Changing Corporate Form: Why is UCLan doing this and why is UCU concerned?

‘These are exciting times in higher education and the board of the university is confident that these arrangements create a sound framework to build on the success of the last twenty years and assure the future of the university’.

“Exciting times”:

A new wave of neoliberal policy-making in relation to public services, applied with a new ruthlessness:

- The Health and Social Care Bill
- The Work Programme
- The White Paper – Putting Students at the Heart of the System

De-regulation, liberalization and the creation of investment opportunities for new public service providing companies and for British and US finance capital.

In higher education:

The government’s reforms have:

- shifted the form of their subsidy from funding into a fee and loan system that is choking off student demand
- Imported a competitive ‘margin’ for student places that is creating a ‘squeezed middle’ of universities
- Removed some of the regulatory barriers to access to the markers of prestige – university title.
- Deliberately subsidized the creation of new, for-profit providers through the Secretary of State’s direct designation of providers as fit for public support, allowing unregulated and uncapped expansion.

New providers with deep pockets:

The new providers entering the system are a new kind of animal in the UK. They are for-profit companies with huge financial capital resources behind them and very deep pockets.

- BPP University College – owned by Apollo, which owns the University of Phoenix

- The College of Law – Now, the university of Law, owned by Montagu Private Equity, a PE fund specializing in public service companies.
- Greenwich School of Management – made a cool £22 million out of off-balance sheet students last year, owned by Sovereign Capital, a PE fund with a portfolio of healthcare, welfare and education companies all benefitting from public service reform and founded by John Nash, currently George Osborne's adviser on – public service reform.
- Pearson – owned by Pearson plc, an education and publishing giant with its fingers in most pies in Britain and the US.

These companies spent the years in opposition lobbying for the de-regulation the government is now pushing through, for example, by commissioning a commercial law consultancy, Eversheds to write reports for them.

Financiers looking for new investment opportunities:

Financial crisis and City-based institutions looking for lower risk, longer term investment opportunities and the creation of new assets to trade in.

- Private equity funds looking for buyout opportunities – the Parthenon Group and UK HE as a 'Treasure Island.'
- Investment banks looking to fund bond issues, loans, become shareholders etc., in return for steady income streams.

Universities and the dash for cash

Now the combination of de-regulatory policy and the entry of new providers is changing the way in which higher education institutions more widely behave.

In some ways, this is only accelerating developments that were already under way. But there is now an added dash to access new sources of capital to fund the beauty contest for home and overseas students.

Examples include:

- A renewed scramble to form partnerships with private providers trading in international students, including joint ventures which include committing equity - De Montfort, Leeds Met, Gloucestershire
- Outsourcing – Salford, Sussex, London Metropolitan
- Subsidiary companies – cashing in on off-balance sheet students – Coventry, Glamorgan, Bolton, Hertfordshire
- Bond issues – De Montfort, Cambridge and possibly UCL
- Buyouts – College of Law, London Metropolitan
- Changes of Corporate Form – UCLan.

How does UCLan's proposal fit?

Corporate form is an issue.

Different HEIs have different constitutions and different corporate forms:

- chartered universities – broadly the Pre-92 sector
- higher education companies – the majority of the post-92 universities
- companies limited by guarantee – former ILEA Polytechnics and more recent new HEIs
- now, with BPP, Pearson, Kaplan and the University of Law: companies limited by share.

Why does this matter? What would *change* if UCLan decided to become a company limited by guarantee?

Different corporate forms give institutions different powers:

UCLan is a higher education corporation, created by the 1988 reform act when the polytechnics were taken out of democratic local authority control.

As noted in an Eversheds report from 2009, statutory corporations like UCLan have only those powers set out in the statute or necessarily implied by this statute. This imposes certain restrictions on what the management and the governing board can do.

Fundamentally, as higher education corporations they don't have the power of ownership but are created by statute with only the powers that are in or are implied by that statute and must seek Privy Council approval for anything that exceeds these powers.

What does that mean, concretely?

For example, the 1988 statute says that UCLan must:

- have an instrument of government with a governing body and an academic council
- be charities and use their assets for charitable purposes
- must seek the permission of the Privy Council for any changes to their constitution.

If it moves to become a Company Limited by Guarantee, what changes?

Although it would be a charity, the Group moving to a Company Limited by Guarantee would free it from these statutory controls:

- It would not have to seek Privy Council approval for change in its Memorandum of Association, but could change this with a simple decision of the Boar.
- This would include having the power to decide to dissolve itself as a charity and become a company limited by share or sell itself wholly or in part to a third party.
- The CLG would have no necessary governance structure – the UCLan document itself demonstrates that when it talks about the new VC having the power to determine what structures are appropriate – in theory this could mean radical changes to the way the university subsidiary was governed internally.

It would also make it easier to access private capital or grant investors access to its assets:

- Could float a loan on the stock market, secured against university assets
- Could dissolve itself without Privy Council or Secretary of State approval
- Arguably, it would be easier to set up a for-profit subsidiary company limited by share which would control the university's assets and which could be a joint venture with a private equity investor.

Why is this new?

The university's message about this seems designed to confuse. For the Times Higher it's a groundbreaking development. For staff, it's nothing to worry about because other HEIs are CLGs.

It's perfectly true that around 20 HEIs are constituted as CLGs. Five big post 92 universities were CLG charities when they were controlled by ILEA and when that was abolished, were left as CLGs, including Greenwich, South Bank, London Met, Roehampton and UEL.

The public discussions over London Met's fate arguably show up some of the risks of the CLG form: under accusations of mismanagement and bad handling of contracts, now there are discussions about a possible full sale under the insolvency act or breaking it up and asset stripping it. This may not be the most likely scenario but it's possible.

There are precedents for this.

Three major further and higher educational charities, constituted as companies limited by guarantee have in recent years been bought entirely by private equity funds or shareholder driven companies:

- **Edexcel – bought by Pearson Plc**
- **College of Law – bought by Montagu Private Equity**
- **University for Industry Ltd (Ufi Ltd) – bought by LDC Capital**

Not one higher education corporation has been similarly acquired.

The key thing is the policy context and the movement of private capital into the sector.

Private capital finds it easier to take over a charitable company limited by guarantee than a corporation.

The changes I described at the beginning of this talk transform debates about moving to CLG form out of the arcane world of debates over charity and company law and into a key stage in the stripping out of the last vestiges of democratic governance and control from our universities and the freeing up of university assets for the uses of private investors.

Conclusion:

The university is no more reducible to a private company than a student is to a consumer.

Moving to private company status will simply entrench autocratic management control structures over the university's activities and make moves toward running it as a for-profit company appear all too logical or inevitable.

From this perspective, what Eversheds and UCLan's management see as limits can be viewed as imperfect but nonetheless important levers for democratic influence and defences of the public interest:

- the need to consult the Privy Council
- the limits on the power of management to amend the instruments of government and the articles of association.
- the stipulation that there must be a governing body and an academic council
- the statutory restrictions on the power of management to alienate assets that are not only charitable but that have been built up over years through public investment, using taxpayers money

In the absence of genuine public accountability or democratic control or levers, these imperfect instruments can be seen as valuable proxies with which other university stakeholders can assert their interests.

There is, as there always, is, an alternative. There's a policy debate in the Labour Party now about the future of HE funding and organization. In Scotland, the Von Prondzynski report offers a vision of a more democratic institution serving the national interest.

These are not arcane issues, though they may appear so. They are vital issues of ownership and control.

McVicar Quote:

“As the sector fragments and a growing number of institutions, without massive endowments, are forced to operate in a market and to compete with and probably emulate for-profit providers, will the civic role of universities be enhanced or reduced?

Will the ABC higher education corporation, probably part of a larger for-profit group, provide a safe haven for academics with outspoken and unpopular views on matters of public concern, such as abortion, employees' rights or the challenges to a community-based health service?

Our universities are important bastions of civil liberties and important support structures for democratic society. How do we prevent that being eroded as we move towards market liberalisation?”

Not , I would argue, by turning the University into a private company.

Precisely because the university is not a private business, precisely because there is a better way to run a university, it is vital that we take a stand to defend UCLan’s status as a higher corporation.