



SAFEGUARDING INSTITUTIONAL COMMERCIAL INTERESTS AS RECESSION BITES

Recession is upon us and the impact of current economic conditions on the further and higher education sector is likely to be double edged.

On the one hand, the government has pledged additional funding to re-train those who lose their jobs as a result of the recession, as well as to ensure that capital projects in the sector continue to be funded, to stimulate the construction industry more widely. However, many institutions may find that commercial activities, such as conferencing and hospitality, commercial research and sponsorship and full cost employer-facing provision, are hit as businesses try to cut non-essential costs from their budgets. There is also the increased risk that customers and suppliers may become insolvent leaving institutions with irrecoverable debts or with vital goods and services undelivered.

To avoid unnecessary financial exposure or business disruption, institutions should consider reviewing their relationships with customers and suppliers at this stage, to try to identify any that appear to be at risk of financial collapse. Warning signs might include unexplained and increased delays in payment or supply, or a decline in the quality of goods and services supplied.



Where customers or suppliers are deemed to be at risk, appropriate action could include

Customers

- III Carry out credit checks on new customers and customers with a history of late payments.
- III If possible get payments on account. This is particularly important for customers with a poor credit history and on projects in which you will be expected to go to significant expense in sourcing materials or obtaining services from external suppliers.

- III If payments on account cannot be obtained and the institution is to extend a significant amount of credit to a customer it may be possible to obtain credit insurance to protect against bad-debts or even late payments.
- III Ensure that the institution has the correct name and legal status of the company. If invoices are raised against the wrong legal entity there may be difficulty obtaining payment. Raising credit notes and re-issuing invoices will lead to inevitable delays in receiving payment.
- III Invoice promptly and follow up late payment.
- III If the institution is engaged in designing, engineering or creating a new product, ensure that the intellectual property rights are retained and include a retention of title clause in the contract.

Suppliers

- III Ensure that the institution receives the goods and services being provided before making payment. The more expensive the goods or services to be supplied, the more important this is



because if the supplier becomes insolvent before the goods or services are supplied not only may the institution not receive the goods or services but it may also struggle to recover a proportion or any of the sums paid.

III If suppliers of services, for example the IT system, are struggling financially the institution may notice a decline in service or even a complete breakdown in the service. In this situation the institution may wish to consider whether it can lawfully terminate the contract and obtain the services of an alternative supplier.

III If a supplier of services becomes insolvent an insolvency practitioner may try to novate the contract of supply to a new supplier. The insolvency of the original supplier may permit the institution to lawfully terminate the contract and negotiate a better service at cheaper cost with a supplier of its choice.

III Care should be taken where the supply contract is one covered by the EC Public Procurement regime. There are provisions enabling institutions to obtain temporary replacement cover without going through a full procurement process, but these may not apply in every situation.

Should you wish to discuss the issues raised in this bulletin in more detail please contact:

Smita Jamdar, Partner - Head of Education

T: 0870 763 1332

E: smita.jamdar@martineau-uk.com or

Andrew Holden, Associate

T: 0870 763 1661

E: andrew.holden@martineau-uk.com

