Effective management of international risk

Newcastle University

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What we will cover

• Introduction - your international activities and why it is important to manage risk
• Key risk areas and managing risk
  – Health, safety and security issues
  – Academic issues
  – Fraud and corruption
  – HR and regulatory
Key risk areas and managing risk
Managing risk

“Addressing risk is an important part [of international partnerships]; complacency is not an option as UK universities are increasingly drawn to consider collaboration in countries which may present considerable operational difficulties… risk should continue to inform and guide universities’ overseas activities.”

Dr Joanna Newman
Director, UK Higher Education International Unit

We will look at what this approach to risk management looks like in practice in relation to the following key risk areas
Health, safety and security issues
Health, safety and security issues

Much is at stake for colleges with footprints in other countries; not just students’ safety but also the schools properties, liabilities and reputations. Many administrators agree that monitoring quickly shifting circumstances around the globe is crucial to making swift, smart decisions and avoiding knee-jerk reactions.

‘American universities worry about students abroad’, NYTimes
Health, safety and security issues

**Recent high profile cases**

- There have been a succession of cases in recent months involving both students and employees suffering accidents, illnesses and violent attacks whilst working or studying abroad.
- In addition to the obvious welfare issues for the individuals concerned and the reputational issues for the University, such incidents also have potential to create legal and financial risks both in the UK and the host country.
Health, safety and security issues

The law

- UK legislation, e.g. if failure to risk assess decision to send staff/students overseas (under Reg 3 MHSWA)
- Common law duties of care
- Duties under the student and staff contracts
Health, safety and security issues

The scope of the University’s potential liability

(McLean v The University of St Andrews, 2004)

Language student on university exchange in Odessa subject to sexual assault – attack happened on a beach at 2am ¾’s of a mile from M’s accommodation – M sued St Andrews. Argued they owed her duty of care and should have known of risks in that area. Held: attack occurred at a location over which University had no control - incident therefore fell outside scope of their duty of care. But judge indicated there might be other similar circumstances where liability might arise.
Health, safety and security issues

The law

• Consider also duties under local jurisdiction
• E.g. in Malaysia:
  – Factories and Machinery Act 1967 and
  – Occupational Safety and Health Act 1994
• E.g. in Singapore:
  – the Workplace Safety and Health Act
  – employers must, as far as reasonably practicable, protect the safety and health of employees or workers working under direct control, or who may be affected by their work
• Is the University familiar with these obligations?
Managing risk

Managing health, safety and security risks

• Risk assessment and ongoing monitoring key
• For students, UCEA recommend six stage risk management approach:
  – review and approval of placements
  – processes for raising and resolving problems
  – planning and contingencies
  – ensuring each party understands role and responsibilities
  – preparation of students
  – training of staff

  (UCEA H&S guidance for placement of HE students)
“Risk assessments must be made for all work taking place overseas.”

“The assessment should be based on previous knowledge, information from the Foreign Office, travel agents and contacts in the place being visited.”

“The findings and conclusions drawn from the risk assessment should be made familiar to all participants, any significant factors being relayed in writing whenever possible.”

Health and safety guidance when working overseas,

UCEA/USA
Academic issues - Academic freedom and freedom of speech
Academic standards and quality

Quality Assurance Agency for Higher Education (QAA)

- UK Quality Code for Higher Education 2012 (Chapter B10 Managing Higher Education Provision with others) – The Expectation

“Degree awarding bodies take ultimate responsibility for academic standards and the quality of learning opportunities irrespective of where these are delivered or who provides them...”
Academic freedom and freedom of speech

Banning opposition leader from Malaysian university demonstrates lack of academic freedom

Singapore Professor Denied Tenure, Sparks Academic Freedom Debate
Academic freedom and freedom of speech

One of the key features of an academic post is the freedom of staff to conduct research, teach, speak, and publish without interference or penalty. UCU is concerned that as the UK presence in higher education grows in more authoritarian countries, the basic principles of academic freedom, collegial governance, and non-discrimination are less likely to be observed.

UCU overseas working guide
Academic freedom and freedom of speech

Autonomy is the institutional form of academic freedom and a necessary precondition to guarantee the proper fulfilment of the functions entrusted to higher-education teaching personnel and institutions.

UNESCO Recommendation concerning the Status of Higher Education Teaching Personnel
Fraud and corruption
Fraud and corruption

Rising university corruption linked to falling public investment
Times Higher Education Supplement, 3 October 2013

  - Reduction in public funding and pressure to maintain standards fuelling corruption, fraud and unethical behaviour in global HEIs (ripe in recruitment and admission)
Potential liability

Application of UK fraud provisions

Bribery Act 2010

- May be an offence under Bribery Act, even if no act or omission takes place in the UK, if;
  - It would form an offence if done in the UK; and
  - The person has a close connection with the UK.
- Person has a ‘close connection’ if they are, amongst other things, a British citizen
- Expectations are of a person performing functions in UK, even if carried out abroad
Managing risk

Managing fraud and corruption risks

• Again, due diligence and ongoing monitoring is key. Consider the recommendations of the QAA in its report on failings by a UK university relating to its dealings with overseas partners. The university was advised to (amongst other things):
  – “strengthen its due diligence and vetting processes to take proper account of the academic, legal and financial aspects of setting up and maintaining collaborative partners”
  – “ensure that the staffing resource is sufficient and able to ensure that the operation can be managed effectively”
  – “strengthen its monitoring (of various aspects of collaborators operations)”
Managing risk

Managing fraud and corruption risks

• Such an approach may also provide a defence to ‘failure to prevent bribery’ under the Bribery Act 2010

• If University can show has implemented ‘adequate procedures’

• What does this mean?
  – proportionate procedures
  – top level commitment
  – risk assessment
  – due diligence
  – communication (and training)
  – monitoring and review
Managing risk

Managing fraud and corruption risks

• Other international guidance and tools for assessing risk and eliminating fraud risks have a similar focus on, e.g. Framework on Bribery and Corruption – Good Corporation:
  – board commitment to ‘zero tolerance policy’
  – communication and training
  – regular risk assessments
  – due diligence processes in place
  – involvement of key business functions (HR, finance, etc)
  – use of a compliance function

(From Business Ethics Briefing, ‘Anti Bribery and Corruption Standards and Frameworks’)

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HR and regulatory
HR and regulatory issues

Key risk areas

- Selection of staff
- Statutory rights and jurisdictional issues
- Student/staff contract
- Pensions
- Human Rights
- Intellectual property
- Governance/charity law
- Work permits/entry requirements
- Tax and Insurance
- Health and safety
- Data protection
- Equality – cultural issues and discrimination
- Intellectual property
Understanding the employment rights of overseas staff

Malaysia Case Study: *(Williams v The University of Nottingham UKEAT/0124/07)*

Lecturer employed to work in Malaysia – breakdown in relationship – employee pursued claims for unfair dismissal and disability discrimination in the UK employment tribunal - claim ultimately unsuccessful but employment dispute reported widely in the UK – jurisdiction for claims will be a matter of fact to be determined in each individual case
Managing risk

Managing HR and regulatory risk

- Do they have the right skills and qualifications?
- Second or recruit?
- Recruit internationally or locally?
- Research active, teaching or both?
- Language
- Visa requirements and illegal working
- Offer letter/change of terms of contract (within one month)
- Secondment agreements
- Mobility clauses, change of terms and conditions, fixed contracts
- Is there competition for the role?
- Are you requiring or requesting the employee to move?
Managing risk

*Managing HR and regulatory risk*

- **Assess** the host country context:
  - do you understand legal framework?
  - do regulatory requirements differ from UK?
  - what is local tax framework?
  - what is social security situation?
  - has appropriate academic, legal and financial due diligence been undertaken?
  - what are principle cultural differences?
  - what is local employee/labour relations context?
  - local ethical/human rights issues?

(UCEA, Employing HE staff overseas toolkit)
Information and guidance

- International Partnerships – a Legal Guide for UK Universities (UK Higher Education International Unit in association with Eversheds LLP)
- Health and Safety Guidance when Working Overseas (UCEA and USA)
- UCEA Health and Safety Guidance for the placement of Higher Education students (UCEA and USHA)
- Guidance on Health and Safety in Fieldwork (UCEA and USHA)
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