

Strategic Priorities and Risks

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Nicky Fairbairn, a partner in the Education team at international law firm DAC Beachcroft considers the dominant legal issues facing higher education.

As lawyers, our role is to ensure that our clients are as well protected as possible from the risks associated with strategic challenges. From our work with both the higher education sector and a range of other businesses, the feedback from the boardroom is that these challenges are digital transformation, well-being and climate change.

For higher education, digital transformation is especially focused on how teaching is delivered. COVID required an emergency rush to on-line; the post-pandemic scenario is more complex and nuanced. At one extreme there are the few who expect life to return to the innocent days of 2019; at the other, digital is the only way forward. The answer will lie somewhere in-between, with subtle differences for different institutions. While students are very much for a physical, rather than virtual, learning experience, this doesn't necessarily mean a return to the lecture hall. It is perhaps rather a return to the seminar room and research lab, for a more personalised and intense experience, with a greater number of flexible working areas able to accommodate changing requirements. This evolution has a widespread impact - on the future shape of the campus, on employment contracts, on intellectual property and data protection for example. As legal advisers, we can walk through scenarios with you, exploring the legal consequences of each decision.

It is important that students are clear about how they are going to be taught, with unambiguous explanation in the prospectus and at open days. Without this transparency, establishments are vulnerable to individual and co-ordinated claims of mis-selling. Clarity is especially important post-COVID as there is a sense that even if legal contracts haven't been broken, emotional contracts have been compromised and expectations clouded. Such an atmosphere is fertile ground for discord.

In a recent boardroom survey we undertook with "In House Lawyer", the subject of well-being came from very low on a list of priorities to almost the highest. Businesses in general are much more concerned about the provision of support around mental health for employees. Universities do also have a legal duty of care to their students and can be exposed to claims of negligence and referrals to the Office of the Independent Adjudicator for Higher Education. There is also the requirement under the Equality Act, that students with mental health issues are treated no less favourably. Policies and procedures concerning well-being should be accessible, transparent and understood.

Improved standards also apply to the environmental agenda. This is not just more environmentally conscious property management, but also delivery of new buildings and the use of construction materials that do not have a negative impact on the environment. From my experience, the drive for net carbon zero has been higher on the agenda for the education sector for longer than many other businesses and estate managers are highly aware of the need for extended compliance. However the costs for achieving this are significant, with consequences for other areas of investment around the campus particularly in this demanding pandemic response period.

Understanding what other organisations are doing to address these challenges can help short-circuit the route to a solution. With our range of operation across many areas of business, we see facilitating these cross sector discussions as another way we can support the changes that need to be made.

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