principal who produced the Report on University Governance in 2012 which espoused the view that Universities were part of the wider idea of the 'democratic intellect' and should behave in a transparent and accountable manner, much of the criticism of Vice Chancellor salaries and student claims around the quality of teaching and value for money, seem to be focussed on activity South of Hadrian's Wall.

### Widening Access

In Scotland, government is driving the access agenda and whilst much is now focussed on early years, all HEIs are being encouraged to play their part in creating opportunities for the economically less advantaged. Universities Scotland is currently consulting on a Vision statement for 2030 that proudly reports that universities are;-

“a force for social inclusion, doing all that is within our power to widen access. We have turned around our approach to making offers to undergraduate study to bring in more students from the poorest 20 per cent of neighbourhoods (SIMD20). The offer rate to students from SIMD20 postcodes is now the same as to applicants from SIMD60-80; and since 2013 students applying from SIMD20 and SIMD40 postcodes received offers at a higher rate than would have been expected based on their grades and subjects.”

This is no mean achievement. Post 1992 institutions such as Glasgow Caledonian University and the University of the West of Scotland have long adopted a position that they are there for the learners in their communities as well as further abroad, and their achievements in this area are such that they debate the value of measures which focus on incremental growth in targeted student numbers. Other more "traditional" seats of learning have learnt to play their part too in different ways, so that Scotland's oldest University, St Andrews, now runs Reach and Gateway programmes targeted at recruiting students from rural and SIMD20 communities.



## Regional Impact

Universities in Scotland continue, as Universities Scotland's vision statement reflects, to be:-

- a transformative influence on the cities and regions we are part of. This contribution is economic, social, cultural and regenerative. We are deeply proud to be a part of the towns and cities we belong to and equally proud of our reach to support people in some of the most remote and rural parts of Scotland through distance and online learning;
- a key sector of the economy with an annual economic impact of over £7.1bn GVA from universities' activities alone, multiplying every £1 of public investment into over £7 of economic impact;
- employers of over 43,700 people in high-quality jobs.
- a major exporting sector, creating £1.5bn of export earnings from outside Scotland;
- magnets for direct external investment, with over £1.5bn of research funding and contracts from outside Scotland including 15% of total UK Research Council competitive investments;
- creating start-ups and supporting existing businesses to grow. We support over 18,000 existing small and medium-sized enterprises across Scotland every year, have helped to catalyse the emergence of new Scottish industries including life sciences, informatics and computer games”.

## University of Highlands and Islands

The unique collaboration that is UHI is proud of the contribution it makes from its 13 College Campuses and research centres and its 70 local learning centres. With tangible growth and success in the courses it delivers on Adventure Tourism Management in Fort William they can look to the contribution that students have made to the town's economy, the demand from which has led to the building of new student residences in a place with no HE provision 20 years ago. Likewise UHI's involvement in the Inverness City Region Deal working with HIE, Highlands Council and NHS in Inverness makes a meaningful contribution to the Northern Innovation Hub by enhancing health and social care provision via new facilities at the university's new School of Health. Last but not least the collaboration with Ceolas on Benbecula in the Western Isles has created a world centre for traditional music and the Gaelic language which has seen an influx of international students which, in turn is making a tangible contribution to the local economy and even beginning to

reverse the flow of local young people from the Western Isles. UHI's innovative use of technology and distance learning has meant that that they can say that from a campus area the size of Wales they can create one virtual classroom allowing everyone in the region and beyond to participate.

## Dundee – City of Discovery

Given that Lonely Planet currently list the City of Dundee as one of the top ten places to visit in Europe, I wanted to end this piece by having a look at the contribution that Abertay and University of Dundee have made to the regeneration of Dundee both as a destination and as a place to study, live and work. It is not that long since Dundee was a sad example of a post-industrial city with a proud heritage of “Jam, Jute and Journalism” which had seen it as a significant player in the history of the British Empire. Then it looked backwards to its glory days. Now Dundee is a vibrant, exciting city with two successful Universities working together with Scottish Enterprise and Dundee City Council to enable it to be looking forward to opening the doors on the V&A in September 2018. Together Dundee and Abertay contribute £886m GVA to the Dundee area and provide 18,500 jobs which represents, at 12.5%, the highest proportion of HEI employment in any part of Scotland. The Universities have built a reputation for work in areas such as biomedical science and in computer gaming which is the envy of many other places and leads to their courses and their city as being seen as the place to be. Why wouldn't you want to visit the City of Discovery?

## Conclusion

Scotland's 19 HEIs are each different examples of what it is to be a contributor to the civic society of their communities in which they are located and which they serve. QMU Scotland's smallest University nestled at the edge of Edinburgh produces a steady stream of work ready nursing and health service workers. UHI delivers learning to students from 13 colleges and research centres and offers, in addition to its online facilities, access to 70 local learning centres. No institution is the same as any other but each plays its own unique role in making the places in which we work and live more interesting, more successful and more sustainable. It is a privilege for us to be able to work with them.

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# About Mills & Reeve

Mills & Reeve offers a deep knowledge of the higher education sector and the commercial strength of one of the UK's leading national law firms.

Our multi-disciplinary team is ranked in tier 1 in the UK legal directories for advising the higher education sector.

We have supported our clients in over 75 jurisdictions through our international network of law firms around the world.

The Sunday Times has recognised us as a Top 100 Best Employer for the last 15 consecutive years; the only UK law firm to have achieved this. We work hard to create a culture where everyone feels that they contribute and can make a difference, delivering outstanding service to our clients.

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