



## University Governance and the Financial Challenges Posed by Coronavirus

**In light of the financial implications facing many universities due to COVID-19, VWV's Con Alexander and Jane Byford outline key areas that need considering from a governance perspective.**

There is increasing public awareness of the challenges facing universities as a consequence of coronavirus (COVID-19). Not least are the adverse financial implications raised by reductions in tuition fee income and revenue from housing, catering and conferences. Many within the UK's higher education sector are already operating on narrow margins and have in past years taken on significant amounts of debt.

While some support has been announced for universities, the government has also said that *"access to the business support schemes, reprofiling of public funding and student number controls should be sufficient to help stabilise most providers' finances .... Should that not be sufficient, such that a higher education provider finds themselves at risk of closure, the government will only intervene further where we find there is a case to do so .... and as a last resort."*

The OfS has also consulted on a new time limited condition of registration designed to maintain *"stability and/or integrity"* within the HE sector during the pandemic, which is widely defined to include both *"financial and economic matters"* and *"matters related to good governance"*.

The range of challenges raised by coronavirus for universities is wide, and many decisions for their governors and senior management will relate to the practical reality of issues such as moving students to virtual tuition. The financial stability of the university will underpin these kinds of decisions, because its ability to continue as an institution will ultimately determine its ability to continue to provide education and research.

### **What Should Governors Be Considering?**

The overwhelming majority of universities are constituted as charities, and their governors are charity trustees who must make their decisions within the framework of charity law and regulation. The general duty owed by governors as charity trustees is to make their decisions in the best interests of their university and its current and future students, with a specific duty to safeguard their university's assets and financial position.

While the government has recognised the possibility of *"risk of closure"* posed by financial instability, there is no common statutory basis for universities which face this risk to fall back on. The *Technical and Further Education Act 2017* introduced the concept of the 'education administration' for further education colleges but this does not apply to universities. Their position on solvency issues will depend upon the way in which they are constituted. While universities constituted as charitable companies will be subject to the insolvency legislation which applies to all companies, there is a "gap" in the legislation as regards universities constituted as HE corporations or by Royal Charter.

Governors of universities facing financial challenges should however have regard to the key insolvency principles which apply to companies when making decisions in relation to their

university's financial position. These principles are likely to be the yardstick by which the discharge of the governors' duty under charity law to the universities' beneficiaries (and, if relevant, under insolvency law to its creditors) will be assessed. This will include assessing their university's solvency against "cash flow" and "balance sheet" tests in the basis of full and up to date information (including cash flow forecasts).

More generally, the duty which applies to charity trustees will require governors to take decisions which fall within the range of decisions a reasonable trustee body would take. They should identify, obtain and consider all information reasonably required to reach the decision in question; identify and consider all relevant factors relating to it; disregard any factors identified as being irrelevant to the decision; and obtain and consider any advice which is required.

Strong governance focused on clear decision-making which is based on full information, an understanding of all relevant factors and relevant advice will be in line with the expectations of the OfS as the university's principal regulator for the purposes of charity law and is also likely to be important for the proposed new temporary condition of registration and its wider regulatory framework.

**Award-winning law firm [VWV](#) provides specialist advice for universities on all of the issues outlined above, including decision-making by trustees and wider governance issues in response to the coronavirus pandemic.**

**To find out more, please contact Con Alexander on 07730 731 089 or Jane Byford on 07909 656 764.**



Con Alexander



Jane Byford

*VWV is a supplier on LUPC's national [Legal Services framework](#)*