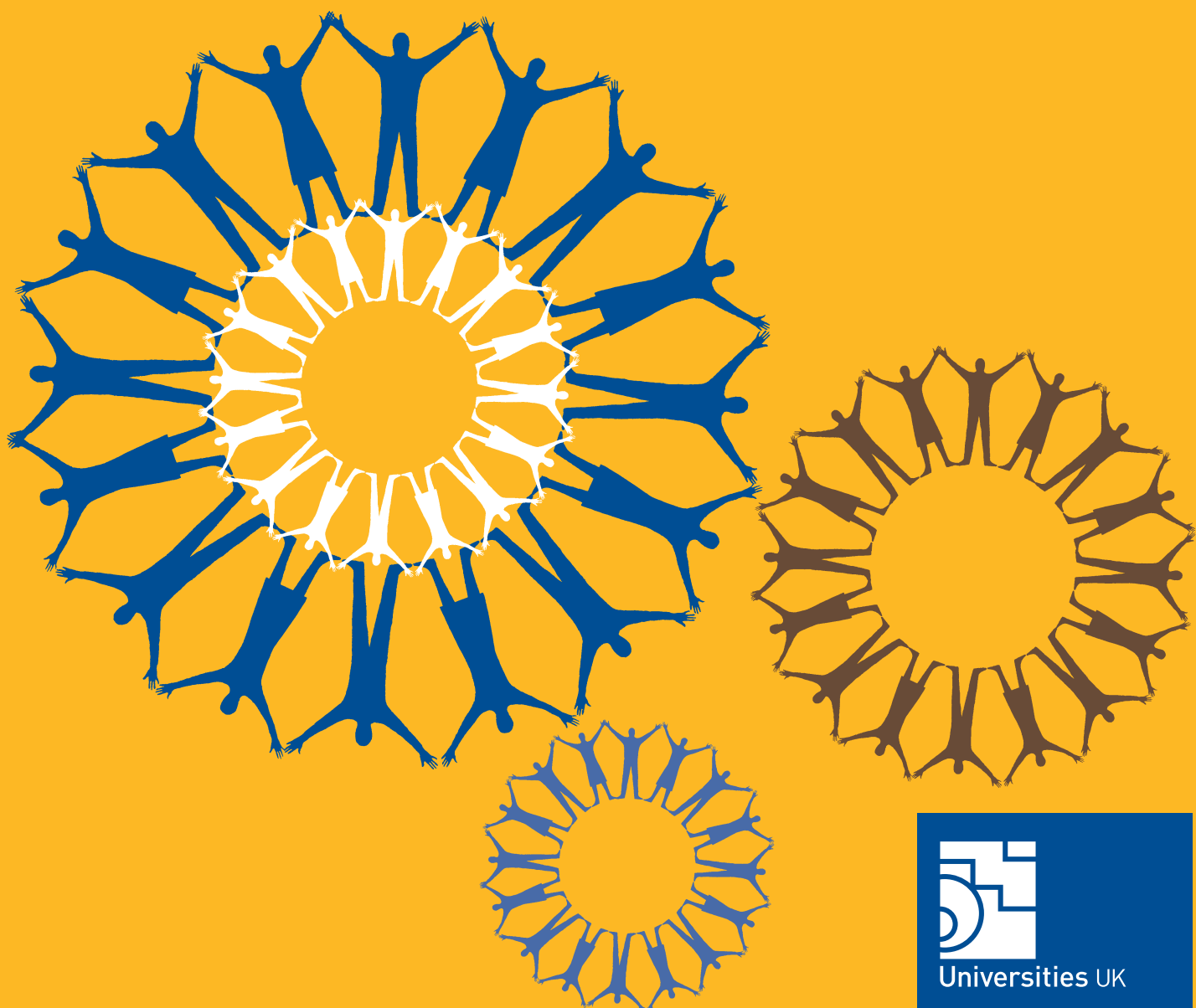


# Developing future university structures: new funding and legal models



Universities UK

This is the second policy commentary in a new series published by Universities UK. These policy commentaries provide an opportunity for invited authors to analyse and discuss higher education policy issues with the emphasis on future trends and opportunities. The series focuses on issues relevant to the longer term development of the sector and contributors are asked to highlight the future implications of strategic development for national policymakers and member institutions. The views expressed are those of the individual author; they do not necessarily represent the views of Universities UK.

This policy commentary has been prepared by Glynne Stanfield, Partner, Eversheds LLP. Eversheds LLP is a law firm that provides significant advice to the higher educator sector in the UK and overseas. It follows a presentation given by Glynne Stanfield to Universities UK's annual conference in Leicester in September 2007 and to its Longer Term Strategy Group on 22 January 2009. It will also feature in a session to be held at Universities UK's annual conference in September 2009.



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This policy commentary, which has been produced by Eversheds LLP, looks at future trends in the development of university partnerships and business models in the short, medium and long term:

- There is a trend towards British higher education institutions providing international education services either through the establishment of branch campuses outside the UK or through joint ventures or other collaborations to teach students based wholly or primarily outside the UK.
- The trend towards mergers of institutions in higher education will continue. There is a possibility that they could include mergers between institutions in different countries.
- There is likely to be an increasing crossover between higher education, further education and the schools sector in the UK, particularly as a consequence of the Government's academies and trusts schools' programme.
- There is likely to be increasing private sector involvement in the higher education sector with more organisations seeking UK degree-awarding powers. This may cause the private sector to become a stronger competitor to the UK publicly funded sector.
- We may see more organisations with powers to award non-UK degrees setting up operations in the UK. These could be full branch campuses established, for example, by Ivy League or other American universities or by universities in Europe or other parts of the developed world.
- Subject to government approval, there is a model available for a possible takeover of a British publicly funded university. This could be by a management buy-out or buy-in.
- There is likely to be a further move away from the public funding of universities with increasing interest in raising endowments and grants, the sale of surplus assets, conventional and unconventional loan finance and possibly equity or quasi equity investment. It is possible that there could be a stock exchange debt issue by a British university.
- The UK higher education sector does not operate on a level playing field as there are different types of legal entity operating in the sector. British higher education institutions have different legal rights and powers and some of these may be disadvantageous.
- We are likely to see an increasing use of group structures within universities. These structures could encompass more than one higher education brand, as well as further education, schools, ancillary services and commercial enterprises all being combined within a single group.
- We may see an increase in the use of dual or joint degrees.
- We may see British higher education institutions seeking to acquire powers to award non-UK degrees.
- There is likely to be an increasing emphasis on low-cost options in certain areas of the market. These could appeal to students from particular economic or geographical groups.
- There is likely to be an increasing crossover between the higher education sector and the health sector.
- We may see the creation of multi-jurisdiction universities.
- We are likely to see universities seeking to divide their charitable and non-charitable activities.
- We may see higher education institutions seeking to change their legal form; some may seek to convert to private companies limited by shares or to public companies limited by shares.

- 1.1** The last decade has seen significant changes in the interaction between publicly funded higher education institutions and the private sector. This has led not only to collaborations between the public and the private sectors but also to the public higher education sector seeking to learn from and, in some instances, to replicate the private sector's business structures and operations.
- 1.2** This policy commentary sets out the views of Eversheds LLP as to how those trends may continue to develop over the next few years. In some instances, the changes may happen quite soon, while others are more long-term and will depend upon the direction of government policy.
- 1.3** Where the phrase 'private sector' is used in this paper it covers those parts of the economy not primarily funded by the public purse.

- 2.1** The following trends have been observed by Eversheds LLP in its interactions with its higher education clients over the last few years:
- (i) more international students being taught outside rather than inside the UK;
  - (ii) increasing numbers of institutional mergers;
  - (iii) greater crossover between higher education, further education and schools;
  - (iv) an increasing interaction with the private sector and consideration by higher education institutions of what the private sector is doing.

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### International students

- 2.2** Until a few years ago, when universities thought about international student recruitment they meant trying to attract non-EU students to the UK home campus on the basis that those students were charged a full fee. That is still the major focus. However, there has been an increasing tendency to reach out to students who will not be based at (or possibly ever come to) the UK home campus. This is either through the establishment of branch campuses (which seems to us still to be in the formative stages) or through joint ventures and other collaborations with non-UK based organisations, with a view to teaching the university's UK programmes overseas.
- 2.3** Universities usually establish branch campuses on dedicated education enclaves, such as in the existing Dubai Knowledge Village (for example, the University of Bradford), Dubai International Academic City (for example, Middlesex University) or on newly formed developments such the EduCity initiative in Nusajaya, Malaysia (for example, Newcastle University's new medical school). However, increasingly standalone campuses are being set up, such as University College London's campus in Adelaide, the University of Nottingham's campus in Kuala Lumpur and City University's campus at the Dubai International Financial Centre.
- 2.4** We expect to see the trend increasing of UK universities establishing branch campuses on established or newly created EduCity sites or standalone ventures. Developments are most pronounced in the Gulf (particularly in Qatar and Abu Dhabi) but other countries within the region (for example Kuwait and Saudi Arabia) will try to attract British universities to establish campuses in those areas. While many branch campuses are established with a local partner they often receive soft funding or grants from local governments.
- 2.5** We expect the countries where British universities have traditionally established branch campuses (i.e. in the Commonwealth, China and the ASEAN region) to continue to be the main focus of interest, although campuses are also likely to be established in India as the regulatory framework changes. However, there still seems to be little interest in Africa or South America.
- 2.6** Many more British universities are continuing to collaborate with partners based outside the UK in setting up validation arrangements. The location of these partners and the target market for students tend to be the same as for the branch campuses. We expect to see this trend continue.

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### Mergers

- 2.7** We expect to see more mergers between institutions in the UK in the next few years. Many of these will be driven by financial pressures or the need to rationalise. Some may be driven by quality issues. However we expect to see the present diversity of higher education institutions in terms of their size and speciality to continue. Although the word 'merger' is often used to describe two or more organisations coming together the reality is often that one party is taking over the other(s); we expect this to continue.
- Many institutions will look at cost-sharing arrangements short of merger. These are likely to range from simple arrangements to share personnel and outsourcing to the creation of service companies to provide defined services.

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### Crossover of higher education, further education and schools

- 2.8** There is an increasing crossover between higher education, further education and schools. We have already seen examples of higher education institutions merging with (effectively taking over) further education institutions: the University of Glamorgan with Merthyr Tydfil College; Thames Valley University with Reading College. The current embargo adopted by the Department for Children, Schools and Families (DCSF) on further education corporations being dissolved for merger may slow the process although this may only be the case in the short term.
- 2.9** As higher education institutions are increasingly requested to sponsor academies (for example, University College London sponsoring the Camden Academy as lead sponsor rather than as secondary or co-sponsor) this will result in the academy companies (in effect) becoming part of that university's group from a legal if not an accounting point of view. It is a short move from this point to a British university having both a further education and school involvement and we expect to see more of this in the next few years.
- 2.10** With the onset of the 'credit crunch', we are seeing independent schools increasingly coming under financial pressure and we may see some of these schools being taken over by higher education institutions. Certainly, some independent schools have already moved from the independent sector into the state sector through the academy programme (for example, Colston Girls School and Bristol Cathedral School have transferred from the independent sector into the academy programme).

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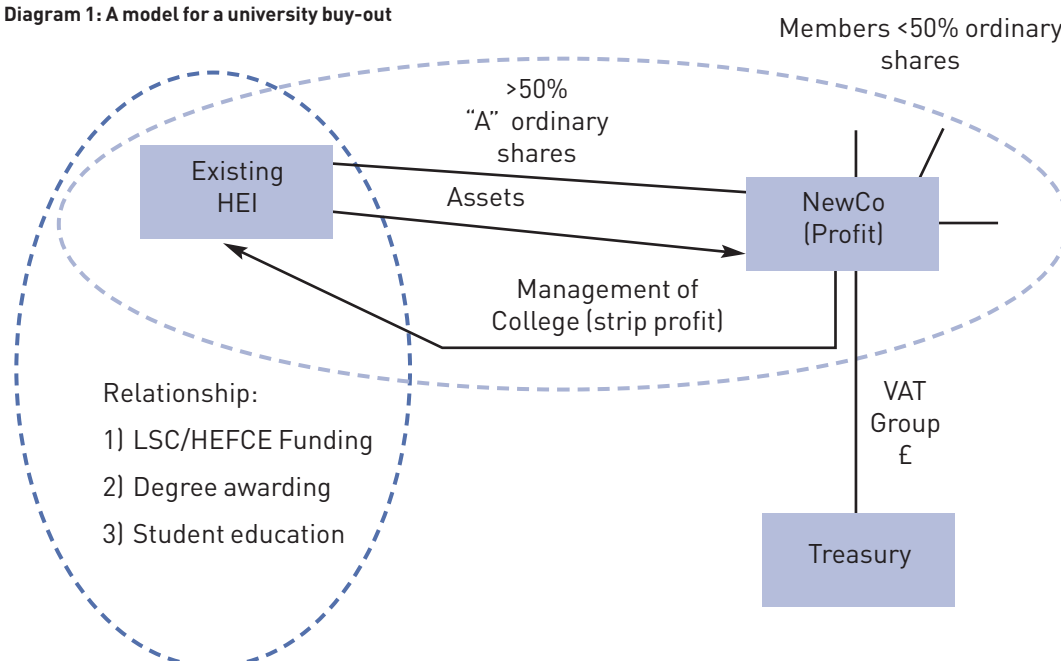
### Private sector involvement in the publicly funded higher education sector

- 2.11** Private sector involvement in the publicly funded higher education sector has increased over the last few years. At present, there are five main areas where the private sector most heavily interacts with publicly funded higher education institutions:
- (i) the private finance initiative and private public partnership schemes;
  - (ii) funding and investments (this is mostly through the banks but other financial institutions are also interested in making loans or managing investments for higher education institutions);
  - (iii) outsourcing (this has been particularly focused on IT but other functions are also commonly outsourced, such as catering);
  - (iv) services (such as legal and accountancy);
  - (v) foundation programmes: this is a relatively new area with numbers of providers such as INTO, Kaplan, Cambridge Education Group, Study Group and NAVITAS offering pre-degree programmes on British university campuses (sometimes branded as an international college of that university). The students then progress to the university. These programmes are likely to grow in importance.

- 3.1** As well as the areas where the private sector interacts with higher education institutions, there are other areas of involvement where it operates alone. These include:
- (i) the running of courses and programmes. Most of these will be non-degree but degree courses may become more common;
  - (ii) providing a significant amount of advice to Government in the formulation and development of public policy. This advice could drive outcomes that may not be in the interest (or perceived to be in the interest) of the UK higher education sector.
- 3.2** We expect to see private companies competing more intensively with the higher education sector over the next few years. At the moment, the arrangements are seen as generally mutually beneficial or symbiotic. However, there are likely to be increased tensions as competition between the two sectors increases.
- 3.3** There are other areas where private companies could seek to compete or interact with the publicly funded higher education sector. These include:
- (i) offering degree programmes; and
  - (ii) (more radically) supporting the takeover by, for example, buy-outs or buy-ins of publicly funded higher education institutions.
- 3.4** At present, in order to obtain UK taught or research degree-awarding powers, a process needs to be followed which, while clearly defined, is lengthy and difficult. BPP Professional Education is the best known of the organisations that have recently received degree-awarding powers. It is likely that other private sector organisations will apply for and obtain UK degree-awarding powers over the next few years. Whether those powers will be limited to taught degrees or may extend to research degrees is open to question. It is likely that in the short to medium term the degree-awarding powers of a private company will be limited to taught degree-awarding powers only. In some senses this may be all that a private company wants since research degrees may be more difficult for it to 'sell'.
- 3.5** The private sector may look at options for shortening the time it takes to apply for degree-awarding powers and making more certain that the application will be successful. One area where we believe there will be an increasing focus is in respect of listed bodies. Listed bodies are organisations that are on a register compiled by the Department for Business, Innovation and Skills, which is updated every couple of years. This list consists of institutions nominated by the publicly funded higher education institutions in the UK in response to a request from the department to supply names. They are bodies offering validated or franchised courses of the higher education institution that recommends them for inclusion on the list. They teach degree programmes but do not, themselves, offer their own degrees. The current list includes most further education colleges, private colleges such as Regents Business School London and major companies, such as Barclays Bank plc. Listed bodies are approved by the publicly funded higher education sector in the UK. British universities should consider carefully the type of institution that they approve to appear on the register of listed bodies, since these bodies have a potential value as we discuss below.
- 3.6** Many private organisations interested in obtaining UK degree-awarding powers (as well as the listed bodies themselves) review the organisations appearing on the department's list. This is because if a company were to take over a listed body and that listed body were then to apply for degree-awarding powers it may significantly shorten the time period for that acquiring company to obtain degree-awarding powers.
- 3.7** The main barriers to applying for degree-awarding powers are:
- (i) the need for an organisation to have most of its higher education students enrolled on study programmes that are recognised as being at level H or above (under the Quality Assurance Agency (QAA) qualifications framework); and
  - (ii) to have shown a track record in teaching those students over a period of no less than four consecutive years.

- 3.8** Once a body obtains degree-awarding powers there is often no restriction on the name under which those degree-awarding powers can be used. There is usually no requirement to use a particular brand or corporate name with the degree awards: just a general legal requirement of not being misleading.
- 3.9** Private organisations (of which there is only one at the moment – BPP Professional Education) are awarded degree-awarding powers for a period of six years but they are not affected by a change of control of the body holding those degree-awarding powers. Therefore, if BPP Professional Education were sold (as has recently been agreed) the new owner would have use of the existing degree-awarding powers. In addition the new owner could change the name of BPP Professional Education and operate those degree-awarding powers under its own name. If the name remained the same the new owner could use a (new) brand name with those powers. The Kaplan brand in the United States, for example, is a name of the Washington Post Group. In addition if that acquiring organisation already had, say, powers to award degrees in the United States, then it would then be able to award dual or joint degrees in its own name without any third party input.
- 3.10** We also expect to see more private companies offering non-UK degrees in the British domestic market. The barriers to entry for an organisation offering foreign degrees are significantly less than acquiring degree-awarding powers in the UK. There is nothing to stop a foreign organisation (whether profit-making or not) establishing itself in the UK and offering foreign degrees; it is simply required to ensure that all students and other applicants are aware that the degree that they will receive will be a non-UK degree.
- 3.11** It is possible that private companies or investors will wish to encourage takeovers of publicly funded higher education institutions by buy-outs or buy-ins. Contrary to what is currently envisaged by the sector, it is possible (subject to the approval of the Department for Business, Innovation and Skills) to, in effect, take over a publicly funded higher education institution. A model for a buy-out is set out below:

**Diagram 1: A model for a university buy-out**



Note: The use of A ordinary and ordinary shares is to delink the economic value of a share from its voting rights so that A ordinary shares carry more than 50 per cent of the votes but not necessarily more than 50 per cent of the economic value.

- 3.12** Under this model, the existing higher education institution will retain its position as a designated institution for the receipt of funding council grant and any Learning and Skills Council funding (if relevant), as well as its own degree-awarding powers. It will also retain its own governing body and its responsibilities in relation to student education.
- 3.13** In return for a cash or other agreed sum, the higher education institution will transfer its assets, undertakings and agreed liabilities to a new company (Newco) in which the both the existing institution and third parties (such as members of the management team or funders) would have an interest.
- 3.14** Using this arrangement, the existing institution and the Newco would be in a VAT group and, therefore, there would be no VAT charge on cross-services nor any need to charge VAT on student fees.
- 3.15** In the particular model shown above, the UK Treasury receives the capital value of the higher education institution and off loads the risk of it to a commercial third party. It would be possible, for example, to float the Newco on the London Stock Exchange (or indeed a foreign stock exchange).
- 3.16** This model may be advantageous to a Treasury wishing to realise capital value from a higher education institution, to transfer risk to the private sector and/or allow additional forms of capital to be raised by a higher education institution.
- 3.17** There is no present indication from the UK Government that it wishes to see such a model develop but similarly there are no legal impediments to such a structure being deployed now.

- 4.1** At present, public funding makes up most of the income of a large number of British universities. We expect that to change over the next few years with increasing pressure on public funds.
- 4.2** We are likely to see increasing emphasis on funding for mostly capital but possibly also for revenue purposes by:
- (i) endowments and grants (be they from other charities, the private or public sector);
  - (ii) sale of surplus assets;
  - (iii) loans (conventional and unconventional);
  - (iv) equity or quasi equity investment.
- 4.3** Endowments and grants (be they from other charities, the private or public sector) are much sought after by British universities but in reality most endowment funding goes to relatively few institutions. Similarly, grants tend to go disproportionately to the most research-intensive universities. We believe that this is unlikely to expand as a major source of income for the sector.
- 4.4** The sale of surplus assets has for several years been a typical way of financing new developments. That is likely to continue although many British universities have already taken advantage of selling surplus assets to realise capital sums.
- 4.5** Loans at very competitive rates of interest had become a feature of university finance. Until the credit crunch, the banks were vying with each other to lend on finer and finer terms and on an unsecured rather than a secured basis. The credit crunch has, at least temporarily, changed that market place. Loans are still available but on less advantageous terms. Our view is that once the credit crunch has passed it is likely that loan finance will revert to rates closer to the cheap rates that were on offer before the recession.
- 4.6** We are likely to see equity or quasi equity investments made in the sector. There are a number of higher education institutions in the UK which are formed as companies limited by shares or by guarantee. They have the advantage of being able to raise equity or quasi equity investment from third parties. The investors are likely to be non-financial institutions so that as well as providing finance they would also provide know-how, skills and expertise which would add value to the university. It would also add value to the investors as an organisation and, therefore, increase the value of that organisation.
- 4.7** As an example of what is possible, any private company (whether a company limited by guarantee or shares) can float a loan issue on the London Stock Exchange. This was the way in which a number of infrastructure projects were financed in Victorian times (for example, the railways and water companies). We may see a return to this, particularly when investment returns are falling and there is concern over the value of investments.
- 4.8** Other examples of investments in the sector are likely to include bond issues (which have been tried before and are likely to reappear with an increasing interest in the bond market during the credit crunch). It is likely that bond issues will be for a single institution rather than, in the past, linked to a number of institutions. In the United States, for example, bond issues are a major way of financing higher education institutions and we see no reason why this could not translate into the UK market.
- 4.9** An interesting case study showing how funding can be used creatively is that of Clare College, University of Cambridge, which recently set out to raise an endowment fund. In this structure, Clare College borrowed a capital sum (£15 million) from a clearing bank over a period of 40 years at a fixed rate of interest. Simultaneously with acquiring that loan, Clare College swapped that interest rate from a fixed rate to one linked to the UK rate of inflation. As a result the college is paying an interest rate linked to the real inflation rate in the UK.

- 4.10** Clare College then placed the £15 million into a series of tracker funds tracking UK, American and Asian stock markets and it intends to track those markets over a period of 40 years. Research from Clare College shows that in no ten-year period, since records began, have stock exchange returns been less than the rate of inflation. On these conservative figures, Clare College believes that it could make, in today's money, an endowment fund of £85 million after repayment of all costs at the end of the 40-year period. Its returns may be helped by the fact that stock exchanges are currently trading at low levels and interest rates are also at an all-time low. Such innovation is likely to continue.
- 4.11** With investment returns to higher education institutions on their surpluses reducing, but banks not passing on lower interest rates to the sector, we may see the higher education sector create and run its own mutual fund under which higher education institutions invest in the fund and the fund lends to higher education institutions at lower rates and better terms than those offered by commercial banks. In this way universities benefit from better interest rates and terms on their borrowings whilst getting better investment returns on their deposits.

5.1 Higher education institutions in the UK operate through a range of different legal entities as follows:

Diagram 2: Legal entities



5.2 The above chart shows, in order of prestige, flexibility and legal freedom to operate, the different legal forms that are used by British higher education institutions.

5.3 Trusts, which used to be a common model, have virtually disappeared from UK higher education over the last few years as pressure, particularly by the funding councils, has been put on the trusts to incorporate.

5.4 For higher education corporations which are statutory corporations, there has been a recent initiative to relax their instrument and articles of government but it does not affect their powers. Statutory corporations only have the powers expressly or by necessary implication invested in them under the relevant Act of Parliament.

5.5 There was a move for higher education corporations to be able to convert to companies limited by guarantee but none has yet done this. We think that a number of higher education corporations may seek to convert to companies limited by guarantee or possibly companies limited by shares over the next few years.

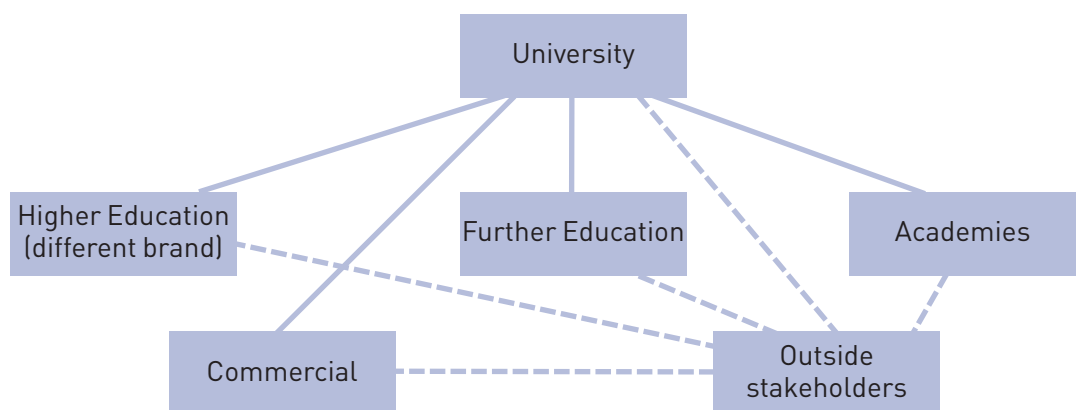
5.6 Companies limited by guarantee have greater freedom than statutory corporations including, in particular, the right to increase the powers in their memorandum of association to support their charitable objectives. Companies limited by shares have all the benefits of a company limited by guarantee plus an ability to raise capital and make distributions which are not available to a company limited by guarantee.

5.7 Royal Charter corporations have all the powers of a natural person and, therefore, are regarded as the best form of legal entity. There is also a certain prestige attached to them. Government policy is currently against the creation of new Royal Charter corporations. This is partly driven by an attempt to reduce the workload of the Privy Council Office, which is responsible for the administration of Royal Charter corporations (most of which are not higher education institutions). It is possible, however, that the Government may feel that the use of a Royal Charter for certain institutions may be beneficial. Certainly, Royal Charter corporations in England and Wales have benefited from a Government initiative in 2007 to relax the areas of Royal Charter corporations over which the Privy Council has control. This was followed by a similar initiative in Scotland in 2008.

5.8 What is clear is that each of these legal entities has different powers and, therefore, higher education institutions which, on the face of it, appear to be similar but in fact have dissimilar powers. This was brought sharply into focus when a large number of higher education institutions embarked on business expansion schemes back in the early 1990s. Some institutions were, because of their legal form, unable to take part in these schemes. At present, the Government does not appear to want to tackle the issue that different educational legal entities have different powers but as higher education interacts more with the private sector this is likely to be brought more sharply into focus.

- 6.1** One area in which we are seeing an increasing interest is the use of group structures by universities. Until five years ago, university group structures were virtually unknown except in the context of a university having a trading company and investments in spinout companies. Recent developments have changed that.
- 6.2** For example, when the Royal Welsh College of Music and Drama merged with the University of Glamorgan, the university set up a separate company (limited by shares) which it wholly owned. The new company took over the assets, liabilities and undertaking of the Royal Welsh College of Music and Drama. The college is run through that separate company, which has its own board of directors, and receives its funding from the Higher Education Funding Council for Wales through the university. The students are registered as students of the college on awards of the University of Glamorgan. The model means that a separate brand is used with the ability to contract in its own name and ring-fence liabilities and risk from the parent. Whilst the University of Glamorgan has not taken this route because of the risk of equal pay challenges (for example), it could also allow staff and students to be engaged on different terms from those of the parent. This is a model that could be used elsewhere particularly where there are examples of different brands being used by one university.
- 6.3** The University of Glamorgan has recently put Merthyr Tydfil College (which was a further education college that it took over in 2006) into a separate company (limited by guarantee) again wholly owned by the university. This is therefore an example of a university having both a higher education and a further education brand through separate companies in its group. As universities become the lead sponsor of academies (for example University College London and its Camden Academy) those academy companies would also be part of the university's group for legal purposes (although in those cases not for accounting or financial purposes). It is possible, therefore, in a single group to see higher education, further education and school brands, all of which are distinct and separate but controlled by a common parent company.
- 6.4** This is likely to be intermeshed with commercial companies within the group which could have funding and interest from outside stakeholders.
- 6.5** A diagrammatic representation of a likely group structure is set out below.

**Diagram 3: University group structure**



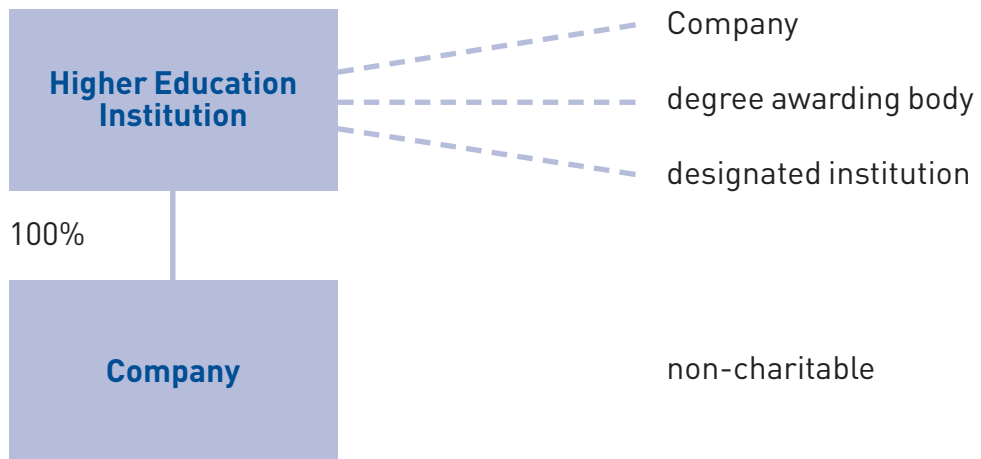
Note: A group structure allows different brands to be used. It may allow staff and students in specific companies in the group to be engaged on different terms.

- 7.1** British universities are likely to face competition not only from the private sector but also from other entities.
- 7.2** There is nothing, for example, to prevent an Ivy League or other American university setting up a campus here. There are more than 75 American universities that have operations of some type in the UK (including Harvard, Georgetown and Vanderbilt). A number of those operations are summer-only programmes but the recent changes to the UK student visa rules have meant that several American universities have, in order to operate in the UK, had to register with the UK Border Agency for the first time. They have become aware through the registration process that they could, effectively, operate full-time programmes here and that the constraints on them are slight. It is difficult to argue that the value of an Ivy League degree is any less than that of a UK degree.
- 7.3** It is possible that a UK further education institution or a professional teaching body (such as the Royal College of Nursing) or learned society could seek degree-awarding powers, which could either be British degree-awarding powers or foreign degree-awarding powers. In that way, British universities may face competition from other publicly funded bodies in the UK.
- 7.4** There is likely to be an increase in the use of dual and joint degrees. A number of British universities when looking at changes to their Royal Charter (following the Government initiative referred to above) have taken the opportunity of including provisions in their charters to allow them to offer dual and joint degrees. It is also possible that those universities may seek foreign degree-awarding powers and, therefore, offer programmes which give two degrees by the same institution for a single course. For example, the Open University has both British and American degree-awarding powers (with the latter accredited in the United States through the Middle States Association). There may be some attraction in offering one course leading to two degrees of a single institution. This may be enhanced through foreign branch campuses of British universities.
- 7.5** We may see an increasing interest in foreign universities setting up in the UK to target a particular audience. We have already seen a small number of Polish universities offering Polish degrees in the UK and seeking to attract Polish students who may return to Poland in the future. There are other countries with large populations in the UK which could be attracted to this approach particularly if those universities are offering programmes at discounted fees (compared to the UK fees) and those programmes are recognised in the students' home country. The fact that it would be much more difficult for a British university to set up in Poland, for example, is immaterial since mutual reciprocity is not embedded in any of the legislation allowing foreign universities to set up in the UK.
- 7.6** There has been an increasing crossover between higher education funding and health funding offered through the Department for Business, Innovation and Skills and the Department of Health. Two recent initiatives (the 'academic health science centres' and the 'health innovation and education clusters') show that the Government has become aware that research funding (in particular in the medical and biomedical areas) is provided through two separate and discrete streams and is seeking to bring them together. Five academic health science centres are being formed (Cambridge, Imperial, Kings, Manchester and University College London). These are joint ventures between universities and NHS foundation trusts/NHS trusts. Following on the academic health sciences centres are the health innovation and education clusters which come with Government funding. This is another attempt to create formal joint ventures between the health and education sector.
- 7.7** There is also the recently announced UK Centre for Medical Research and Innovation (involving University College London, the Wellcome Trust, Cancer Research UK and the Medical Research Council) which is targeting health funding and education funding. We would expect to see more of this over the next few years. It may extend to commercial companies (including the big pharmaceuticals) targeting these areas.

**7.8** We also believe that it is possible that we will see a multi-jurisdiction university in the next few years. This could be created by the merger of two institutions in different countries or by one institution setting up a number of campuses and seeking degree-awarding powers from some or all of the countries in which it operates. Under current British laws, there is nothing that would prevent such a development. This could be an extension of the model used by the University of Kent in France and Belgium.

**8.1** The recent Charities Act 2006 has made radical changes to charities law; it has forced many British universities to consider their charitable status. While originally this may have been in the context of the charitable status of their student unions (and any other entity that had exempt charitable status), we believe that the legislation will cause British universities to consider whether they should divide their charitable and non-charitable activities. An example of how this might be done is set out in the following chart:

**Diagram 4: Charitable status**



- 8.2** By adopting such an approach, a higher education institution can keep those activities which are required to be charitable together with its degree-awarding powers, designated institution status and student contracts in the institution, while transferring all its non-charitable activities into a wholly owned company. To the extent that the company then makes a profit it can ‘gift aid’ the surplus back to the higher education institution.
- 8.3** In this way, the restrictions that apply to a higher education institution because of its charitable status will not affect those activities that do not need the benefit of charitable status.
- 8.4** It may also be possible for institutions to convert to private companies limited by shares or public companies limited by shares. Under the model above, if the company established was either a public or private company limited by shares then it would be possible to float on a stock exchange part of the share capital of that company as a way of raising capital.

- 9.1** As a result of the independent nature of British higher education institutions, they have a great degree of flexibility as to the business models that they can adopt. As UK higher education increasingly becomes more global we are likely to see an increase in innovative models of the kind discussed here.
- 9.2** All the models shown in this paper could be developed in accordance with current law now.
- 9.3** Some ideas are more radical than others but history shows that universities that stand still do not tend to evolve as rapidly as those that innovate.
- 9.4** This report argues that there is the possibility (if not likelihood) of the private sector overlapping more with the public sector in both symbiotic and competitive ways.
- 9.5** It also highlights the increasing importance of international education and other partners outside of the UK together with competitive pressures from other parts of the UK education sector.
- 9.6** Access to additional sources of private capital might become more important with a debt laden Government.



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## About Universities UK

This publication has been produced by Universities UK, which is the representative body for the executive heads of UK universities and is recognised as the umbrella group for the university sector. It works to advance the interests of universities and to spread good practice throughout the higher education sector.

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