Collaborations and Mergers in HE: Lessons Learned and Future Prospects

Stimulus paper

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Stimulus Paper Series

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The current context

The purpose of this paper is to examine what might happen in the context of collaborations and mergers in higher education over the next few years, including an examination of the drivers for change. The main focus of the paper is on collaborations and mergers between public institutions, but it covers the role of the private sector where relevant.

This paper deals with the law in England only; it is relevant to Scotland, Wales and Northern Ireland but they each have differences (sometimes subtle).

It covers both the Department for Business, Innovation and Skills (BIS) June 2011 White Paper “Higher Education - Students at the Heart of the System” (White Paper) and BIS’s August 2011 technical consultation paper “A new fit for purpose regulatory framework for the higher education sector” (the Technical Consultation).

The context in England

With the conspicuous exception of the takeover by Apollo of BPP, most significant mergers in the higher education sector to date have been in the publicly funded arena and have not involved any private partner.

In this paper we use “public” to mean those higher education institutions (HEIs) receiving Higher Education Funding Council for England (Hefce) monies (even where the Hefce contribution to their overall income may not be significant) with “private” being those degree-awarding institutions not receiving Hefce funding and whether profit making or not. We do not include in either category institutions not having either UK degree-awarding powers or Hefce funding since they are a very diverse range of institutions subject to virtually no regulation.

The public institutions are more heavily regulated and controlled than the private. What is meant by “public” or “private”, however, often blurs the distinction between the for-profit private education providers (such as BPP) and the not-for-profit charitable private sector providers (such as the University of Buckingham and the College of Law). In reality, the higher education sector in England, and indeed across the UK, is overwhelmingly public (in the sense of being primarily funded by the UK tax payer) but even the private sector receives significant public funding. There are only a handful of private institutions in the UK.

Mergers have been driven by various factors including a desire to improve the standing of an institution (e.g., the creation of the University of Manchester from the Victoria University of Manchester and UMIST – where the international standing of the successor institution is higher than that of either of the predecessor institutions), to create an institution where there is perceived to be an unmet need (e.g., University of Cumbria), or financially driven (e.g., Wye College being merged with Imperial College). It is a truism, of course, to say that there is no such thing as a true merger of equals; the reality is usually one party takes over or subsumes another.
In addition to mergers there have been some significant collaborations in the higher education sector, again usually involving only public sector partners eg the creation of the federal structure of the University of Roehampton, the University College London/Yale link and the Cambridge - MIT Institute.

The common factor between all mergers and collaborations is to enable institutions to fulfil their mission better; sometimes the arrangement is opportunistic or sometimes more proactively planned.

The much anticipated (particularly by the private sector and new entrants) White Paper shows the direction of travel of the coalition government, which is to reduce the tax payer funding burden on higher education whilst supporting a diverse and successful higher education sector with little distinction between public and private institutions operating in a freer market.

International comparison

When considering the UK higher education sector, it is interesting to compare some other countries and how their higher education systems operate. In the US higher education represents about 3% of their gross national product, with more than 4,000 accredited institutions enrolling over 15 million students and conferring in excess of 2 million degrees a year. Some US$26 billion is spent on research and development every year, of which US$16 billion comes from the US government.

Around half of US higher education is from the private sector.

Canada has the highest proportion of post-secondary education graduates in its workforce in the western world, with 22% of its workforce having a degree. Its higher education system is run mainly on a provincial basis, with every province in Canada having exclusive rights to make laws in relation to education. There are over 90 universities in Canada of which only 10 are private. Virtually all the private universities are new and teach only at undergraduate level. There have been a number of mergers over the past few years but they have mostly been between public institutions, whereas in the US most mergers have involved private universities. Those Canadian mergers are generally seen as having been successful.

In Australia there are 41 universities, of which 37 are public, two are private and two are Australian branches of overseas universities. Bond University was Australia's first private university and was incorporated in 1987. Melbourne University, an Australian public university attempted a venture called Melbourne University Private from 1998 to 2005 but it was unsuccessful, losing around AUS$20 million over its lifetime.

There were a large number of higher education mergers (called amalgamations there) between 1983 and 1991.

Australia does have, however, a highly successful higher education private sector at non-degree level. There are a number of quoted companies operating in the higher education market without degree-awarding powers.
In New Zealand there are eight public universities and 25 public polytechnics; the latter focusing on technology-intensive teaching and research. There is no private university and the private sector interacts with the public sector on a relatively small scale.

In Hong Kong there are nine universities in total but only one private university (the Hong Kong Shue Yan University founded in December 2006).

It is interesting to compare Hong Kong with Singapore where, like the US, higher education accounts for over 3% of gross national product. Singapore has two fully fledged public universities and two fully fledged private universities, although both private universities are funded by the government. There are also a number of foreign universities that have established off-shore campuses in Singapore. The Singaporean government is interested in attracting and developing that area. The Singaporean government is establishing new HEIs, particularly in the technology area eg Singapore Institute of Technology.

There is significant private sector involvement in the US, and within that the for-profit sector has grown rapidly in recent years; there is a significant and long-standing private education sector in Japan and Korea; and a growing private sector in East Africa, Latin America and Central and Eastern Europe. Elsewhere in the world (for example in Western Europe), private sector involvement in higher education is relatively small scale or embryonic.
Coalition government

This part of the paper examines how the coalition government may change the regulatory framework and how that might impact on mergers and collaborations in higher education. These changes could be a key driver.

We think that funding issues, the regulatory framework and other policy changes are the three key areas which will drive a significant part of the mergers and collaborations agenda in higher education in the next few years, so we start by examining each of these areas. The coalition government’s thinking in these areas is set out in the White Paper and the Technical Consultation.

Funding policy

The White Paper makes clear that the amount of government funding going into the UK higher education sector will fall in actual and real terms; this will not be a short-term fall, however, since the policy of switching funding to students through repayable loans (but those loans not starting to be repaid for many years) is likely to increase government funding in that period.

The funding changes are likely in the short term to create two classes of institution (i) highly successful world-class institutions (like the Russell Group) which will be able to increase their income; and (ii) other institutions which will need to be able to demonstrate to their students real value for money. It is this latter group that will be faced with significant cost pressures on the one hand and competition from the private sector on the other. This latter group are also likely to lead on looking at collaborations and mergers as sources of additional or replacement income/capital.

Interestingly, the private sector will also be affected by these changes since they will be required for the first time both to enter into contracts with the funding councils in order for their students to be eligible for student funding support and to compete for student funded numbers. This is likely to cause them to want to increase their collaboration with the public sector and/or to move away from depending on students supported by the loan funding. Indeed we have seen some evidence of this public/private collaboration in the BPP and New College Swindon model.

Case study

BPP University College have entered into an agreement with New College Swindon under which New College offer two-year BPP degree programmes in business and finance at a fee of £6,000 pa (ie £12,000 in total) compared to BPP’s usual three-year programme of £9,000 pa (ie £36,000 in total).

It will be interesting to see how the mini market in higher education to be created (similar in some ways to the way the last Labour government created a mini market in the health service) will develop. This may well drive merger or collaboration.
Regulatory framework

HEIs are set up as one of five legal types being:

<table>
<thead>
<tr>
<th>Royal Charter</th>
<th>Companies limited by shares</th>
<th>Companies limited by guarantee</th>
<th>Higher education corporations (or other statutory corporations)</th>
<th>Trusts</th>
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The effect of those five different legal forms is that some institutions have more powers than others. In general, the further to the left on the above chart, the more powers the institution has so that, for example, a Royal Charter corporation’s powers are normally more extensive than those of a higher education corporation.

It is difficult, or sometimes impossible, under current law for an HEI to convert from one legal form to another.

A Royal Charter is a grant of the Crown and, therefore, can only be revoked by the Crown; government policy at present is for there to be no new Royal Charter corporations created for HEIs. There is only one company limited by shares in the higher education sector (The Royal Agricultural College). Most new universities created post-1992 are companies limited by guarantee, as are a significant number of pre-1992 universities. Most of the former polytechnics are Higher Education Corporations (“HECs”) and only have the powers which are vested in them under the Education Reform Act 1998 and the Further and Higher Education Act 1992. HECs can, with the consent of the secretary of state, convert to a company limited by guarantee but not to a company limited by shares and still receive public funding. There are only a few trusts left since most have converted; where they have converted they have converted to a company limited by guarantee. A company limited by guarantee cannot convert to a company limited by shares.

Chapter 5 of the Technical Consultation seeks views on allowing the governing body of an institution to choose its legal form and to be able to move across legal forms depending upon its needs. We believe that such powers would be very useful, since the effect of these changes would be to allow HEIs to merge with each other in a simpler, quicker and cheaper way (eg some institutions no longer requiring a private Act of Parliament to merge); to allow the use of a full range of powers by an HEI (eg the limits on some financing opportunities according to the legal form of an HEI will be removed); to permit an HEI the ability to compete with the private sector on equal terms; and the ability of an HEI to adopt a bespoke governance structure.

In addition, the current embargo on an HEI converting to a company limited by shares and receiving Hefce monies could be removed.

The White Paper makes clear the government’s determination to increase Hefce’s powers which will apply to institutions which do not currently receive, nor intend to receive, any direct funding from Hefce. In addition, some of the perceived recent failures at British universities have confirmed to government and Hefce that Hefce’s
powers of intervention are more limited than they or the government would like and this will be redressed.

At present an HEI cannot enrol students who wish to pay on a private basis for a fee in excess of the fee cap. In addition under current law an HEI cannot charge more than the fee cap to any student. It is however possible, using an appropriate structure, for an HEI to break both the student number cap and the fee cap, so that an HEI can choose to offer courses to students who are willing to pay a private fee. The White Paper makes clear that these arrangements will continue to be possible in the future. This will allow collaborations to increase student numbers to HEIs.

The word “university” in the name of an institution currently requires government approval. At present there are different rules applying to publicly funded institutions wishing to use university in their title than apply to a private institution (or indeed a foreign university wishing to come into the UK and create a company in its own name). Matters are further complicated by entities operating as a “university technical college” or “university centre” or “university campus”. Private institutions have a much lighter touch regulation in using “university” in their title by simply requiring the consent of the secretary of state, whereas publicly funded universities have to meet additional criteria specified by the Quality Assurance Agency for Higher Education (QAA) (and approved by government) which includes target numbers of students, governance and leadership standards. The Technical Consultation makes clear that the rules will be changed and aligned. This should have benefits for university colleges.

However there is at present no one definition of “university” for the purposes of English law; instead the definition of university has been the subject of case law and is defined for narrow, specific purposes in different ways in various Acts of Parliament. There would be significant benefits to the sector as a whole if “university” was defined for the first time in Statute but we see nothing to indicate that the government intends to legislate in this way.

The government has committed to resolving the issues around VAT as it relates to education. At present it is generally believed that UK VAT law does not comply with EU law since UK law looks at the nature of the supplier rather than (as required under EU law) the nature of the supply. It is likely that this will be corrected and the nature of the supply will determine the VAT treatment. This will require legislative change, although the Education Act is unlikely to be the place for that change.

HEIs will continue to need to consider how to deal with the deficits in their defined benefit pension schemes. The government is unlikely to wish to assume the burden itself, and there is nothing in the White Paper or Technical Consultation about the pensions issue.

These deficits are a major barrier for private sector involvement in higher education if they were required to pick up the costs of the deficits in the final salary pension schemes run by most universities. Under current law, following a Transfer of Undertakings, Protection of Employment (TUPE) transfer, pension rights do not automatically transfer. We do not expect that to change, however, if a private sector partner was to make an investment in a public sector HEI it would not want to be investing in a deficit in the pension scheme.
The issue also applies to mergers between public sector higher education institutions, which under the current Pensions Act can trigger a pensions charge to cover the shortfall funding in the scheme operated by the merging institutions.

There is a particular issue around the Teachers Pension Scheme ("TPS") operated by many HEIs. Unlike the Universities Superannuation Scheme (USS) or Local Government Pension Schemes, TPS for very unclear reasons does not allow subsidiaries or joint venture companies of HEIs to be members of TPS. This holds back much innovation. The policy is even less understandable since the Department for Education acts as the trustee of TPS. We believe the policy needs to change.

A major change of policy from the last government to the current one is to allow the private sector to become an investor stakeholder in a publicly funded university. At present the HEI needs to be incorporated as a company limited by guarantee or by shares in order to allow a private sector partner to invest in a public HEI. If HEIs can move from one legal form to another then this will ease the possibility of private sector investment.

For other legal forms of HEI there are models available now to allow private sector involvement short of investment in the public institution, for example a contracted-out model under which a private sector partner can effectively operate the undertaking of a university. However these models have not proved to be attractive to the private sector.

A private sector investor will want either to invest in the ownership of an HEI (equity investment) or in the undertaking and assets of an HEI (asset route). In the case of the equity route, charitable status will need to be given up. There are some legal issues around voluntarily giving up charitable status which need to be satisfied as part of any private sector involvement.

The White Paper does not propose that the Secretary of State be given greater powers to approve these types of transaction, so current law will need to be relied on.

We do not expect, however, that the degree-awarding powers will be permitted to be transferable from one institution to another, although BIS will allow degree-awarding powers to be transferred when an institution changes its legal form. There appear to be no plans to control the transfer of ownership of a degree-awarding institution.

Policy Changes

There are some other areas where there may need to be a policy change rather than a legislative change. The one key area not covered in the White Paper or Technical Consultation is that private providers want flexibility on the planning use classes of the buildings they use. At present the buildings required fall in to use class B1 (office) or use class D1 (education). Planning consent is required to move from one class to the other which is time-consuming, uncertain and costly. National Planning Policy Statements need to make specific reference to the promotion of education, including a presumption that a request to change to D1 will be permissible.
Why would the public sector want to interact with the private sector?

Competition between public and private sectors

We sense that now they are in office the coalition government is less keen to develop an active private sector which will compete with the public sector because to do so would be to undermine the public sector. This is because the government may now see that the cost of allowing the private sector to compete with the public sector could be to increase the cost to the tax payer if publicly funded universities have to be closed down or shrunk as a result of private sector involvement.

This means that for the public sector, the private sector may become a source of major collaborations and finance. This is even more the case if Hefce as a source of government monies to aid mergers and collaborations becomes of diminishing importance.

We believe, therefore, that the coalition government is minded more to allow the private sector to interact in a collaborative way with the public sector (with the possibility of a private sector operator owning and running a public sector university not being ruled out). There is likely, however, to be some small-scale additional private sector degree-awarding powers granted. We do not believe that any private sector for-profit operator will apply for research degree-awarding powers because they do not believe that there is enough of a commercial market in it; that mirrors to a large extent the US experience of for-profit providers too.

On the basis that the private sector is unable to obtain its own degree-awarding powers in a reasonable period of time then the following would seem to be the main reasons why a private sector operator may wish to provide funding to a public sector institution. This is on the basis that the private sector involvement helps the public HEI to support its mission:

- To allow the private sector operator to use the degree-awarding powers of the public HEI. This use may be under the brand of the private sector operator or another brand. It is not a legal requirement that an institution awards degrees in its own name. The requirement is only that on the degree certificate the degree-awarding institution is named. There are numerous examples within the sector of differential branding used on degree certificates.
- The ability to establish another campus in the UK. If a private sector partner were to provide funding to an out-of-London HEI then it may wish to establish a London campus for that institution. That London campus could then target private fee-paying students whether from the UK, EU or internationally.
The ability for the private sector to use the degree-awarding powers outside of the UK, for example on Asian campuses.

Case study
Coventry University has established a London campus which has been very successful in recruiting international MBA students. Those students were more interested in studying at a London campus than they were at the main campus of the university only 80 miles away.

The ability to use those degree-awarding powers in course areas where the British university may not currently be strong. Degree-awarding powers are generally not limited to any subject area; the only ones which are prescribed are medical, dental and optical.

Case study
The University of Newcastle has established a medical branch campus in Malaysia which operates UK medical degree programmes. The General Medical Council has approved the campus offering and the fees being charged are comparable with those in the UK.
What models may be used for a merger or collaboration?

As a matter of legal theory there are only three ways in which one institution can interact with another:

I On a contractual basis.
I On the basis of setting up some type of legal entity.
I Merging or taking over the other.

Within each of those categories there are numerous ways in which those parties can construct their arrangements with each other. There is no differentiation in the ability to interact between a public to public sector institution compared to a private to private or public to private institution.

At present most interaction between public and private HEIs is at a contractual level.

Main advantages and disadvantages of the models

Contractual model

The main advantages of a contractual arrangement are that it is a flexible and dynamic structure which is relatively straightforward, quick and easy to set up. Its main disadvantages are that:

I It does not limit the liability of the parties to the contract save to the extent that one party may seek to pass obligations to the other under the contract.
I It can be imprecise and vague in its nature and scope, any lack of clarity in the nature and extent of the joint venture could cause difficulties for the parties.
I It does not have the capacity to contract or act in its own right and, therefore, raising finance is very difficult.

Case study

University College London has contracted with Yale University to jointly carry out research and to exchange faculty and students. The arrangement is currently in defined scientific areas but could be broadened.
Legal model

When setting up a legal entity the main advantages are that:

- These legal entities can be quickly set up.
- The legal entity has limited liability.
- The legal entity could be charitable and therefore attract favourable tax treatment.
- There are various ways for participants to be involved (through membership of the board or ownership).
- It is recognised by funders as a good vehicle for raising finance.
- It ring fences liabilities.
- It may provide a mechanism to employ staff or engage with students on different terms to that which apply to the parents.

Its main disadvantages are that:

- It is more difficult to set up and can be more difficult to unwind.
- It normally costs more.
- It may add to administration and burden.
- It may bring additional legal obligations depending on the legal form.

Case study

The University of Surrey acquired the Guildford School of Acting by setting up a subsidiary into which the assets, liabilities, undertaking and staff of Guildford were transferred. An agreed governance structure was put in place.

Mergers

Mergers are bespoke to the institutions so it is not possible to generalise on their advantages and disadvantages. However some of the key issues to be resolved in any merger are:

- Who will occupy the senior posts post-merger; failure to agree this or the mechanism for their appointment will undermine the merger talks.
- The makeup of the governing body of the merged institution and the identity or mechanism of appointment of the chair.
- The need to ensure that the parties are working towards the vision and mission of the merged institution rather than acting in the interests of the predecessor.

Case study

When the University of Glamorgan merged with the Royal Welsh School of Music and Drama it did so by setting up a wholly owned subsidiary which took over the assets, liabilities, undertaking and staff of Royal Welsh. The subsidiary has its own governing board and delegated powers.
Possible scenarios for future collaborations and mergers in higher education

Set out below are some areas where there may be development over the next few years. Some are possible now, some require legislative change, some involve private sector partners and some do not.

Shared Services

There is undoubtedly seen to be a lot more scope for shared services both within the higher education sector and between the higher education sector and other related sectors than currently happens. Our impression is that whilst every institution is interested in shared services, most are interested in the context of being a supplier of services rather than a recipient of those services. There is an understandable nervousness amongst institutions about sharing sensitive data or information with organisations which, if not competitors now, could become competitors in the future.

This may cause shared services to be limited, in the short term, to non-sensitive services (such as gardening, maintenance, security and catering). We have no doubt, however, that the government has in mind more extensive sharing of common services to include HR, finance, administration, IT, telecoms and similar functions.

It is likely, therefore, that whilst institutions are nervous of sharing sensitive or confidential services, they may be willing to do so with organisations which are non-competitive; possibly in the public sector. This may extend to shared service arrangements with NHS Trusts, NHS Foundation Trusts, local authorities, other public sector bodies and the like.

VAT is often mentioned as a reason for not sharing services. The Chancellor’s Autumn Statement in November 2011 committed to overcoming this issue (probably through the use of an unincorporated association), the detail is expected in December 2011. However some organisations (such as NHS Trusts and local authorities) already have beneficial VAT arrangements on sharing services, and it is likely that the higher education sector may be able to put in place arrangements to take advantage of that favourable VAT treatment.

In any event, there are VAT mitigation vehicles around, both now and in the future – for example internal audit services are operated both in the north and south of England through arrangements which avoid VAT being charged. In addition, the adoption by the UK of the European Service Sharing Directive may help to facilitate
shared services. The use of an unincorporated association may also be usefully applied to allow shared services without any undue VAT burden.

It is possible, however, that HEIs may consider that more value could be derived from outsourcing services. Clearly VAT could be a major issue on VAT outsourcing. However it is possible that off-shoring (ie services provided outside of the EU, possibly contracted with an organisation within the UK or EU) could overcome the VAT liabilities and costs. In the commercial sector, outsourcing and particularly off-shoring have resulted not only in significant cost savings, but also in service delivery benefits; rather than paying UK-based staff an average salary, organisations are able to off-shore to organisations based in countries with an equally highly qualified and educated workforce but paying in the top quartile of pay. In this way it is possible to get the double benefit of a better quality staff at lower costs. We appreciate that the trade unions are very opposed to arrangements of this type.

It is, of course possible that the law may also be changed around VAT to overcome some of the costs currently associated with VAT charges on outsourcing. In this case outsourcing may become more beneficial.

Support for financially failing institutions

Support for financially failing institutions by the private sector is likely to increase. This could be by allowing a private sector operator to take a direct equity stake in an HEI or by allowing a private sector operator to acquire the undertaking of that HEI (see the equity route and asset routes set out in section 2 above).

Either route will allow capital to flow from the private sector into an HEI but clearly this would need to come with the safeguards of quality and control, with enforceable and appropriate remedies for breach of those quality and other standards, probably via the secretary of state.

Whilst the consent of the secretary of state will be required to arrangements of this type it is likely that, in appropriate circumstances, such approval will be given.

Investment in an HEI

Short of an investment in an HEI, may be an investment in part of an HEI by investment in a school or department. A possible model, for example, would be for a university with a business school to set up a separate company to run that business school on the basis of a sole or exclusive licence to that company to teach business degrees. The joint venture company would have as its other partner an operator which provides infrastructure, capital, skills, marketing, know-how etc in return for its stake.

It is possible that the business school could be separately branded and could operate as a discrete UK campus (for example in London). In this way the private sector is able to capture income-generating value and brand enhancement. For the public HEI this could lead to significant income and capital inflows to secure its mission.

These types of arrangement are possible under current law.
Teams and departments moving

In the commercial sector it is not uncommon for teams and departments to move from one organisation to another. With some notable exceptions (e.g. the Architecture School of Kent Institute of Art and Design (“KIAD”) moving to the University of Kent prior to the merger of KIAD to form the University of the Creative Arts) it is fairly rare to see departments or teams move. We may see more of this, whereby one institution can derive more value (both in reputation and financial terms) by taking over a team or department from another institution.

Indeed in the private sector it will not be uncommon for a payment to be made to secure such a transfer and it is possible that this model may also be used in higher education. In essence this could be no more than an efficiency saving model.

These transfers will be TUPE transfers, but since employment terms are not substantially different across the higher education sector (except for pay to reflect geographic location) we do not envisage that this would be a major issue.

Use of groups

We are already seeing an increasing use of groups. As set out above, the University of Glamorgan wholly owns the Royal Welsh College of Music and Drama, which operates and is branded as a separate higher education institution and has its own UCAS code. The University of Surrey operates the Guildford School of Acting as a separate company.

We also have a number of HEIs which control schools and academies through companies (for example University College London and its academy). Many universities already have technology transfer companies and spin-out companies. We expect to see this trend increasing and expanding.

Not only do groups help ring-fence liabilities but they also allow the development of separate brands, and allow staff to be hired and engaged and students to be recruited on different terms (e.g. with different incentive schemes).

It also allows capital to be raised through other parts of the group. Whilst it may not be possible (or even desirable) to float a Royal Charter corporation, a Royal Charter corporation could establish a subsidiary (or a joint venture company) as a plc for a defined function (for example the business school outlined above). It could then seek to float that vehicle.

The fact that there are profit-making companies in the group should not pose a particular difficulty to universities, since any profits can be gift-aided to the charitable parent.

Charitable status

Some universities may choose to give up their charitable status or to operate part of their undertaking through a non-charity to allow themselves to be free of, or limit, charities’ regulation; this could also cause removal of the Hefce principal regulator obligation for that HEI.
Charitable status not only gives the tax benefits of not being liable for corporation tax or stamp duty and having business rates reliefs savings, but also allows charitable donations to be given.

Against that is the regulations which apply to charities. When Pearson took over the EDEXCEL examination board it effectively turned that charity into a cash pot charity. Pearson now successfully runs EDEXCEL; this demonstrates that charitable status is not essential to a successfully run education undertaking. In the short term, however, we may see institutions seeking to divide their charitable and non-charitable sides; in some ways this is akin to what Imperial College London has done in dividing its property portfolio from the rest of its undertaking.

**Designated institution status**

Some institutions may give up their designated institution status so that they choose not to receive any public funding. There is no doubt that Britain’s top-ranked universities could give up such designation and continue to recruit and attract enough students willing to pay full fees. However, since the government directly and indirectly controls the bulk of the research funding that those universities depend on, to some extent, it is unlikely that they would seek to give up that status in the short term without assurances that it would not impact upon their right to receive research funding. That may require a change from the research councils and their designation of a research organisation.

The University of Buckingham has operated successfully without designated institution status (although its students receive loan support). It is possible that institutions may consider that they can attract enough students (either from the UK/EU and internationally) without any public funding.

**Employee ownership and social enterprise**

The coalition government’s "Big Society" agenda in part encourages employee ownership and social enterprise; whilst these two concepts are separate they can be interlinked.

Employee owned means no more than employees having a stake in the organisation for which they work. For those HEIs already set up as a company limited by shares or a company limited by guarantee, it is possible now for them to become employee owned. Being a social enterprise does not involve the creation of a separate legal model from those that are available in the commercial sector; it simply requires a statement of intent written into the governing documents of the body setting out its social function and purpose.

It is, of course, possible that management buy-outs and management buy-ins could also be effected through such routes (possibly funded by private equity or other capital providers). Employee ownership could be for commercial gain but does not necessarily have to be so.
Employee ownership may or may not be coupled with bonus, incentive and option schemes, all of which could be implemented in the corporate structures outlined above.

**Alternative funding sources for HEIs**

Universities for many years have relied upon grants, endowments, bank debt, financing and the sale of surplus assets as their core funding. It is likely that they will need to look for new sources of finance.

Those sources of finance could include the equity finance set out above, whether directly into the HEI or via a joint venture vehicle.

There are, however, other routes that could be used.

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**Case study**

Clare College, Cambridge successfully raised an endowment fund a couple of years ago, using financial instruments and based on sound investment advice. The signs are that that has been a successful approach.

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Other possibilities are debt capital issues on a stock exchange (such as the London Stock Exchange). The fact that an institution is not quoted on the stock exchange does not stop it from being able to float a debt instrument (for example loan stock) on that market. This type of finance was heavily used in Victorian times to finance water, railway and other utility organisations.

It is also possible to have bond issues. Universities UK (in its Committee of Vice-Chancellors and Principals guise) several years ago launched a bond issue. This was not as successful as it could have been, possibly because it was done on a syndicated basis. One major advantage of a bond is the ability to have a so-called “tap” issue whereby the institution can go back to the market to raise further finance on the terms of the original documents.

Some universities have engaged in private placements under which they access the balance sheets of financial institutions such as pension funds, life insurance companies etc; we expect to see more of this.

In the long term, it may be possible for a public institution to float. Of course we already had the first quoted UK university (BBP) before its takeover by Apollo. If private sector investment becomes common in higher education and if that is of an equity type, then those equity investors will want to be able to see an exit route for their investment.

Typical exit routes required by private investors are somewhere between three to five years from the date of investment. The usual exit routes are a float, trade sale or a secondary buy-out (under which another financial investor takes over the position of the original investor). It is highly unlikely that these types of arrangements could take place in the context of a charity and, therefore, for
arrangements of this type to take place it is likely that charitable status will have been given up.

**Multi-university**

It is possible that we may see mergers between a UK and overseas university to form the core of a global university. There are no legal prohibitions on such a merger and no global company would think it could be global unless multi-sited internationally.

**Further/Higher Education and Schools**

There is an increasing overlap between the higher, further and schools sectors. HEIs do operate in the further education sector and with schools at the moment (eg University of Surrey with Guildford School of Acting and University College London with its academy).

With funding streams being maintained or even increased in the schools sector and the removal of local authority control over many more schools, there may well be opportunities for HEIs to offer a broader offering.

Independent schools are sometimes under financial pressure (and sometimes sit on valuable land banks). They may welcome a merger or other collaboration with an HEI as an alternative to being taken over by a larger independent school.

We believe that further education institutions will increasingly broaden their offering into higher education. The recent first grant of foundation degree-awarding powers and indeed taught degree-awarding powers to further education colleges is proof of that. Further education colleges may be an attractive way for the private sector to enter or maintain a presence in UK higher education since many of the investment possibilities that apply to public HEIs apply equally to further education colleges.

**Private training providers (PTPs)**

There are significant numbers of organisations operating in conjunction with HEIs. They may provide merger or investment opportunities for HEIs.

If, for example, a PTP had cash flow issues or could get better business traction by using the brand or contacts of an HEI then that HEI could invest in it (perhaps using some of the investment instruments of a venture capital fund), incentivising management and benefiting from income/capital gain from the investment and the spin-off symbiotic benefits of working with that company.

**Online and distance education**

Many private providers are now focusing their efforts on online learning or distance learning (or blended learning as a combination of the two). In this model they need only UK degree-awarding powers (and a marketable brand). They can base their
operations outside the UK and their target market might be outside the UK or EU. Students may well be part-time.

Some private providers predict that traditional campus-based provision will significantly decline.

This will be likely to affect the non-highly-ranked universities most.

**Shorter degree programmes**

We are already seeing many universities moving the length of their degree programmes from three years to two. We believe that this trend will continue and might further affect revenues at universities.

**Conclusion**

The only certainty for the higher education sector is that it will need to constantly evolve, adapt to circumstances and innovate. Many of the ideas contained in this report are common in commercial environments and perhaps this reflects the principle that there is nothing new - just a re-hashing of old ideas!

We do think that UK higher education is at a watershed. Those institutions that are proactive and flexible are likely to be the ones that succeed. This paper intends to float possibilities rather than advocate any particular strategy; every institution must set its own mission and strategy but we do hope that this paper provides some food for thought.
Biography  

Glynne Stanfield

Glynne is a partner in the education group at the international law firm Eversheds. He heads Eversheds Governance and External Relations practice and Eversheds International Education practice.

Governance: examples of work include being the lead partner on the merger between the University of Manchester and UMIST; the creation of the University of Cumbria and the incorporations of the University of Chichester and Roehampton University. Glynne advised on the setting up of the Quality Assurance Agency for higher education (QAA) and Office of the Independent Adjudicator (OIA). He acts for the Russell Group and is its company secretary.

International: transactions include advising the Washington Post Group on education institute acquisitions in the UK (including Holborn College), advising University of Technology Sydney on its joint venture in the UK with the University of Essex, advising Newcastle University on its arrangements with INTO, advising Nottingham Trent University and the University of Sheffield on their joint venture with Kaplan Inc. and advising the Open University on its Indian joint venture with NIIT (an Indian quoted company).

Glynne has worked extensively in the Gulf and Asia including setting up a branch campus in China for Glasgow Caledonian University, advising Newcastle University on its medical campus in Malaysia and marine engineering campus in Singapore, acting for City University on its joint venture in Dubai and University College London on its Adelaide campus. He recently acted for University College London on its biomedical joint venture with Yale University.

He advised Apollo Global on its takeover of BPP. In addition he has a number of private sector education clients including the US organisations Laureate and Bridgepoint Education. He also advises a number of US universities on their EU operations including Harvard, Georgetown and Vanderbilt.

Glynne is the author of the UUK guide to new structures in higher education (working with their Longer Term Strategy Group), a policy document for the 157 Group on preparing colleges for the future and is managing editor of the Universities UK guide to UK HEIs operating internationally. He is a regular speaker at events and conferences. He has been asked by the Universities Secretary, David Willetts, to provide input on education matters from a legal non party political perspective.

He has advised a number of education institutions in sponsoring academies and other schools.

He is a member of the US higher education organisation, National Association of College and University Attorneys (NACUA) and a member of the Institute of Chartered Accountants Corporate Finance Faculty. He is recognised as a leading lawyer in the UK legal directories ‘Legal 500’ and Chambers.
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