

Morgan Cole

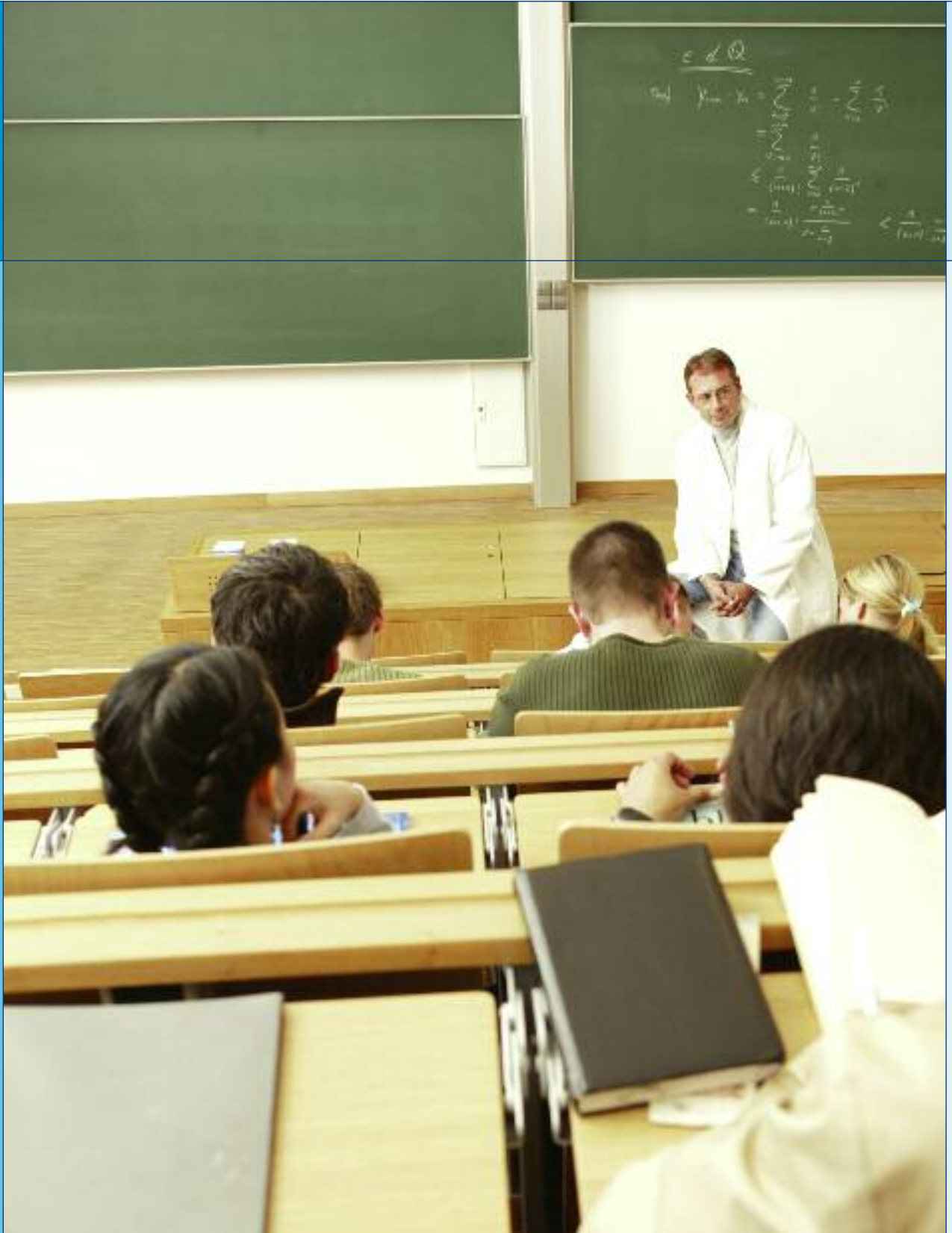


higher and further education

www.morgan-cole.com

delivering high quality legal services from offices in wales and southern england





dedicated, focused legal advice

Morgan Cole is a successful and enterprising firm of lawyers that provides an extensive range of legal and consultancy services to clients in both the public and private sectors.

We employ more than 400 people in offices throughout Wales and southern England. Amongst our staff we have more than 50 partners, assisted by in excess of 200 lawyers.

We have a significant client base and are recognised in England and Wales as a leading provider of specialist legal services to the education sector. Our experience gives us a real understanding of the sector and enables us to offer practical and relevant legal advice in respect of the very broad range of issues that now face universities and colleges. We understand the pressures of having to deliver academic excellence on the one hand, and on the other having to ensure the need to maximise income from a wide range of sources, the need to widen access, and increased competition within the sector (which itself has to be balanced against the pressure to collaborate).

Morgan Cole has a particular expertise and experience in the following areas which impact on the day-to-day operation of colleges and universities:

- constitutional law and regulatory matters
- funding issues
- collaborations, joint ventures and mergers
- student matters
- procurement and commercial contracts
- professional and operational staff
- intellectual property and information governance
- data protection legislation
- estates and property management
- construction and engineering
- health and safety

constitutional law and regulatory matters

Morgan Cole provides specialist advice on constitutional issues for educational establishments including governance and probity. Whilst institutions are being encouraged to operate outside their traditional areas it is clearly vitally important that they operate in accordance with their constitutions and existing legislation.

We have many years experience in advising education establishments in connection with the particular idiosyncrasies of their constitutions whether founded by statute or Royal Charter. Whilst the constitutions of further education establishments are clearly set out in the Further and Higher Education Act 1992 there are issues, particularly in respect of subsequent legislation.

Funding issues

Our corporate team regularly advises clients in relation to obtaining funds and raising finance for the acquisition of corporate entities. This involves providing full due diligence regarding the assets and liabilities of the acquisition under consideration.

Our banking team has experience of advising both institutions and lenders in the granting and taking of facilities, most usually in connection with significant property projects. We have also advised in relation to major PFI and PPP schemes.

Our experience includes:

- advising a funding council on its statutory powers
- advising on the merger of two chartered institutions
- advising the Federal University of Wales on proposed fundamental amendments to its Charter and Statutes following the Dearing Report
- advising two HEIs on structuring and funding issues and the establishment of a residential arts centre and a film school respectively
- advising on what has been described as "the most legally complex petition ever" to a Visitor which challenged the very essence of Swansea University's constitutional and administrative arrangements
- advising on applications for academic appeals procedures in terms of assessing procedural fairness and openness and the availability of appeals under the Human Rights Act
- advising educational charities and their trustees on changes to their founding statutes and regulations, personal liability and compliance with charities act requirements including disposal of land; accounting and reporting requirements



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collaborations, joint ventures and mergers

Our commercial team has particular experience of advising on joint ventures whether between institutions and each other or between institutions and the private sector. In our view, if a collaboration is to work, there must be very clear and measurable objectives, proper due diligence, simple and clear documentation plus, most importantly, the 'chemistry' must be right.

Our experience includes:

- advising the University of Wales Swansea in a collaboration with IBM which involved the installation, at the University's Institute of Life Science, of a multi-million pound computer
- the drafting of validation and collaboration agreements between a university and the private sector
- the preparation of collaboration agreements between two universities and an institute of higher education
- advising in connection with the constitutional implications of a potential merger between two of the constituent elements of the University of Wales

student matters

Educational institutions have had to come to terms with a rapid growth in both the number and variety of disputes such as issues connected with academic selection, sex or race discrimination and the rights of the disabled plus special education needs.

There has also been a marked growth in the number and range of disputes of a contractual nature, often involving problems over the payment of fees. HEIs accordingly have to be careful to not inadvertently create contracts such as by making informal offers and also not to breach any contract that is already in existence. Internal guidelines and regulations are essential to protect universities and many HEIs now issue a student 'charter' or similar document to try to formalise the rights and obligations of the HEI and its students.

The issue of liability also arises in the context of an HEI's duty of care to its students and any purported negligence by the HEI. Negligence claims have in the past been largely confined to cases of personal injury (including nervous breakdowns or stress) but recent case law in the secondary education sector suggest that claims for negligently failing to recognise a special need and for poor teaching may be successful.

Not only do we have a large dispute management division which regularly advises on potential negligence claims, we have also advised HEIs on issues specifically related to students including the granting or refusal of degrees, the appropriate fees payable by an overseas student given the wrong information, the duty of care owed generally to students and, in particular, the duty of care owed to students on field trips.

Our solicitors are experienced in dealing with criminal issues of the type that can arise within educational establishments and handling consequential police involvement. Examples of such issues might be episodes of bullying, assault, dishonesty or drug abuse. We are particularly conscious of the paramount need to protect reputations wherever possible, and our solicitors' extensive experience in criminal work can provide clients with both reassurance and guidance when it is most required.



Our experience includes:

- advising in relation to legal challenges to educational institutions concerning admissions policies and practices
- advising in relation to the recovery of unpaid fees. We have a dedicated debt recovery team
- acting for educational institutions in disputes relating to internal disciplinary inquiries and proceedings and on some occasions serving on disciplinary panels
- advising in relation to unfair practice procedures relating to investigations with regard to students sitting examinations
- advising on several disputes relating to the granting and/or refusal of ordinary degrees, research degrees and other academic qualifications, including substantive and procedural issues and, in particular, Human Rights Act implications
- advising on disability and race discrimination issues relating to students
- advising as to the proper procedure to be followed in sensitive academic disputes/grievances between members of staff and advising as to the conduct of relevant investigations
- advising on the implications of recent legislation for the assessment and evaluation of special educational needs, and the curricular implications for the institutions concerned
- representing a leading college of higher education in court proceedings brought by students for negligence, breach of contract, and misrepresentation for allegedly failing to deliver on curricular and on advertised course content
- advising both a college and a university in relation to the downloading of pornographic material and computer mis-use
- advising a college on its internal disciplinary procedures and dealing with the suspension of an undergraduate for harassment of a female student including setting up the disciplinary hearing, considering the available evidence and providing guidance on the procedure to be adopted to comply with Rules of Natural Justice and the Human Rights Act

procurement and commercial contracts

We have experience of advising in respect of all types of commercial and contractual matters, for example, legal work on all aspects of intellectual property including patents, licensing, royalties and sponsorship as well as product liability issues.

Our commercial team also covers issues such as funding agreements, joint ventures and other collaborative ventures and we have a specialist EC/Competition law team.


We have expertise in the legal and commercial aspects of both procurement and supply processes and transactions. Some of these will be governed by standard procedures and provisions whilst others will be bespoke. Exceptionally, aspects of procurement or supply will be undertaken as a joint venture.

We are practical and commercial in our contract work. Where standardisation is appropriate we will encourage its use. Where bespoke contractual arrangements are required we bring an analytical and creative approach focused on achieving what our clients want within their powers and budget.

Examples of recent advice given include:

- drafting licence agreements for universities whereby they license out bandwidth allocated to them by UKERNA to third parties
- drafting a concession agreement with a supplier of academic dress for degree awarding ceremonies
- drafting an agreement for warehousing of books and material published by a university press
- advising a wholly-owned subsidiary of a university on the contents of its consultancy contract, both with academic staff and with third parties
- advising educational institutions as to the applicability of EC procurement regulations
- advising in connection with the acquisition and maintenance of IT systems
- drafting concession and licence agreements and advising on branding
- advising the University of Wales on its standard academic validation and franchising agreements
- advising on the letting of premises for public meetings especially in the light of the Human Rights Act
- advising HEIs on the franchising of various courses to other institutions abroad





Examples of cases in which we have been involved recently are:

- representing an institution connected with a university in a court action concerning the validity and protection of a patented invention
- advising universities in relation to such matters as the negotiation of website development agreements, data protection provisions, drafting terms and conditions of use of websites
- acting for an HEI in connection with advice and implementation of its knowledge exploitation funded IP audit, including providing training and education seminars to staff and students on the nature and characteristics of intellectual property rights
- advising an HEI on the registrability of its names and logos as trademarks, including the strategy of licensing such trademarks and logos to overseas universities providing accredited degrees
- advising an HEI in connection with its strategy for the exploitation of intellectual property rights created by its employees

intellectual property and information governance

The protection and development of IP is clearly a potential income-generator. Morgan Cole has developed a service specifically aimed at educational institutions concerned with the management of intellectual property.

We work with the institution concerned to put in place appropriate intellectual property management, disclosure and incentive structures, advice on preferred exploitation strategies and a detailed IP policy. We also prepare training materials for staff and students, deliver training seminars, and assist chosen personnel to ensure the ongoing education of students and staff in all relevant aspects of IP management.

Other specific intellectual property issues which can arise in an educational environment include an establishment's possible exemption from copyright legislation in relation to copying copyright material for teaching purposes. We can advise on all such issues arising from the Copyrights, Designs and Patents Act 1988.

Morgan Cole has recognised expertise in relation to data protection law having provided data protection services and advice to a wide range of clients in both the private and public sectors.

The case of *Durant v Financial Services Authority (2003)* which refined the scope of the meaning of 'personal data' for the purposes of the Data Protection Act 1998 (DPA), together with the recent expansion of the statutory definition of personal data as it applies to public bodies (as a result of amending provisions contained in the Freedom of Information Act 2000 (FOIA)) pose new challenges for many public sector bodies as they navigate their way through the complex requirements of the DPA. In our experience public bodies are concerned to avoid the damage to reputation that can occur where sensitive personal data is mishandled or where unlawful disclosures are made.

The firm routinely deals with queries from Government, NHS trusts and educational establishments in relation to subject access requests made under the DPA. Increasingly we are called on to advise on the application of the 'personal information' exemption where trusts are processing requests for information under the Freedom of Information Act.

We also have considerable experience in delivering training on the Data Protection Act and confidentiality in a way that enables key staff at all levels to gain an appreciation of the data protection principles and the chief obligations of data controllers under the DPA without becoming unnecessarily overwhelmed by the DPA's legislative complexities.



professional and operational staff issues

Our employment, pensions and benefits group provides a comprehensive range of services in this area, acting for universities and other HEIs.

The group is particularly active in providing advisory training facilities for clients. In this respect we undertake extensive contract audits to ensure the client's contracts and policies comply fully with legal requirements, and we run a series of training seminars aimed at our education clients to inform them of the key issues in employment, pensions and employee benefits law. This comprehensive training programme is aimed at audiences which include HR professionals, managers with disciplinary responsibilities, and those involved in the strategic direction of an institution.

We run annual employment forums and workshops at our offices. Recent topics covered include parental leave, part-time and fixed-time work, regulations, TUPE updates, discrimination updates, data protection and human rights, corporate killing and disciplinary and grievance procedures.

Our work with other education clients has included:

- representing a leading educational institution in connection with whistle-blowing complaints under the Public Interests Disclosure Act 1998
- representing a leading university in disciplinary proceedings concerning the exclusion of academic members of staff
- representing universities in the employment tribunal in complex cases involving complaints for unfair dismissal, race and sex discrimination
- advising a leading higher education corporation on a union dispute involving strike ballots and industrial action
- advising Principals of HEIs and Boards of Governors on disciplinary and appeals issues
- reviewing the Working Time Regulations in relation to holiday pay and entitlements for part time employees
- advising upon the interpretation of the Fixed Term Contract Regulations and the impact upon staffing issues
- providing advice in relation to a major restructuring of management and departments
- providing advice in relation to internal grievance and disciplinary enquiries and proceedings including several high-profile incidences
- advising on converting fixed-term contracts to indefinite appointments, and on the new requirements necessary to allow a request for flexible working
- re-establishing the procedures for the implementation of the Commissioner's model contracts of 30 colleges in the University of Oxford and the associated rights and guidance documents including drafting university bylaws for the disciplinary and appeals procedure

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estates and property management

Morgan Cole has wide experience of complex development work as well as landlord and tenant, acquisition and disposal work in the education sector.

Recent areas of work include:

- acquisitions of land for student and teaching accommodation, including contaminated sites requiring remediation
- acting on the development of a regeneration park and in the acquisition of a (highly confidential) development of 100,000 square foot development for a university
- sales of surplus land including JVs with local authorities mainly involving housebuilders
- the development and subsequent implementation of an estates strategy for a further education college
- new builds and development of teaching and sports facilities
- development of grant-funded research facilities
- creation of complex leasehold structures on multi-party/used sites
- deeds audits and archiving - including pre-merger due diligence and title cleansing
- a complex PPP scheme in relation to the building of a new halls of residence
- providing a variety of advice on landlord and tenant issues in both FE and HE, both contentious and non-contentious
- providing preliminary advice to a FE college which is intending to reconfigure entirely its estate and undertake a significant new-build



construction and engineering

Members of our construction team have worked in industry combining their legal expertise with first-hand commercial experience. Our approach is always pragmatic. We are sensitive to commercial realities and risk.

We believe that our experience enables us to adopt a holistic approach to take account of each individual client's needs and concerns.

The team has extensive experience of dispute resolution and management, involving litigation in the Technology and Construction Court, arbitration, adjudication and mediation. Members of the team include qualified mediators and a Fellow and Associates of the Chartered Institute of Arbitrators.

Our broad experience in these sectors enables us to have a comprehensive understanding of the different needs and requirements of specific projects and different parties. This understanding assists us greatly in supporting our clients - both in drafting sustainable contracts and in conducting effective negotiations.

Instructions handled by the team include:

- advising a university on major cost overruns on the development of a research institute. Avoiding adjudication of the contractor's claim and achieving an excellent settlement in adverse circumstances
- acting for a university in relation to the replacement of its existing halls of residence on a five-acre site housing 400 students, into halls accommodating 750 students
- acting for a university in the design, build and refurbishment of existing accommodation for single students and mature students with families, together with the provision of facilities management services
- acting for a number of universities in relation to BES schemes. Whilst these schemes are no longer available, they illustrate our track record in large public/private sector capital and development projects

health and safety

Health and safety considerations, and associated risk management, have risen to the fore in workplaces of every sort over the past few years. The strict obligations imposed by the Health and Safety at Work Act apply as much to college authorities as they do to commercial and industrial enterprises - perhaps even more so, given the special duty of care that rests on those responsible for young people.

Morgan Cole has a regulatory team which advises on all aspects of compliance in this field, and where accidents happen, helps to deal with the investigating authority. Our aim is always to keep the risks of prosecution and damage to reputation down to an absolute minimum. In addition to advising on policies and compliance, we can assist with the formulation of emergency response plans to cover the event of a serious accident.

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