

Legal Issues raised by selected projects from the JISC MLEs for Lifelong Learning programme: Identifying areas where legal guidance is required

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A deliverable of the JISC Study to explore the legal and records management issues relating to the concept of the Lifelong Learner Record

Version 1.0

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Introduction

This part of the JISC Legal Study was designed to survey selected projects from the JISC MLEs for Lifelong Learning programme in order to:

- focus on the relevance of legal issues already identified by the Study as being likely to affect the development of transferable Learner Records and Personal Development Planning within FE and HE institutions
- permit the projects to flag up and discuss other legal issues as yet unidentified, so that the Study researchers can ensure those issues are also adequately taken account of when guidance documentation is written

The projects were chosen on the basis that they were engaged in the development of cross-institutional applications and tools which were likely to result in engagement with one or more of the key legal issues, including data protection, intellectual property law, and accessibility, identified by the Study researchers.

The information provided below results from material obtained by the Study researchers from project personnel in semi-structured interviews carried out during visits to the selected projects, and augmented by telephone and e-mail follow-up questions as necessary to clarify particular issues. As noted above, the issues raised by this report will be used to inform the practical legal guidance documentation to be produced in due course by the Study researchers.

Overview

The survey identified a range of legal issues for which guidance documentation could usefully be compiled, both for existing and future projects. In a number of cases, important legal issues did not appear to have been identified by projects as a risk factor during their pre-implementation planning, and sometimes had not been identified as potential problems at all. That having been said, none of the projects surveyed appeared to have run into significant difficulties with legal issues at the time of the interviews.

The key legal issues identified were:

- Intellectual property rights in the background and foreground project materials. Projects were often uncertain about who owned the IPRs in pre-existing material which was incorporated into applications and tools, and what agreements were in place for the future use of such material by project partners and others. It was also often equally unclear who would own the IPRs in materials developed during the lifetime of the project, e.g. whether the resulting IPRs would be shared or licensed between the parties to the project. Even where institutional agreements existed, those actually working on the projects were sometimes unclear as to their meaning, suggesting a lack of communication between those writing the agreements and those carrying out the project work. Several projects were developing, or intending to develop, project software applications and tools as open source software (OSS), but in their responses during interviews were often unsure as to the legal (and practical) implications of doing so.
- Intellectual property rights in the data contained in project applications and tools, including learner generated data. While projects appeared largely of the opinion that ownership of transcript-oriented learner data was less important than ensuring a proper understanding of the relevant responsibilities of those holding/accessing it (defined by the Study as stewardship of the data, rather than ownership); it was clear that ownership rights in valuable material created by learners in the course of their studies (e.g.

computer software) could become an issue, as could the use by learners of potentially sensitive/proprietary research data in the PDP process. The issue of ownership of IPRs in student-generated works (outside formal sponsorship or research contract relationships) remains unclear generally, and is increasingly likely to become a live issue if institutions seek to claim rights in works created and/or held in institutional applications and tools.

- Data privacy and confidentiality. While the institutions which were party to the projects were usually comfortable with their own internal use of learner personal data, problems arose for many of the projects when sharing data between institutions, primarily because institutions were uncertain about their roles within the project e.g. were they a data controller, data processor, or neither. While most projects had addressed the issue to some degree, uncertainties remained even amongst maturer projects. Where suitable solutions had been arrived at, as with the NIIMLE project, they were often project or size specific solutions, which would lead to difficulties transferring them to other environments, or scaling them up to larger groups of institutions. Projects differed widely as regards the nature and scope of the data collected, the channels of collection, the mechanisms for collection, methods of data quality control, and authorised access by staff to learner records.
- Legal requirements as regards accessibility. All the projects were aware of their obligations under legislation such as SENDA 2001, and all were engaged in ensuring that they had taken, or were taking, reasonable steps to ensure that learners were not discriminated against by virtue of a disability. Most, if not all, were cognisant of the relevant accessibility standards for software based tools.

Following from the survey, the Study researchers will be producing the following guidance documentation for use by existing and future projects in this area:

- Guidance on structuring intellectual property rights in educational projects that involve the use of background materials and/or the development of foreground materials.
- Guidance on the legal implications of open source software licensing, covering the licensing of OSS code into and out of projects, as well as the relationship of OSS with copyright.
- Guidance on the responsibilities of those holding/accessing transcript-oriented learner data (stewardship).
- Guidance on effective management of IPRs in student generated works created in and/or held on institutional applications.
- Guidance on managing the interface between the requirements of PDP and the effective protection of proprietary information.
- Guidance on data protection, with specific reference to determining data controller/data processor status; possible approaches to multi-institutional data protection frameworks; and access to personal data.

Key

Code Project Details

- SH SHELL:** Lead institution: University of Plymouth
URL: <<http://www.educationaldevelopment.net/shellproject/default.htm>>
 The project is developing the integration of technologies across the University of Plymouth and its partner colleges. Single registration will replace cumbersome double registration for all partnership students, through interfaces supporting efficient transfer of student data.
- NI Northern Ireland Integrated Managed Learning Environment (NIIMLE):** Lead institution: Belfast Institute of Further and Higher Education (BIFHE), Project team based at Queen's University Belfast (QUB)
URL: <<http://www.niimle.ac.uk/home.htm>>
 The project is developing a cross-institutional Managed Learning Environment (MLE) for the Northern Ireland region that facilitates the mobility of the lifelong learner and supports collaboration between FE and HE institutions.
- SP Specifying an e-portfolio: Enhanced learner information for flexible admissions and transitions into Higher Education;** Lead institution: University of Nottingham
URL: <<http://www.nottingham.ac.uk/e-portfolio/>>
 The project aims to achieve continuity between FE and HE progress files and to explore inter-institutional interoperability in order to further Widening Participation and enable widespread use of enhanced learner information.
- DL Developing Learning and Teaching Aspects of Progress File and the Personal Development Profile across FE and HE;** Lead institution: Loughborough College
URL: <<http://www.loucoll.ac.uk/projects/ppp1.htm>>
 The project is developing and piloting a web based electronic progress 'portal' and Individual Learning Plan which will capture the achievements of FE students at Loughborough College and the RNIB Vocational College a in fully accessible form.
- PR PROcesses for Support of PErsonal development Records Online (PROSPERO):** Lead institution: Queen Mary & Westfield College, University of London (QMUL), Open and Distance Learning Unit (ODL Unit)
URL: <<http://prospero.odl.qmul.ac.uk/>>
 The project is identifying learner PDP processes to bring the information generated together in an accessible form so learners can represent their complete learning history via a 'Personal Learning Environment' (PLE) which allows them to update, manipulate and use their PDP data.
- EC e-College Wales MLE;** Lead institution: University of Glamorgan.
URL: <<http://www.e-collegewales.co.uk/>>
 The project is developing an MLE to support learners in pursuing programmes of study. It provides learners with materials and a communication tool, records their progress and receives assessed materials.

1. The Project Institutions

1.1. Which institutions are currently involved? From which sector or sectors? (e.g. central government, local government, educational, commercial, employers)

- SH** 1 HEI, 8 FEIs, 1 commercial company (Phosphorix), 1 local education authority (Learning and Skills Council: representative on the project board).
- NI** 2 HEIs, 16 FEIs, indirectly 1 commercial company (BIC Systems Ltd: supplied QLS systems to partner FEIs), 1 regional government agency (Northern Ireland's Department for Employment and Learning: representative in the project Steering Group).
- SP** 3 HEIs, 3 FEIs, 1 local education authority (through its City of Nottingham Passport project) and UCAS.
- DL** 1 FEI, 1 HEI, RNIB, local education authority (Leicestershire LEA), and indirectly 1 government agency (DfES: provides under-licence for use of initial application) and 1 commercial company (3T: gives technical support if required).
- PR** 1 HEI (its specific unit), 1 major UK employer (BT), and indirectly 1 Union (Communication workers Union: provides some funding for BT/ODL students.).
- EC** 1 HEI, 6 FEIs, 2 commercial companies (Blackboard and Campus IT), indirectly another commercial company (Boxmind) and a regional government body (Welsh Assembly Government).

1.2. Are other institutions envisaged to be involved at a later date? From which sector or sectors? Why?

- SH** Possibly 1 commercial company.
- NI** Possibly 1 HEI in order to have the entire region's FE and HE institutions on board.
- SP** Two scenarios: 1) 1 more HEI and about 6 more FEIs, and possibly the region's Learn Direct, 2) national bodies, heads of information services, and organisations such as Becta and UCAS.
- DL** Local schools/school district and other HEIs/FEIs/projects involved in testing interoperability are likely future partners.
- PR** It is expected that FE partners will join in the next stage. It is believed that if the application is used by and useful for others, e.g. FEIs, it will be easier to get funding in the future.
- EC** Relationship with an educational institution abroad is currently being explored.

2. The Project Application/Tool

2.1. What is the main purpose or function of the application/tool?

- SH** The purpose of the ioNode infrastructure is to convert data to IMS format and transfer securely and reliably to other destinations in the consortium and the Learner Record database.
- NI** The purpose of the MLE is to offer a number of services to facilitate lifelong learners, particularly in the form of access to their formal records and some means to engage in PDP, including manipulation of PDP records.
- SP** There are three applications/tools relevant to the project. The overall purpose of the project is to contribute to the government Widening Participation agenda. In practice, the project is testing UK LIP by transferring data from 2 applications (City of Nottingham Passport and UCAS) to a third application (University of Nottingham ePARs). The project is putting forward a proposal for a new UK LeaP and linking it to PDP. The latter is necessary for the purpose of supporting transformation from one stage of learning to the other or to employment.
- DL** The Electronic Progress File is a training tool or vehicle to develop students to be independent learners. It is a student centred tutorial tool, i.e. aid for tutors that contains a facility to capture information about the students, including formal and personal achievements. The tool can be used by students when applying for further study and employment.
- PR** The overall purpose of the Personal Learning Environment (PLE) is to manage the interface between employers and academia.
- EC** The overall purpose of the MLE is to support the student in pursuing programmes of study. It provides students with materials and a communication tool, records their progress and receives assessed materials. 'Progress' equals to the completion of credit bearing modules.

2.2. What are its main elements, functions and/or uses?

- SH** Main elements: A hub, a Learner Record database, a portal for access to Learner Records and interoperability agents to send/receive student-related data in IMS form from/to the hub.
- NI** Main element: A central MLE portal that connects to the individual institution's NICIS servers (or SRS Databases) via dedicated servers installed in each institution; Functions: To offer a number of learner-focused services, including access to transcript and a PDP tool.
- SP** Main element: The project focuses on the structured Personal Statement element of the respective e-portfolio applications at schools, UCAS and at the HEI. Functions (of the e-portfolio applications/processes): To show interest in pupils and in a wider range of aptitudes than merely exam marks, and to support students in demonstrating aptitudes in addition to exam results.
- DL** Main element: Individual Learning Plan (ILP) used to produce the UCAS Personal Statement. Other functions: To facilitate Initial Assessment, Progress Review (up to 5 one on one tutorials over the year) and Career Planning, and to provide access to learner's Personal Record (data from SR database). It can also be used to produce a Course Plan (MIS tool for administrative use (up to 85%) to monitor student commitment and progress) and Progression Check List (done at the end of the

course). Overall, the ILP helps the FEI in carrying out MIS/LEA tasks, especially the requirement to produce knowledge of student's next destination.

- PR** Main element: Personal Learning Environment (PLE) that is part of an MLE type of system (consisting also of Top Class proprietary VLE, to be phased out and replaced by OS one, and in-house SRS). Functions of the PLE: To facilitate new students' application process and to provide an (e-Learning) e-portfolio tool. The tool allows to students to record richer information on their learning. The main form of recording will involve relating competences gained through a course to evidence and reflecting on and/or demonstrating their relevance to their occupation.
- EC** Elements: VLE element of the MLE that uses Blackboard but also a hybrid system combining Blackboard with University of Glamorgan's own Learning Environment (GLE). Functions: The VLE contains learning and support materials, assessment exercises, and facilitates discussion groups, virtual classroom and email communications. The VLE communicates with the Student MIS. The GLE includes a communication tool called Project Tool used by students in their final year project module. This tool allows recording tutorial meeting and future planning of work. Still, it cannot be considered to be a Progress File, a PDP tool or an electronic portfolio.

2.3. Is the development of the application or tool a pilot project? Is it, or is it envisaged that it will be, an institutional, regional, national or international application/tool?

- SH** Regional pilot project; an element of the system will be adopted at least by 1 FE in another region; national test bed modelled on the system will be available to HEIs and FEIs soon.
- NI** Regional pilot project; could be adopted by other counties/small regions; anticipated system cannot accommodate >20 institutions; no other entity has envisaged to adopt yet.
- SP** Regional project piloting the transfer of data and testing the UK LIP interoperability specification that produces nationally relevant knowledge. Project is likely to expand in the future.
- DL** The development of the application is a pilot project. As it has potential as a 'value added' tutorial model and a 'vehicle' for transferring data from one educational institution and/or stage to another, it is likely to be taken up in the local district level, and potentially at the county level.
- PR** At the moment it is an ODL Unit pilot project. In the next stage it will be an ODL live project that is envisioned to be extended to whole QMUL. Because the PLE will be based on open source software, it will be available to others, including any FE and HE partners who express interest in it.
- EC** E-College Wales (ECW) was a pilot project until 2003. It is now in the implementation phase. It is not known yet what the University of Glamorgan will decide regarding its continuity at the institutional level. ECW might move towards a regional model. It is likely at least to influence what goes on in the area of e-Learning in Wales.

2.4. How is the project's development funded, and for how long is funding available? If the project is funded for a limited time, how is it envisaged that future funding will be obtained?

- SH** Current JISC funding is available until the end of February 2005. At least one future JISC bid involving future development of SHELL has been submitted.
- NI** The project is funded by JISC until the end of July 2005. The NI Department for Employment and Learning (DELNI) has been approached several times about future funding. DELNI has committed itself in writing for funding NIIMLE for another year, until July 2006. Ideally, the project would be granted solid funding until 2009 in order to realise its full potential.
- SP** The project is funded entirely by JISC except that UCAS is taking part at its own expense. Project ends at the end of July 2005. JISC regional bid or reference model bid may be successful and provide necessary future funding.
- DL** The JISC funding is available until end of July 2005.
- PR** The JISC project funding ends at the end of July 2005. Continuity for the PLE under construction is expected for another two years, as some relevant funding has been obtained.
- EC** E-College Wales is funded by the EU until October 2005. Thereafter it hopes to get HEFCE funding for its courses. The University of Glamorgan is funding the MLE system and will decide on whether it will do so in the future in January 2005. It is envisaged that e-College Wales will continue to deliver after October 2005.

3. Ownership and Intellectual Property in the Project Application/Tool

3.1. Is the application/tool based on proprietary or open source software? Why?

- SH** The whole system is OSS based, apart from a minor proprietary element that is soon likely to be replaced with an OSS alternative. OSS was chosen because JISC supports this avenue of development and it is felt that OSS will be cheaper in the long run.
- NI** Based entirely on OSS; chosen because provides a neutral system for data exchange and does not disadvantage any project partner.
- SP** The partner HEIs e-portfolio application was reported to be most likely based on proprietary software. The status of the e-portfolio tool in use at local school was not known at the time of the interview. (A request has been made for project representatives to clarify this matter.)
- DL** The application is based on proprietary software. The Loughborough College has an under-licence on last year's model of an application developed by someone else. The under-licence includes the right to tear the application to pieces. The technologist on the project has used OSS to improve the application.
- PR** Current VLE, Top Class, is a proprietary system. It will most likely be phased out and replaced with individual OSS components or whole OSS system. One alternative, OSPI, supports only new support functions, whereas the ODL team wants to do more. They are looking for an OSS Content Management System and have a GPL or restricted GPL licence in mind. OSS because want software to be flexible, to modify and add code to suit their needs, and not allow software to drive student support.
- EC** Blackboard, Microsoft tools and Macromedia are proprietary. Very little if any OSS has been used. The University has an information system strategy and has found Microsoft products reliable and has necessary support services.

3.2. Who currently owns the intellectual property rights (IPRs) in the application/tool? Is there a formal agreement between any partners in the project with regard to future ownership or licensing of IPRs? What are its terms?

- SH** IPRs are shared between an HEI (lead institute) and a commercial company. Some uncertainty about the nature of the OSS licence, and its implications, if any third party wishes to commercially exploit the code. Software and code should be free for non-profit sector, inclusion the education sector.
- NI** The HE & FE project partners own IPRs. There is a non-specific agreement leading to some uncertainties about the precise nature of the OSS licence for the project software, and the IPR relations between the parties.
- SP** The HEI e-portfolio tool belongs to the HEI in question and the IPRs in the local education authority's e-portfolio tool for schools are shared among the authority and 1 software company. The statement was made that UCAS must have a proper legal infrastructure in place to determine IPRs for its relevant system(s).
- DL** The IPRs in the original application are owned by the DfES, who had commissioned a software company to develop it. The under-licence from DfES does not help in determining where the IPRs lie in the current application that has been considerably modified and added on.

- PR** The tool (PLE) has not been developed yet, so nobody has IPRs. The ODL Unit's project team has a firm intention to make it a fully OSS system. Hence, the issue of IPRs may not arise at all.
- EC** Blackboard has been licensed by the University of Glamorgan. The actual resulting project is owned by the University. It has a close relationship with Blackboard and has been a test site for it.

4. Software Standards

4.1. What software standards/protocols/specifications are employed by the project? (e.g. accessibility (Web Accessibility Initiative Standards, W3C), interoperability (IEEE Learning Object Metadata (IEEE-LOM), IEEE Public and Private Information for Learners (IEEE PAPI), IMS Learner Information Profile (IMS-LIP)), etc.) Why?

SH IMS-LIP, ebXML, SOAP (etc.). CETIS recommended ebXML initially, although now recommending web services.

NI IMS LIP, IMS Enterprise Web Services, IMS Content Package (and IMS Metadata to describe contents). IMS standards were mandated by the original project call, as JISC is keen to learn about their effectiveness. The accessibility guidelines followed are WCA Guidelines version 1.0 (WCAG v1.0).

SP The project employs the UK version of IMS LIP. It is aware of accessibility standards but has not yet proceeded to implement them.

DL The application has been built to link up to UK LIP. In the next stage of the project, UK LIP will be put to use. ACCLIP is employed by the project.

PR UK LIP will be employed. Under consideration: IMS RDCEO, an IMS specification to do with specifying and representing skills in XML type of way. Top Class VLE does not conform to accessibility requirements, but there is intention to create new OSS VLE that complies with W3C.

EC Interoperability issue has arisen with prospective overseas partner but it has not been addressed, yet. An action plan on accessibility re: online learning materials etc is in progress.

4.2. If metadata tags are being employed to mark-up data to aid interoperability, are 'legal' metatags being, or to be, employed by the project (e.g. to indicate restrictions on use/retention of data for DP or IPR reasons). How will this work?

SH No use of legal metatags.

NI No use of legal metatags.

SP Not known at the time of the interview, but most likely no use of legal metatags.

DL Not known at the time of the interview.

PR Issue is not considered topical and has not been fully evaluated at present.

EC No, as there is very little, if any, electronic transfer of data involved. Most data transfer especially for registration purposes is still paper based. However, it was suggested that IPRs in learning objects might be an area where legal metatags could assist in specifying copyrights.

4.3. Where data is transferred between institutions, or to 3rd parties, what measures are, or will be taken, to ensure that 'legal' metadata will not be stripped, lost or corrupted, and that the restrictions are adhered to?

SH Not applicable

NI Not applicable

SP Not known

DL Not known

PR Not a lot, if any, electronic data transfer is foreseen with regard to PLE and SRS data.

EC Most data transfers between the HEI and partner FEIs regarding personal information of (new) individual students are paper based. Legal metadata may not be relevant to the system at all.

5. Data Collection

5.1. What types of data are collected? (e.g. learner created, formal transcript, other)

- SH** The only type of data collected is student record data that is entered into student record systems (SRSs) at partner institutions. The learner record is a multi-institutional, formal transcript.
- NI** The types of data collected and held centrally at project data base are: learners' PDP data, user preferences and mentoring discussions. Other data are SRS data, including transcripts.
- SP** 1) Student records data, i.e. information about the student and their course, including transcripts. 2) Learner created data, e.g. student academic review of semester or year for discussion in scheduled personal tutorial, students self-audit of skills and assignment cover sheets, student feedback to the school/department. 3) The HEI's e-portfolio application can also include data created by any tutor and school administrator. The latter information is open for student to see.
- DL** Student record data, specifically individual student records; no formal transcript data; a lot of learner created data.
- PR** SRS: Student record data, including module information and formal transcript; PLE: 1) Application stage: learner created personal information data, some prior learning data and personal motivation statement, 2) Study stage: learner created data focused on self-evaluation of gained skills and recording relevant reflections and evidence.
- EC** Types of data collected about ECW students include personal details, educational data (highest qualification), employment data, data concerning racial and ethnic origin, disability and mental health. In addition, the collected data include any appeals and complains in relation to the HEI or its partner FEIs.

5.2. Via which channels are the data collected? (e.g. direct from learner, educational institution, local authority, employer, other)

- SH** The initial student record data is collected directly from students when they register at their first institution (i.e. any member of the SHELL consortium). The SRS data from all partner institutions is transferred to the SHELL hub and the Learner Record (for those students who give their explicit consent to it). The SRS data for the partnership students (undertaking a course at one of partner FEIs but awarded degree by University of Plymouth) is also copied to the University's SRS.
- NI** PDP thoughts and reflections are collected from or entered directly by learners. Transcripts are collected from educational institutions and feedback from tutors. User preference data is entered by the learner. Mentoring discussions involve data entry by learners and their mentors.
- SP** Some data is collected via the UCAS form forming the ePARs new entrant profile. The Personal Statement element from the UCAS form is rewritten by the learner for the first meeting with the tutor. Course information and exam marks are collected from the University's SRS. The relevant School/Department identifies a senior tutor who can rewrite some data together with a designated member of the administrative staff.
- DL** The data is mainly collected directly from the learner. It is also collected from subject and progress tutors. Administrative staff feed in student record data.

- PR** 1) SRS: The data is collected directly from the learner. No data comes from UCAS, as the programme has so far been advertised via BT only. 2) PLE: The data comes directly from the learner in the application process and during the course of the actual studies. (There is no process to validate student's claims concerning prior learning.)
- EC** When learners apply for any ECW course, data concerning their previous experience and qualifications are collected direct from learner. The learners are expected to show evidence of the experience and qualifications at the interview. References are collected from e.g. employers.

5.3. How is the data collected? (e.g. intranet/internet, Web portal, VLE/MLE, institutional database/records, other)

- SH** Different SR systems collect data through various methods e.g. awarding body sends information to it. Some partner FEIs carry out paper based student registration, others electronic.
- NI** PDP reflections data is collected or entered though a Web portal, and transcripts through institutional databases.
- SP** The UCAS number is fed into the system by the student before they start the course. This number feeds into the ePARs displaying basic SR data. ePARs is a portal that can be accessed through the University of Nottingham Portal. It can also be accessed outside the campus through the internet. Hence, the learner can input data via portal or internet.
- DL** The data is collected through the SRS and a web application that can be accessed via intranet or internet. Eventually the majority of data will be collected via Loughborough College's Web portal that includes a VLE, UCAS form and the Progress File.
- PR** The closest description of the data collection mode is to say that it is collected through internet via a Web Portal.
- EC** People who apply for e-College Wales courses can submit their data via an Internet application form or paper form. Learners link to the VLE/Blackboard via a normal online browser e.g. when participating in discussion groups. Moreover, learners can drop assignments to tutors via Blackboard's digital box or on paper.

5.4. What methods, if any, are used to ensure the accuracy/completeness of the data collected from various sources? (e.g. data quality control)

- SH** There is a messaging system which ensures delivery of messages sent between systems. An acknowledgement is sent back to the sender by the recipient's system. The system guarantees that the data will arrive in an accurate and complete form sooner or later.
- NI** At the moment, the only form of data quality control involves showing the data to the data subject, who is expected to tell if it is wrong
- SP** It was suggested that there must be an institutional data quality control or related system in place at least at the HEI acting as the lead institution of the project.
- DL** At present the only check is a human one done by the student's progress tutor. It was acknowledged that some form of data quality control needs to be developed.
- PR** It is taken as given that the data provided for the ODL Unit's SRS by BT employees will be accurate, because it is provided 'under the supervision' of the appropriate line manager.

EC Although there is very little electronic data transfer, transcription errors may occur when HEIs and partner FEIs are typing in Student Records data from paper forms. At present, the accuracy and completeness of data appears to be checked by humans only.

6. Privacy and confidentiality of data

6.1. Who is/are the data controller(s) for the data?

- SH** Each partner institution is data controller for the data that it has sent to the Learner Records system. If a student has taken degrees in two institutions, the individual institutions remain the data controller for each set of student data on the same student. If project continues beyond 2005, a third party (e.g. UCAS or a company) may become the single data controller.
- NI** All partner HEIs and FEIs are individually data controllers for the MLE relevant data in SRSs. It is not entirely clear who is/are data controller(s) for data, especially PDP data, stored centrally in the project data base based at the QUB.
- SP** The individual HEIs and FEIs are data controllers for their SR data. The responses identified the different types of data and data from different origins that are transferred to and stored in the University of Nottingham's (lead institution) e-portfolio system. However, there was uncertainty about who the relevant data controllers are in some cases. The uncertainties concern the data controller for UCAS data when it has been transferred to the HEI, for learner created, PDP data, and for tutor created data (including academic references).
- DL** The data controller is Loughborough College, acting as the project's lead institution, and specifically its MIS manager.
- PR** For the ODL Unit's SRS data, the ODL Unit is (presumably) the data controller. There is a DPO in the Computer Science department who the project team will speak to about the PLE.
- EC** The University of Glamorgan is the predominant data controller and partner FEIs are data processors. However, the FEIs are data controllers for some parts of learner data.

6.2. How are learners informed about the collection and use of data relating to them? (e.g. collection notices)

- SH** Student registration form wording has been changed so students know that the data relating to them might be used to build a lifelong learner record. Students can opt out from transfer of data to Learner Records system. The students of the relevant HEI sign a disclosure notice.
- NI** A paper form that conforms to the requirements of the DPA 1998 has been signed by all students that use the MLE portal.
- SP** The lead HEI has a collection notice that has been approved by the Information Commissioner. This notice covers its e-portfolio tool. The tool's 'new entrant profile' is also preceded by a collection notice.
- DL** All application forms to study at the partner institutions contain a clause. However, it was noted that a collection notice needs to be put online, because the application is an electronic system.
- PR** It was believed that an appropriate collection notice forms part of the current online application. However, this matter will need to be considered anew in the process of developing the PLE.
- EC** There is a collection notice online. In addition, when the University's Registry Office receives a paper application, it sends all relevant notices to the applicant.

6.3. Does any of the data collected require the consent of the data subject? (e.g. sensitive personal data – disabilities, medical data, etc.) How is this addressed by the project?

- SH** Consent not required at present. However, if the PDP aspect of the system will be developed, this may become a topical issue.
- NI** No sensitive personal data is collected or transferred as part of the relevant data transfers.
- SP** The disclosure of disability issue has been addressed in the lead HEIs e-portfolio application's 'new entrant profile'.
- DL** The issue has been addressed by using the lead institution's disclosure form which is held electronically, printed off and kept secure. In the Progress File system the disclosure form is available online.
- PR** Not known at the time of the interview. (Project team member was asked to find out.)
- EC** Some of the data collected is sensitive personal data (see 5.1). The consent of the data subject is sought by following University of Glamorgan's established procedures. SENDA 2001 is not posing a problem to the University and it is continually working towards providing appropriate support.

6.4. Where multiple institutions are involved in the collection and use of learner data, where do any legal obligations for data privacy lie, and what formal or informal mechanisms exist to ensure that institutions are in conformity with those obligations? (e.g. data sharing agreements, data processing agreements, joint data controller agreements, data use protocols)

- SH** Each partner institution is obliged to abide by relevant legal obligations as data controllers for their SRS data. There are signed agreements between the HEI, as the data processor for the project relevant data, and each of the FEIs as data controllers. If the project's servers will be hosted by a third party in the future, an agreement with that data processor and different controllers needed.
- NI** All data controllers (16 FEIs & 2 HEIs) have individual responsibility to comply with relevant obligations. There are two agreements. First, Data Controllers Agreement that specifies the undertakings of each institution in its role as a joint data controller. Second, Data Processor Contract between 17 data controllers and 1 HEI as the Data Processor that defines the undertakings and warranties that each party makes regarding responsibility for the processing of personal data.
- SP** UCAS has been passing some data to the relevant HEI for years. By 2006 UCAS wants to pass all 'hard data' electronically plus more 'soft data'. It was stated that there probably is a data sharing agreement in place for the 'hard data'. However, as the project is moving towards 'soft data', there will be some legal work to do in this area.
- DL** Not applicable.
- PR** Not applicable at the present time.
- EC** There are franchise agreements in place for all University (and presumably also partner FEI) operations. In addition, there is at least a memorandum of understanding on this issue between the lead HEI and partner FEIs.

6.5. Have any legal problems arisen in this area, and if so, what strategies has the project adopted to solve them? Have institutional DP officers been involved in the project? Has legal advice been sought? Have national DP regulators been approached for advice?

- SH** Initially, there was a lot of concern on part of FEIs about sending data outside their own institution because their income depends on its accuracy. DPOs were involved in creating Data Processor Agreement. The Information Commissioner was consulted about what the project was planning to do and gave a green light.
- NI** Data protection issue has been an ongoing concern in that it has taken time to get everyone to understand DP issues arising from the project. Both HEIs DPOs have been involved and DPOs of all FEIs have been consulted, and an acceptable solution was developed in consultation with the Information Commissioner.
- SP** No legal problems have arisen so far, but these issues will become topical/urgent once the project partners can and will begin move real people's data as opposed to test data.
- DL** No reported legal problems. The project complies with institutional data protection procedures.
- P** Not applicable.
- EC** No legal problems have arisen. The University of Glamorgan's DPO has been involved in the e-College Wales project.

7. Access to data

7.1. Who apart from the learner has, or is envisaged as having, access to data held in the application or tool? (e.g. past, current or prospective educational or training institution; past, current or prospective employer; other).

SH The learner record data regarding own and partner students is available to all partner institutions' administrative members of staff. It was intended that academic staff would be able to see learner data until the point the learner left the institution. However, development has not reached that point yet. Academic staff do not currently have access, unless the learner provides it.

NI At present only the learner has access, apart from when the learner chooses to share her PDP reflections etc with a tutor. However, in the medium term administrative staff is likely to try to obtain to the data in order to get automatic enrolment and class lists.

SP Only the learner's current educational institution will have access.

DL The student's progress tutor at the FEI has access to all learner data in their Progress File. MIS staff only sees student record data that has been input at the stage when the person applied to the FEI.

PR The PLE and new OSS VLE system administrators will have full access to students' PLE data simply because of their database maintenance duties. However, they have no right to manipulate or use the data for any purposes.

EC ECW is a heavily audited EU project. Hence, EU auditors have access to all data. However, they are bound by strict confidentiality. The Welsh European Funding Office (WEFO) commissions and receives the auditors' reports.) In addition, external examiners have access to examination relevant parts of learner data.

7.2. Is access granted to all of learner's data or to a subset of that data? Where applicable, who determines the degree of access that is granted? If the user is supposed to determine the degree of access, what safeguards are there to prevent pressure being placed on the users by 3rd parties to grant wider access?

SH Learners can decide what is revealed and send a link (single access/view) or an email to another user. There will be two portals (in progress): 1. student portal; 2. administrative staff portal (for designated registry office people at each institution). The active consent (or withdrawal thereof) is given by student. Only records that the learner has consented to reveal can be accessed by academic staff and colleagues. In the future, prospective education providers and employers may be able to view all or parts of the learner record, if the individual learner gives active consent in each individual case. It was acknowledged that safeguards will be needed if this plan is realised.

NI The learner determines the nature and degree of access, but no 3rd parties involved at present.

SP There exists a facility to share student data. The lead HEI's e-portfolio system can include data created by any tutor or school administrator. The latter information is open for student to see. In addition, students have some private data not accessibly to anyone but themselves.

DL The progress tutor has a facility to review individual learner's access consent regularly. This is the 'Agreement Review Data' section of the Student Progress File. In the future, there are plans to let student decide what parts to give access to and to whom, especially what parts are transferred to whom.

PR Learners will be able choose exactly what data to reveal and to whom, e.g. their BT line manager for annual progress review, a tutor, mentor etc. Access to the data will only be available via email attachment or through the student's memory stick. There will be no direct access to anyone apart from the individual learner.

EC The EU auditors can undertake an audit trail across the ECW.

7.3. What conditions are placed on the use of the data by 3rd parties? (e.g. reuse of data, secondary uses of data, time limits on retention, accuracy and completeness etc.) How are these conditions monitored/enforced?

SH Administrative members of staff's use of the learner data is controlled by the institutions' conformity with the DPA 1998.

NI The project's Steering Group would need to meet and approve any 3rd party access. Such access requests have not been made so far.

SP Not applicable

DL Not applicable at the present time.

PR Not applicable at the present time.

EC Not applicable other than where the data is collected under statutory obligations and cannot be further processed beyond those specific obligations.

7.4. Have any uncertainties or disputes arisen with regard to access? What solutions have been proposed or adopted by the project?

SH No

NI No

SP The project is not yet at a stage in which access disputes might arise

DL No

PR No

EC No, as the EU auditors are aware of their obligations re: confidentiality.

8. Ownership and intellectual property in data

8.1. Who owns the intellectual property in the data (or specific elements thereof) contained in the application or tool? (e.g. the learner, educational institutions, sponsors, employers etc.) What implications will this have for the ability of the learner or third parties to utilise that data?

- SH** IPRs in the individual institution's SRS data remain with the institutions when that data is deposited in the shared Learner Records system/database. It is acknowledged that it may be more appropriate to think of SR data in "stewardship" as opposed to IPR/ownership terms.
- NI** The question of IPRs in data has not been considered yet, as the PDP element of the system, where ownership issues may arise, is in progress. It was acknowledged that copyright disputes are possible if e.g. an externally sponsored science research student would like to include their research findings in PDP reflections/e-portfolio.
- SP** Not applicable at the present time.
- DL** The idea of "stewardship" of the learner data on part of the FEI is more appropriate in this context than ownership.
- PR** The IPR in the SR data (if subject to IPRs at all) is now owned by the ODL Unit and by extension the University (QMUL). The students will 'own' the data they create and store in the PLE prototype and subsequently in the live system. If a computer science student creates e.g. new software that may be profitable, QMUL owns the IPR in it. It is acknowledged that if an individual student's evidence on any competence is based on course work produced in cooperation with fellow students, IPR disputes may arise.
- EC** The data for which the question of IPRs arises most clearly is the discussion board data. The University of Glamorgan's general regulations says that the copyright of ideas, products, work etc that learners create in the course of their study rests with the University. However, this regulation has been clarified re: the ECW business course, the key aim of which is to facilitate learners to start up their own business. The University will not attempt to assert any rights in the learners' business ideas.

8.2. Have any uncertainties or disputes arisen with regard to ownership of the data? What solutions have been proposed or adopted by the project?

- SH** No
- NI** No
- SP** No
- DL** No reported uncertainties. The disclosure of disability was identified as the only possible area in which uncertainties or disputes might arise in the future.
- PR** N/A.
- EC** There remains uncertainty about who owns copyright in partner FEI staff members' contributions to the discussion boards. The University of Glamorgan is working on an IPR framework that is likely to address this and other relevant IPR issues.

9. Accessibility

9.1. Has the application/tool been developed to accommodate the requirements of individuals with special needs? How have accessibility issues been addressed?

- SH** The Learner Record portals that are currently being developed will be made accessible to a wide range of users, including those with different disabilities. At present, users can for example change colours and text sizes on the screen.
- NI** Work is currently undertaken to accommodate accessibility requirements. The project is following the Web Content Accessibility Guidelines (WCAG1.0) set out by the Web Accessibility Initiative (WAI) of the W3C. It is aiming to achieve "Double-A" level standard, and is incorporating relevant guidelines within both the design and implementation of all services that the MLE offers to learners. At a later stage, a detailed test phase will be carried out, including user testing, software testing and hardware testing (for both normal hardware and assistive technologies) to ensure the guidelines being followed work within a variety of scenarios and environments.
- SP** The project is in the process of addressing accessibility issues due to SENDA 2001.
- DL** The project has already applied small parts of ACCLIP that allows one to select user preferences for the whole application, and will apply more in the future. The application works for JAWS® (Job Access with Speech - voice activated software) and Luna (text enlarger) users. Luna users can select e.g. range and size of font. There were some problems with getting Luna to work properly but this issue has now been solved. Work is currently undertaken in additional areas, e.g. a monochromatic version of the application to assist those with visual impairments.
- PR** The project team has not looked at accessibility in any detail yet but it is committed to creating accessible templates when the PLE is developed.
- EC** Glamorgan has pioneered a lot of work with students with disabilities, so an appropriate infrastructure has been in place already for 10 years. However, accessibility of online materials is a rather new issue. An action plan on accessibility re: online learning materials etc is in progress. A staff member from one of the partner FEIs is a member of the Accessibility TechDis and frequently discusses accessibility developments with EWC and JISC project team.

9.2. Have any uncertainties or disputes arisen with regard to accessibility issues? What solutions have been proposed or adopted by the project?

- SH** No
- NI** No uncertainties or disputes have arisen so far, but one HEI's Equal Opportunities Officer has been contacted as a precautionary measure. It was noted that the law on web accessibility is vague, where it states that companies must make "reasonable adjustments" to their web material so that all people regardless of disabilities or other can access the material. The project chose to follow the Double-A standards to ensure that if the law were to change in the future, the system would maintain a high level of accessibility and be well within the law.
- SP** No
- DL** No
- PR** N/A
- EC** No

10. Opt-in/Opt-out/Exclusion

10.1. Is the application/tool seen as optional or compulsory? (e.g. is it envisaged that all learners at an institutional, regional, national or international level will have to engage with the application/tool at some point, or is it designed for a specific sub-set of learners?)

- SH** Student must give registration information to any and all institutions they attend to undertake a module, a course or a degree. Student registration processes are fundamental business processes of which the institutions' funding depends. However, a student at any partner FEI can opt out of transfer of data concerning them to the Learner Records system, but if they register for study at partner HEI later, there will not be a record of their previous study.
- NI** Learners in partner institutions across the region do not have to use the MLE portal, but not engaging with it might make their life less convenient.
- SP** In principle the engagement with the relevant HEI's e-portfolio application is optional and in practice not all use it. However, because supporting students PDP is a QCA requirement to be complied with from Autumn 2005 onwards, fullest and widest use of it is encouraged.
- DL** At the moment the application is piloted with about 100 students. It is envisioned that the majority of students at the FEI will engage with it in the future. It will be compulsory for all in principle. However, in practice some people just cannot access a computer. There will be a paper based alternative available for such individuals to comply with SENDA.
- PR** 1) Current application process: There is only an online application for the Online degree, so using it is compulsory in practice; 2) The future PLE: Applying for a course via PLE will be more or less obligatory, but the actual use of the PLE to support the learning and competency identification process will not be compulsory. Although the ODL Unit will not require any learner to use the PLE, BT may require employees to use it. It was noted that individual applications can be dealt with on case by case basis now and in the future, if necessary.
- EC** The ECW provides online courses. Hence, it is necessary for the students to log in at least once to draw out all learning materials that can be stored on a PC or a lap top. The learners are not obliged to participate in the discussion groups. Post enrolment consent is asked from learners for chat or messenger contribution storage. There will be further opt-in consent checks for further developments like this. There is support available on accessing and using the learning materials and participating in the discussion groups etc.

10.2. What are the implications for a learner who does not wish to, or cannot, interact with the application/tool?

- SH** See 10.1.
- NI** This issue has not been addressed yet, but it was acknowledged that it needs to be discussed with partner institutions' Equal Opportunities Officers.
- SP** If the e-portfolio application is used by tutors for course related purposes, not engaging with it will pose a problem. In addition, the student will not get as good pastoral care and tutoring as those using it.

- DL** To comply with SENDA, the FEI will have to provide an alternative. As all content in the application are based on Word documents, providing the alternative paper based system will not be a major problem for the institution. It is believed that not being able to engage with the application will not have significant implications for the learner.
- PR** The personal development of the learner will not be supported as well as that of those who interact with the system. Because the ODL Unit provides only online courses, whatever issue a student might have with the PLE, they would have the same problem with the wider VLE, i.e. the Online learning system.
- EC** Learners who do not wish to, or cannot, interact with the ECW MLE would find it difficult, although not impossible, to pass their course.

Acronyms

Becta	British Educational Communications and Technology Agency
BIFHE	Belfast Institute of Further and Higher Education
BT	British Telecom
CETIS	Centre for Educational Technology Interoperability Standards
DELNI	Department for Employment and Learning
DP	Data Protection
DPA 1998	Data Protection Act 1998
DPO	Data Protection Officer
DfES	Department for Education and Skills
ECW	e-College Wales
ebXML	Electronic Business using eXtensible Markup Language
ePARs	electronic Personal and Academic Records
EU	European Union
FE	Further Education
FEI	Further Education Institution
GLE	University of Glamorgan Learning Environment
GPL	GNU General Public Licence
HE	Higher Education
HEFCE	Higher Education Funding Council for England
HEI	Higher Education Institution
IEEE	Institute of Electrical and Electronics Engineers
IEEE-LOM	IEEE Learning Object Metadata
IEEE PAPI	IEEE Public and Private Information for Learners
ILP	Individual Learning Plan
IMS	IMS Global Learning Consortium
IMS-ACCLIP	IMS Accessibility for Learner Information Package
IMS-LIP	IMS Learner Information Profile
IMS-RDCEO	IMS Reusable Definition of Competency or Educational Objective
IP	Intellectual Property
IPRs	Intellectual Property Rights
JISC	Joint Information Systems Committee
LEA	Local Education Authority
MIS	Management Information Systems
MLE	Managed Learning Environment
NICIS	Northern Ireland College Information System
NIIMLE	Northern Ireland Integrated Managed Learning Environment
ODL	Open and Distance Learning
OSPI	Open Source Portfolio Initiative
OSS	Open Source Software

PDP	Personal Development Planning
PLE	Personal Learning Environment
PROSPERO	Processes for Support of Personal Development Records Online
QMUL	Queen Mary & Westfield College, University of London
QUB	Queen's University Belfast
RNIB	Royal National Institute of the Blind
SENDA	Special Educational Needs and Disability Act 2001
SOAP	Simple Object Access Protocol
SR	Student Record
SRS	Student Records System
UCAS	Universities and Colleges Admissions Service
UKLeaP	United Kingdom Learner Profile
UK LIP	United Kingdom Learner Information Package
VLE	Virtual learning Environment
W3C	World Wide Web Consortium
WAI	Web Accessibility Initiative
WEFO	Welsh European Funding Office
WCAG	Web Content Accessibility Guidelines
XML	eXtensible Markup Language