

UMAL Claims Digest

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Introduction

Welcome to the latest edition of our **Claims Digest**, featuring four topics of particular relevance to our Members.

The first article, by Emma Nicholls of DWF, examines freedom of speech across the four UK jurisdictions in light of recent legislative developments in England and the outcome of the judicial review in *The King on the application of the University of Sussex v The Office for Students*.

In the second article, Barney Winckler of Kennedys considers the potential for claims against further and higher education providers to be brought by way of group actions.

The third article, by Joshua Curzon and Arran Roberts of Kennedys, explores cybersecurity risks and highlights the recent cyberattack on Instructure that affected education providers worldwide.

Finally, Neil Kochane of DWF reviews the risks associated with silicosis for employees, students and visitors at universities and colleges.

We hope you find these articles informative and useful. If you have any questions or comments, please contact Paul Francis, Head of Claims at UMAL.

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Freedom of speech – what universities and colleges need to know

Introduction

“The core mission of universities and colleges is the pursuit of knowledge. Free speech and academic freedom are fundamental to this purpose. Without free speech there are no new ideas. There is no productive debate. There is no social progress. There is no challenge to conventional wisdom. Even where conventional wisdom reflects truth, it must be open to criticism and discussion.”

(Office for Students (“OfS”) Regulatory Advice 24: Guidance related to freedom of speech)

The 2025 edition of the annual Academic Freedom Index, which assesses academic freedom worldwide, indicates that the UK has experienced a statistically significant decline over the past decade. The UK now ranks between 60th and 70th out of 179 countries, placing it below several European nations including Germany, Italy, Spain and France.

Further concern arises from YouGov polling commissioned by the OfS, the independent regulator for higher education in England. Its June 2025 report found that around one fifth of the 1,200 higher education research and teaching staff surveyed did not feel free to discuss challenging or controversial topics in their teaching.

The Statutory Framework

The main provisions of the Higher Education (Freedom of Speech) Act 2023 (“HEFoS Act”) came into force on 1 August 2025. It amends the Higher Education and Research Act 2017 (“HERA”) by introducing a new statutory framework governing freedom of speech and academic freedom in higher education. The Act requires registered higher education providers in England, eligible students’ unions and constituent colleges (such as the Oxbridge colleges) to take reasonably practicable steps to secure and promote freedom of speech and academic freedom.

Before the HEFoS Act, freedom of speech obligations in higher education were principally governed by section 43 of the Education (No. 2) Act 1986. That duty continues to apply to further education institutions in England and Wales and to universities in Wales, requiring institutions within its scope to take reasonable steps to secure lawful speech and maintain a Code of Practice governing meetings and other activities.

The statutory duties introduced by the HEFoS Act apply only to registered higher education providers in England. They do not extend to institutions in Wales, Scotland or Northern Ireland.

Institutions in Scotland and Northern Ireland are not subject to the section 43 duties. However, institutions across all four UK jurisdictions remain subject to other legal obligations relevant to freedom of expression, including the Human Rights Act 1998 (“HRA”), Article 10 of the European Convention on Human Rights (“ECHR”), equality legislation, anti-harassment law and, where applicable, public law principles.

For universities and colleges across the UK, the ECHR, incorporated into domestic law through the HRA, provides a common baseline protection for freedom of expression. That right is qualified and may be restricted where prescribed by law and as necessary in a democratic society.

Although Article 10 provides a common legal foundation throughout the UK, England now operates within a significantly more prescriptive statutory and regulatory framework than Wales, Scotland or Northern Ireland. The HEFoS Act requires English higher education providers not only to secure freedom of speech and academic freedom, but also to promote them and maintain a more comprehensive Code of Practice than previously required. This article therefore focuses principally on the English regime whilst highlighting the wider legal framework relevant across the UK.

Definition of “Freedom of Speech”

The HEFoS Act inserts a new Part A1 into HERA. It defines “freedom of speech” as the freedom to impart ideas, opinions or information, as referred to in Article 10 of the ECHR, through speech, writing or images, including electronic communications. The definition also extends to artistic expression, such as paintings and theatrical productions.

The Duty

Under the new Part A1 of HERA, the governing body of a registered higher education provider must promote, and take reasonably practicable steps to secure, freedom of speech within the law for staff, students, members and visiting speakers, having particular regard to the importance of freedom of speech. The Act also imposes a corresponding duty to promote academic freedom.

In relation to academic staff, the duty includes protecting their freedom within the law to question and test received wisdom, and to advance new, controversial or unpopular opinions without placing themselves at risk of adverse consequences affecting their employment or career progression. Academic freedom extends beyond an individual’s own area of expertise. It includes contributions to wider academic debate, comments on matters of public interest and criticism of the individual’s own institution. Providers must also maintain a free speech Code of Practice.

These duties build on the public interest governance principles already applicable to English higher education providers registered with the OfS. The new statutory regime, however, places those principles on a clearer statutory footing and introduces a significantly more extensive regulatory and enforcement framework.



Academic freedom extends beyond an individual’s own area of expertise.”

OfS Regulatory Advice 24

The OfS’s ‘Regulatory Advice 24: Guidance related to freedom of speech’ came into force on 1 August 2025 alongside the new duties introduced by the HEFoS Act. It sets out a three-stage framework for assessing compliance with the statutory duty to secure freedom of speech. The framework should be applied whenever a decision or measure may affect freedom of speech.

Step 1: Is the speech “within the law”?

The new statutory duties do not alter the existing legal boundaries of lawful speech. The starting point remains that speech is lawful unless restricted by statute or the common law. The guidance identifies examples of unlawful speech, including certain offences under the Public Order Act 1986, harassment under the Protection from Harassment Act 1997 and offences under the Terrorism Act 2000. Providers are therefore under no duty to secure speech that is unlawful, including speech amounting to unlawful support for a proscribed organisation, speech that may amount to racial hatred, harassment or other unlawful conduct.

Step 2: Are there reasonably practicable steps to secure the speech?

Where lawful speech may be affected, providers must consider whether reasonably practicable steps can be taken to secure that speech without restricting it. The guidance explains that this may require positive action, such as amending policies or codes of conduct that unnecessarily restrict lawful speech. Equally, compliance may require institutions simply to refrain from taking action that would impede lawful speech.

However, a step cannot be regarded as reasonably practicable if taking it would itself be unlawful. This includes acting incompatibly with another Convention right where the provider is subject to the Human Rights Act, such as the ECHR Article 8 right to respect for private and family life.

If no lawful and reasonably practicable steps are available to secure the speech, there will be no breach of the statutory duty in failing to do so.

Step 3: Are any restrictions prescribed by law and proportionate?

Where speech cannot be secured through reasonably practicable lawful steps, any restriction must satisfy Article 10(2) of the ECHR. In particular, any restriction must pursue a legitimate aim and be proportionate. This requires decision-makers to consider whether a less restrictive alternative could achieve the same objective.

The proportionality test sets a high threshold. In practice, lawful speech will often attract significant protection.

It is important to recognise that the questions of whether reasonably practicable steps are available and whether any restriction is proportionate are closely connected. In many cases, they involve considering the same issue from different perspectives: whether a less restrictive approach could reasonably have been adopted.

Competing Duties

Universities and colleges are frequently required to balance freedom of speech against other legal obligations which may, in some circumstances, justify restrictions on lawful speech. In England, Wales and Scotland these include duties under the Equality Act 2010. Institutions in Northern Ireland operate under a separate body of equality legislation, although they face many of the same practical challenges when balancing freedom of expression with protections from harassment and discrimination.

The Equality Act 2010 prohibits unlawful discrimination in relation to protected characteristics. However, the expression of views that others may regard as unpopular, offensive or even discriminatory is not, of itself, unlawful. Speech falls outside the protection of freedom of speech only where it amounts to unlawful harassment or discrimination or is otherwise unlawful. Universities and colleges are public authorities for the purposes of the Equality Act and must also comply with the Public Sector Equality Duty. This includes the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not.

The OfS guidance makes clear that these duties must be discharged in a way that recognises the importance of freedom of speech and academic freedom. It acknowledges that many cases will be complex and highly fact specific. Institutions should therefore ensure that their policies are carefully drafted and implemented so that they comply with both their equality obligations and their free speech duties. Where restrictions are necessary, they should, wherever possible, relate to the time, place and manner of speech, rather than the viewpoint being expressed.

For governing bodies and senior decision-makers, this underlines the importance of documenting the balancing exercise undertaken whenever competing legal duties arise. Well-reasoned decision-making is likely to be as important as the eventual outcome.



OfS imposed a £585,000 fine on the University of Sussex for breaches of its conditions of registration relating to freedom of speech and academic freedom.”

The OfS decision against the University of Sussex

The challenges involved in balancing competing legal duties came sharply into focus in March 2025, when the OfS imposed a £585,000 fine on the University of Sussex for breaches of its conditions of registration relating to freedom of speech and academic freedom. The investigation centred principally on the University’s Trans and Non-Binary Equality Policy Statement.

The investigation followed a series of student protests concerning Professor Kathleen Stock, a gender-critical feminist, which ultimately resulted in her resignation. The OfS examined whether aspects of the University’s policies, particularly requirements relating to the positive representation of trans people and trans lives, had the potential to restrict academic freedom.

The High Court judgment

In May 2025, the University challenged the OfS’s decision by judicial review.

Although the decision under challenge pre-dated the introduction of the HEFoS Act, the parties agreed that the approach subsequently set out in Regulatory Advice 24 correctly reflected the framework for assessing compliance with the statutory duty to secure freedom of speech.

The Court rejected submissions by the Free Speech Union that the third stage of Regulatory Advice 24 was unnecessary. Instead, it confirmed that the three-stage framework provides the correct approach. Accordingly, a registered provider will generally comply with its statutory duty where it has taken reasonably practicable steps to secure lawful speech and where any restriction imposed is proportionate.

The Court held that the OfS had erred in law in the exercise of its jurisdiction to make its finding that the University had breached its conditions of registration. It also concluded that the OfS had misapplied its own guidance by adopting what it described as an “absolutist approach”. Rather than applying the three-stage framework, the Court found the OfS had treated any interference with lawful speech in the Policy Statement as a breach without considering whether any restriction was reasonably practicable or justified under Article 10(2) of the ECHR.

The Court further found that the OfS had failed to consider the University's policy documents as a whole. Instead of reading the Trans and Non-Binary Equality Policy Statement alongside the University's Freedom of Speech Code of Practice and other relevant policies, it had assessed the Policy Statement in isolation. Read together, the Court concluded, the University's governing documents complied with the relevant registration conditions.



The OfS argued that the University's Policy Statement could expose staff to disciplinary proceedings and that the prospect of such proceedings might have a "chilling effect" on academic freedom."

The Court also disagreed with the OfS's approach to academic freedom. Under HERA, academic staff must be free to put forward new, controversial or unpopular ideas without placing themselves in jeopardy of losing their jobs or associated academic privileges.

The OfS argued that the University's Policy Statement could expose staff to disciplinary proceedings and that the prospect of such proceedings might have a "chilling effect" on academic freedom. The Court rejected that analysis. It held that the possibility of disciplinary proceedings was not the same as jeopardy of losing employment or academic privileges. Once the University's documents were read fairly and as a whole, Professor Stock was not at risk of losing her position due to anything in the Policy Statement. That, the Court held, was determinative.

Finally, the Court noted that by the time the OfS imposed its sanction, the University had already amended the relevant documents to address the concerns identified during the investigation. The Court held that the OfS ought to have taken those changes into account. Instead, it had become focused on establishing a high-profile test case to encourage wider sector compliance. The Court concluded this demonstrated bias and a closed mind and rendered the decision-making process unlawful.

Practical significance of the judgment

The judgment provides important guidance for universities and colleges, and for those responsible for governance, compliance and risk.

First, governing documents should be considered collectively rather than in isolation. A single policy may appear problematic when read alone but ought to be read in the context of an institution's wider governance framework which protects freedom of speech and is compliant with its conditions of registration.

Secondly, decision-makers should avoid treating any interference with lawful speech as automatically unlawful. The correct approach remains the structured assessment reflected in Regulatory Advice 24, requiring careful consideration of lawful speech, reasonably practicable steps to secure speech and proportionate restrictions.

Finally, the judgment reinforces the importance of fair, balanced and well-documented decision-making. Institutions should be able to demonstrate not only the decisions they reach but also the reasoning process by which competing legal duties are balanced.

Practical Guidance – What does the judgment mean for Regulatory Advice 24?

The judgment provides valuable guidance on the approach institutions should adopt when assessing whether freedom of speech within the law has been protected. It also reinforces the complexity of these issues and the importance of evaluating policies in their wider institutional context.

For institutions concerned that the judgment would require a wholesale review of existing guidance and training, that is unlikely to be necessary. The judgment has not altered the statutory framework or the legal duties imposed by the HEFoS Act. Instead, it clarifies how those duties should be interpreted and applied.

Although the judgment and Regulatory Advice 24 concern the English regulatory regime, many of the practical lessons, particularly around policy alignment, training, risk assessment, record keeping and proportionate decision-making, are also relevant to institutions in Wales, Scotland and Northern Ireland, subject to their respective legal and regulatory frameworks.

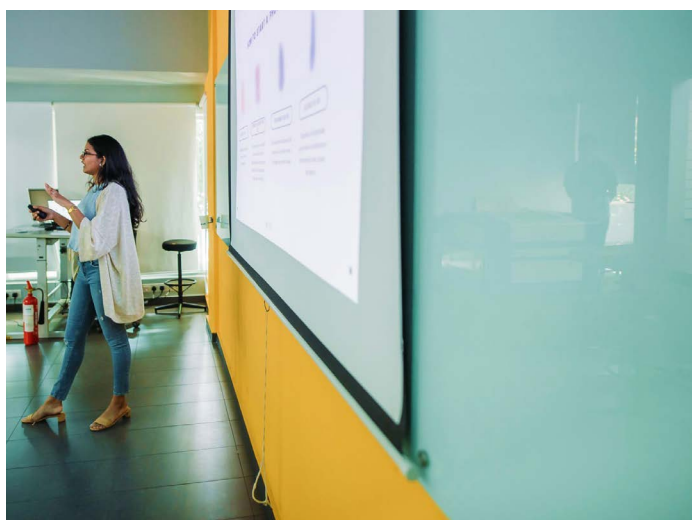
Accordingly, institutions should continue to ensure that they have:

- **A robust Code of Practice** aligned with related policies, communicated to staff and students, and readily accessible through the institution's website, student handbook and other key publications.
- **Effective training** for governors, senior leaders and relevant staff, supported by induction and periodic refresher sessions, to ensure a consistent understanding of the institution's freedom of speech obligations and how they interact with wider legal duties, including equality and human rights legislation.
- **Clear procedures** governing external speakers, meetings, demonstrations and protests, identifying proportionate mitigation measures that enable events to proceed wherever reasonably practicable.
- **Defined arrangements for security and event management**, including responsibility for approving higher-risk events, implementing control measures identified through risk assessment and documenting the basis for significant decisions.

- **Appropriate records** of decisions that materially affect freedom of speech, providing a clear audit trail should those decisions later be scrutinised by regulators or the courts.
- **Transparent research governance**, ensuring that lawful research and funding decisions are assessed fairly and are not unnecessarily restricted.

These measures are likely to be as important from a risk management perspective as they are for regulatory compliance. Clear governance, consistent decision-making and comprehensive records may prove critical in defending regulatory investigations or civil claims arising from freedom of speech disputes, or bringing judicial review proceedings.

What has changed is the regulatory approach and application of the underlying legal framework.



On 19 May 2026, the OfS confirmed that it would not appeal the High Court's judgment overturning its decision, explaining that prolonging the litigation would not be in the interests of students or the sector. The OfS Chair, Edward Peck, observed that the judgment broadly endorsed the approach set out in Regulatory Advice 24, while acknowledging that further clarity would be helpful before the new complaints scheme becomes operational.

The litigation may therefore have concluded, but aspects of Regulatory Advice 24 will still benefit from further clarification. For example, conduct that falls short of the legal threshold for unlawful harassment may nevertheless justify proportionate measures designed to prevent bullying or protect the rights of others. The distinction between lawful but objectionable speech and unlawful conduct is not always clearly explained in the existing guidance.

Similarly, when considering proportionality, decision-makers should always ask whether less restrictive measures could adequately protect freedom of speech while addressing competing legal rights. In practice, this may involve managing the time, place or manner of an event, rather than preventing

it altogether. Such an approach is consistent with the statutory framework and less likely to discourage legitimate academic debate. It would be helpful if this were clearly explained in the guidance.

The central lesson from the judgment is that where competing rights arise, institutions must undertake a careful and balanced assessment to determine how lawful freedom of speech can be secured while ensuring that any restrictions remain proportionate. That assessment should be undertaken in accordance with the institution's Code of Practice by appropriately trained individuals with sufficient authority to make informed judgments.

From a practical perspective, institutions should continue to identify potentially contentious events at an early stage. Early engagement provides more time to assess the legal and operational issues and consider appropriate mitigation measures so that wherever possible protests can still go ahead safely. Institutions across the UK should also continue to review their governance arrangements and policies to ensure they reflect both their legal obligations and the evolving regulatory expectations.

Complaint Scheme

At present, the OfS oversees freedom of speech and academic freedom in registered higher education providers through the conditions of registration relating to governance and management. Where providers are alleged to have breached those conditions, academic staff may notify the OfS, while students who remain dissatisfied after exhausting internal complaints procedures may be referred to the Office of the Independent Adjudicator ("OIA").

From 1 September 2026, a new free to use complaints scheme will extend the OfS's role. Established under regulations made earlier this year, the scheme will enable academic staff, external speakers and other eligible non-student complainants to raise concerns directly with the OfS where they believe a provider has failed to comply with its freedom of speech duties (students may continue to raise concerns via the OIA).

The OfS will have the power to investigate complaints and may recommend that providers review decisions, amend policies or processes, or pay compensation where appropriate. The aim is to reinforce the role of universities and colleges as places of robust intellectual debate while providing a mechanism for resolving disputes concerning freedom of speech.

From April 2027, further new conditions of registration will permit the OfS to impose financial penalties for breaches of the statutory duties introduced by the HEFoS Act. These fines may be up to £500,000 or 2% of an institution's qualifying income, whichever is greater. In the most serious cases, providers may also face deregistration, with the consequential loss of access to student support and public grant funding.

For governing bodies and senior management, these developments reinforce the need for effective governance arrangements. Institutions should ensure that freedom of speech decisions are made consistently, supported by appropriate evidence and documented in sufficient detail to withstand regulatory scrutiny. Robust governance and clear decision-making processes are also likely to assist in responding to regulatory investigations and any associated civil claims.

The observations of Professor Malcolm Press CBE DL, President of Universities UK, made shortly before the High Court's judgment in the University of Sussex litigation, remain particularly apt:



Protecting free speech while preventing harassment, hate speech, and radicalisation are complex tasks involving finely balanced decisions. It is important that the OfS discharges its new responsibilities fairly, transparently, and proportionately.”

In a sector already experiencing significant financial pressures and substantial workforce reductions, it is hoped that the OfS will adopt a collaborative and balanced approach to regulation going forward. The University of Sussex litigation illustrates the importance of regulatory decision-making that is clear, evidence-based and consistent with the statutory framework.

Conclusion

The OfS is expected to publish further guidance, including additional examples of the steps likely to be regarded as reasonably practicable in securing freedom of speech. That guidance will need to reflect experience across the sector and the OfS's continuing engagement with providers on these issues.

Although the new statutory regime applies to registered higher education providers in England only, the principles and wider issues considered in this article have relevance across the UK. Universities and colleges in Wales, Scotland and Northern Ireland continue to operate within established legal frameworks governing freedom of expression, equality, harassment and human rights. Governing bodies and senior leaders throughout the UK therefore face many of the same practical challenges in balancing competing rights, making defensible decisions and maintaining clear governance arrangements, even where the statutory duties may differ.

In the meantime, the impact of the HEFoS Act will continue to be monitored through a range of data sources. Whether the decline in academic freedom identified by the Academic Freedom Index can be reversed in the future remains to be seen.

Universities and colleges have been navigating this increasingly complex legal and regulatory landscape for some time. Many have already reported positive outcomes from reviewing their Codes of Practice and related policies, including closer collaboration with students' unions and student groups and a better understanding among staff of freedom of speech and academic freedom. Valuable resources have also emerged inspired by the work of the Society for Research into Higher Education' and University College London's Disagreeing Well on-line initiative.

The importance of these developments extends beyond regulatory compliance. Higher and further education institutions play a vital role in equipping students with the skills to engage thoughtfully with differing viewpoints, challenge ideas constructively and participate in informed debate. Those skills are fundamental not only to academic enquiry but also to a healthy democratic society.

As Dr Michael Spence, President and Provost of University College London, observed:



Practising the skill of disagreeing well is crucial, not only for the university to do its work, but for democracy more broadly to survive. Democracy demands that we do more than simply shout at each other. Doubtless there will be those who find even these scant suggestions idealistic or even objectionable. You are welcome to disagree; just do it well!”

For governing bodies, senior leaders and those responsible for institutional risk across the UK, the challenge is to ensure that freedom of speech is not viewed simply as a legal obligation, but as an integral part of effective governance. While the statutory framework discussed in this article is most significant for registered providers in England, the broader lessons of the University of Sussex litigation are relevant throughout the sector. Careful decision-making, well-documented governance processes and a balanced approach to competing legal duties are likely to be as important in Wales, Scotland and Northern Ireland as in England in demonstrating that difficult decisions have been reached lawfully, fairly and transparently.

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Student claims – fertile ground for group actions?

Introduction

In February 2026 it was widely publicised that University College London had settled group claims brought by former students against it in the High Court in London in connection with Covid and Industrial action-related disruption to their studies. The possibility of similar claims being brought against numerous other universities remains live at the time of writing and indeed, in mid-July, a number of universities received letters before action to add to those who have previously received claims. The question addressed in this article is are the Covid-related claims likely to be a one-off, or are the HE and FE sectors increasingly vulnerable to other group claims in future?

It is helpful to consider three issues, namely:

- The changing legal landscapes in different parts of the UK and the growth in third party litigation funding.
- The range of legal exposures HE and FE institutions have to students capable of impacting large numbers of them simultaneously.
- The constraints on those wishing to bring claims.

The changing litigation landscape and the rise of funding

Group claims arise where multiple claimants sue the same defendant or defendants for causes of action based on the same or related facts and legal issues. The procedural mechanisms through which such claims may be brought and are managed are jurisdiction-specific. Group claim mechanisms may be either “opt-in”, where every claimant must individually and actively join proceedings in order to benefit from a judgement, or “opt-out”, where claims are brought on behalf of a class of persons and the default position is that every person within that class will be entitled to a share of any award made in favour of the class.

The Civil Procedure Rules that apply in England and Wales make provision for representative actions that are comparatively rare in practice and for Group Litigation Orders (GLOs). GLOs (or bespoke orders with some if not all of their features) are more common and provide an opt-in case-management framework where relevant claims are added to a register and case-managed centrally by one court, usually with common issues of fact and law being resolved by trial of lead or sample cases. “Opt-out” collective proceedings are generally not a feature of litigation in England and Wales, with the very important exception of proceedings in the Competition Appeals Tribunal (CAT).

There has been a marked rise in both opt in and opt out claims in England and Wales over the last ten years. Underpinning this have been, first, the establishment of the procedural mechanisms through which the claims may be brought and, crucially, the availability of third-party litigation funding (TPLF). TPLF is any set of arrangements where financial institutions with no direct involvement in the facts giving rise to the litigation pay the Claimants’ legal costs in return for a financial share of any damages awarded, thereby taking on risk in return for potential reward if the claims prevail.

Group claims are generally not viable without TPLF (and what is called After-The-Event insurance to cover adverse costs exposures if a group claim fails) because such litigation is procedurally complex and time-consuming, in the context of what is generally already an expensive legal system. Once funders and claimant law firms have the expertise needed to identify potential group claims and recruit claimants for them, they will inevitably look for more opportunities to do so. The rise of such claims has been reflected not least in the growth of advertising on social media and elsewhere by firms seeking to recruit claimants.

The Civil Justice Council last year made a series of recommendations regarding the future regulation of TPLF but never seriously questioned whether it should remain available. The view of policy makers in England and Wales is, broadly, that TPLF and the viability of group litigation are good things which promote access to justice (and possibly also the competitiveness of the English legal system, particularly within London, as a source of invisible exports).



English costs law and funding rules have assisted the rise of an assertively entrepreneurial claimant law firm culture.”

English costs law and funding rules have assisted the rise of an assertively entrepreneurial claimant law firm culture. There has not been as significant a rise in group litigation as in England in other parts of the UK to date. Different parts of the UK are, however, considering whether to introduce procedural reforms to make opt out collective proceedings more widely available, which may impact the position.

In 2025 the Scottish Civil Justice Council (SCJC), began a review of current procedure and possible future changes (Part 4 of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 allows for court rules to be prepared to provide for group proceedings in the Court of Session on an opt-in or opt-out basis). Meanwhile, the Law Commission in England announced in April 2026 that it will later this year begin a review of whether a consumer class actions regime should be introduced in England and Wales.

These developments have arguably coincided with and helped to drive a more consumer-rights focused culture that has grown across the UK in recent years. So the next question is, are HE and FE institutions particularly exposed as potential defendants?

Particular exposures to HE and FE institutions

The answer to that question may be affected significantly by whether legal arguments advanced in the UCL litigation reach trial and judgment in another case. Issues of very wide importance to the sector included (i) whether performance interest damages (representing the alleged difference in value between what was promised and what was delivered) should be available for a student learning experience that was substantially different (in this case more online) and thus (it was argued) had a lower market value than the service allegedly bargained for, even if the student could show no loss and (ii) the testing of particular contractual defences in consumer contracts.

Even if claims arising out of Covid-disruption do not reach trial, and there is no repeat of the pandemic in coming years, certain features of the sector have the potential to affect large numbers of students at the same time and thus give rise to multiple claims. These include:

- High student consumer expectations tied to funding and the expected benefit of receiving education.
- Degree inflation, changing employment opportunities for graduates and high levels of student debt potentially giving rise to “buyer’s remorse”.
- Risks of course provision variation or failure, sometimes reliant on third party provision.
- Risks of widespread future industrial action if sector-wide pension and compensation issues endure.
- Data protection risk.

Constraints on those seeking to bring claims

Does all of this mean more group litigation against HE and FE providers is likely or inevitable?

There are factors which may considerably constrain the frequency of such claims in future.

First is the relatively pro-active approach of many institutions in addressing student grievances where systemic problems arise, driven no doubt in part by the availability of the Office of the Independent Adjudicator in England and Wales, the Scottish Public Services Ombudsman and the Northern Ireland Public Services Ombudsman. Students may in some circumstances be offered redress before they are minded to seek legal advice.

Second is the general financial health of the sector. Claimant law firms and, where available, TPLF funders like deep pocket defendants who can fund large settlements. That is not necessarily how many education providers in the UK would see themselves. For as long as funders perceive there are larger rewards or more meritorious claims elsewhere, the sector may benefit from those driving group claims focusing on other sectors.

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Cybersecurity concerns in the education sector

Introduction

Cybersecurity is a high priority for all organisations, but the education sector faces a particularly challenging combination of risks. In this article we explore the recent Canvas incident that impacted the education sector, the specific risks affecting educational institutions, the impact on smaller institutions, and the tail risks arising from incidents.

The Canvas incident: systemic risk in action

A systemic cybersecurity incident is an incident that impacts a key service provider with a global client base. We tend to see at least one systemic cybersecurity incident each year, although recently we have seen this increase to several systemic incidents a year. Previous examples have included file transfer services and chatbots, but this year we saw a systemic cybersecurity incident that specifically impacted the education sector.



The Canvas incident is unlikely to be the last systemic incident that impacts the education sector.”

In April 2026, the software provider Instructure fell victim to a cyberattack, which impacted the Canvas education software. Cybercriminals claimed to have stolen several terabytes of data and held Instructure to ransom. An estimated 9,000 educational establishments around the world are believed to have been impacted by this incident. Instructure is believed to have paid a ransom to secure the return and deletion of data, on the understanding that its customers would not be directly extorted by the cybercriminals.

Systemic cybersecurity incidents pose specific difficulties for impacted customers, who often find themselves in a queue of thousands of organisations demanding answers from the supplier. Where a supplier has thousands or tens of thousands of customers, an individual customer’s commercial leverage is diminished. In such a scenario, customers often experience lengthy delays in obtaining information from the supplier, which can come in the form of generic updates rather than bespoke responses to questions. Where the impacted customers are the controllers of the relevant personal data, they find themselves trying to meet their regulatory obligations while being dependent on a third party for information, and with an overall lack of control over the process.

The Canvas incident is unlikely to be the last systemic incident that impacts the education sector. Educational institutions should consider their cybersecurity incident response processes to assess how they would function in the event of a systemic incident. A process designed for an internal incident or a compromise of a small supplier might not be sufficiently resilient in the event of a systemic incident. Educational institutions should consider how they will respond where an incident is in the mainstream news as the related narrative will evolve independently, and they should consider how this will impact their approach to stakeholder engagement.

Specific risks for the education sector

While the education sector is not alone in facing systemic risks, it faces a particularly challenging combination of risks. These include:

1. A mobile and often international student population
2. Processing large quantities of personal data
3. Legacy personal data retention
4. Large and complex IT estates
5. Legacy IT systems
6. Budgetary constraints

Educational institutions are particularly exposed to the risk that a cybersecurity incident will impact a large volume of personal data relating to a broad group of people, some of whom either are not from or are no longer resident in the United Kingdom, potentially dating back many years. Where possible, educational institutions should proactively monitor their regulatory risk exposure to understand what obligations may arise in the event of a cybersecurity incident. A forward-thinking approach can be extremely effective in improving an institution’s responsiveness in the event of a cybersecurity incident and help mitigate criticism.

Organisations should also carefully consider their legacy systems and personal data to understand whether these represent a regulatory risk, either through the evolution of technology or excessive data retention. While personal data is an asset,

a failure to safeguard that data or set appropriate retention periods turns it from an asset to a liability. As above, a proactive approach to these can help mitigate the risk of unpleasant discoveries in the event of a cyber incident.

No institution too small

We believe that there is a persistent misconception that an institution can be too small to experience a cybersecurity incident, or that such institutions can fly under the radar. Our view is that cybersecurity risks affect all institutions, and that no organisation is too big or too small to be impacted. While large organisations do face specific cyber risks and targeted attacks, cybersecurity incidents are increasingly arising from automated exploitation of vulnerabilities. Smaller organisations with smaller IT budgets face greater challenges in staying ahead of such automated exploitation.

Automated incidents pose specific challenges for impacted institutions, as these incidents can happen very quickly and at significant scale. The regulatory expectation under the UK GDPR is that institutions should implement “appropriate technical and organisational measures” to protect personal data, and this is an evolving standard. From a regulatory perspective, we believe that it will be increasingly difficult to defend using manual defences to automated threats. Smaller institutions should consider whether organisational and technical measures that were previously not appropriate might now be appropriate using automation and therefore expected.



Institutions should be aware that cybersecurity incidents carry a tail risk of potential claims for failing to protect personal data.”

The tail risk

Institutions should be aware that cybersecurity incidents carry a tail risk of potential claims for failing to protect personal data. While a cybersecurity incident impacting an institution can theoretically impact broad classes of people, group litigation for data protection claims in England and Wales remains challenging. This stems from the difficulty that claimants have in proving that they all have the same interest in a claim. However, impacted individuals can still bring individual claims, and these remain a persistent risk following cybersecurity incidents, particularly where an organisation is found to have had inadequate technical and organisational measures. In this context, individuals are also increasingly using AI to assist them in bringing claims which might otherwise be unappealing from a litigation funding perspective.

Barney Winckler
Partner
Kennedys



Silicosis – Recent developments and the duties to employees, students and visitors

Introduction

Silicosis has re-emerged as an important occupational and public safety issue in the UK. It is an irreversible and potentially fatal lung disease caused by inhalation of respirable crystalline silica (“RCS”), a fine dust generated when materials such as stone, concrete, brick, ceramics and engineered stone are cut, drilled, polished or otherwise worked. HSE guidance emphasises that RCS can cause silicosis, chronic obstructive pulmonary disease and lung cancer, and that the particles are often too fine to be seen in normal lighting.

Although recent media attention has focused heavily on engineered stone and kitchen worktop fabrication, the underlying legal and practical issues reach much further. Universities and colleges frequently operate workshops, laboratories, design studios, estates functions, construction-related teaching environments and refurbishment projects in which silica-containing materials may be present. Where that is so, the legal duties are not confined to staff. They may extend to students, contractors, visitors and others affected by the institution’s undertaking.

This is an issue that has attracted a lot of attention and publicity of late and the HSE has recently intensified its focus on silica risk. In March 2025 it refreshed its guidance on health surveillance for workers exposed to RCS, stressing that where there is a reasonable likelihood of silica-related disease, health surveillance is a legal requirement under COSHH. In May 2026 it went further still, announcing that dry cutting of engineered stone is “unacceptable”, issuing sector-specific guidance and launching a programme of more than 1,000 inspections across Great Britain.



What is silicosis, and why is it in sharp focus?

Silica is a natural substance found in many common materials, including rock, sand, clay, concrete, brick and ceramics. When these are worked, fine respirable crystalline silica dust can be released. HSE guidance explains that this dust is hazardous because it penetrates deeply into the lungs and can cause progressive and irreversible disease.

Historically, silicosis was often associated with heavy industry and developed after prolonged exposure over many years. However, recent concern has centred on engineered stone, often used in kitchen and bathroom worktops, because it may contain extremely high proportions of crystalline silica. HSE’s 2026 intervention followed evidence that dry cutting of engineered stone typically produces RCS exposure levels five to ten times higher than equivalent wet methods, and that lower-silica alternatives are available.

It has been reported that more than 50 UK cases of engineered-stone-related silicosis have been identified since 2023, with at least four deaths, and that some of the affected workers were in their twenties and thirties. At a recent round table event in Westminster attended by politicians, medical and health and safety experts it was feared that the true number of cases is likely to be higher with many workers avoiding reporting risks and red flags due to employer loyalty and fear of losing their income. The concern is not just that silicosis is reappearing, but that this newer pattern can involve accelerated disease, with severe injury developing after a relatively short duration of intense exposure.



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For further and higher education institutions, the significance lies not in whether they fabricate kitchen worktops as a business, but in whether their own activities create equivalent exposure pathways. Courses and facilities involving architecture, construction, engineering, art and design, model-making, ceramics, sculpture, practical archaeology, geology, workshop teaching, or in-house estates and maintenance work may all involve cutting, grinding, drilling or otherwise disturbing silica-containing materials. On a large campus, visitors may also be exposed if refurbishment or construction works are inadequately segregated.

Recent HSE developments and the current regulatory climate

The HSE's recent actions show that silica dust is no longer a peripheral issue. In March 2025, HSE updated its guidance on health surveillance for those exposed to respirable crystalline silica (G404). The refreshed guidance specifically highlighted that worktop manufacturing and installation are high-risk occupations, confirmed that health surveillance must be provided where there is a reasonable likelihood that silicosis may develop, and emphasised the need to consult occupational health professionals where over-exposure may already have occurred.



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The regulatory response intensified recently and on 11 May 2026 the HSE announced a major package of measures for the engineered stone sector, including its first COSHH essentials sheet specifically for engineered stone, a statement that dry cutting is unacceptable and the launch of a nationwide inspection programme involving more than 1,000 visits. The guidance also made clear that employers are expected to switch to lower-silica materials where possible, use water suppression, control mist, provide suitable respiratory protective equipment and carry out regular health surveillance. The HSE expressly described those steps as legal requirements.

Although the guidance is directed at the engineered stone sector, its broader significance is obvious. Civil claimants and regulators alike are likely to treat these statements as compelling evidence of what constitutes reasonable and modern control of silica risk. For the tertiary education sector, the practical lesson is that silica exposure can no longer be characterised as a niche industrial hazard. It is clearly on the HSE's list of enforcement priorities and sits within the wider emphasis on reducing work-related ill health.

Why further and higher education institutions are exposed to this risk

Further and higher education institutions can encounter silica risk in a range of operational settings. These include engineering and construction faculties; art, ceramics, sculpture and design studios; practical training workshops; technical services; estates and maintenance teams; and campus building works. Risk may arise not only from direct teaching activities but also from cutting or drilling by contractors or facilities staff in areas accessible to students or the public.

The legal analysis therefore cannot be confined to an employer/employee model. Universities and colleges may owe duties as employers to staff, but they also owe duties under health and safety legislation to persons not in their employment who may be affected by their undertaking. That category readily includes students, visitors, open-day attendees, school groups, external collaborators and members of the public who are lawfully on campus.

This is particularly important because students in higher education are generally adults and the law has been cautious about treating universities as standing “in loco parentis.” But that does not remove liability where the institution creates or controls a hazardous environment. The issue is not whether a university is a parental guarantor of a student's welfare in the abstract, it is whether it failed to control a foreseeable and known danger arising from its premises, systems of work or taught activities.

The statutory framework

The principal statutory framework is found in the Health and Safety at Work etc. Act 1974 (“HSWA”) and the Control of Substances Hazardous to Health Regulations 2002 (“COSHH”). Under HSWA, employers must ensure, as far as is reasonably practicable, the health, safety and welfare of employees, and must also protect persons not in their employment who may be affected by their undertaking. HSE's own legislative guidance describes the Act as imposing duties not only toward employees but also members of the public.

COSHH imposes more specific and onerous duties where hazardous substances are involved. In the case of silica, that means assessing the risk of exposure, preventing exposure where reasonably practicable, and otherwise adequately controlling it. COSHH also requires suitable maintenance and testing of control measures, provision of information and training, and health surveillance where there is an ongoing risk of ill health. The HSE's updated guidance on RCS surveillance in 2025 makes clear that surveillance is not optional where the threshold of risk is met.

For universities and colleges, compliance will often require a layered approach: risk assessment, engineering controls such as local exhaust ventilation and importantly now that the HSE

has raised it, wet methods and water suppression is a legal requirement. Furthermore, suitable respiratory protective equipment, safe cleaning systems, supervision, training, and occupational health input where exposure might remain are all necessary too. In potential litigation the institution would have to prove that these steps were actually implemented, monitored and enforced in practice and were not merely a consideration.

Recent silica enforcement examples: why they matter in civil litigation

There is, at present, a relative lack of recent reported appellate civil judgments specifically on engineered-stone silicosis in England and Wales. However, there are highly relevant criminal and enforcement examples showing what the HSE considers unacceptable practice.

In early 2025, reporting on the prosecution of Warmsworth Stone Limited recorded guilty pleas for failure to comply with an Improvement Notice, failure adequately to control exposure to RCS under COSHH, and failure properly to examine and test local exhaust ventilation. The company was fined, and the director also faced sanction. HSE described the company as having shown “reckless disregard” for relevant guidance and basic worker protection.

In May 2025, Inova Stone Ltd was fined after repeated failures to protect workers from silica dust, with inspectors finding the workshop floor “caked in dust,” little improvement over time, and continuing non-compliance despite improvement notices. HSE said the case should send a clear message that risks from engineered stone must be taken extremely seriously.

These are not civil liability judgments, but they are likely to be highly influential in future litigation. They illustrate the kinds of failings that now look glaring: inadequate risk assessment, poor housekeeping, lack of effective extraction or wet cutting, weak management ownership and failure to heed regulatory advice. In a claim against a university or college, a claimant would likely rely on such material to argue that the necessary controls were well known, practicable and already being enforced elsewhere. Conversely, a defendant institution with robust controls, surveillance, records and competent advice will be much better placed to distinguish itself from the non-compliant operators highlighted in these cases.

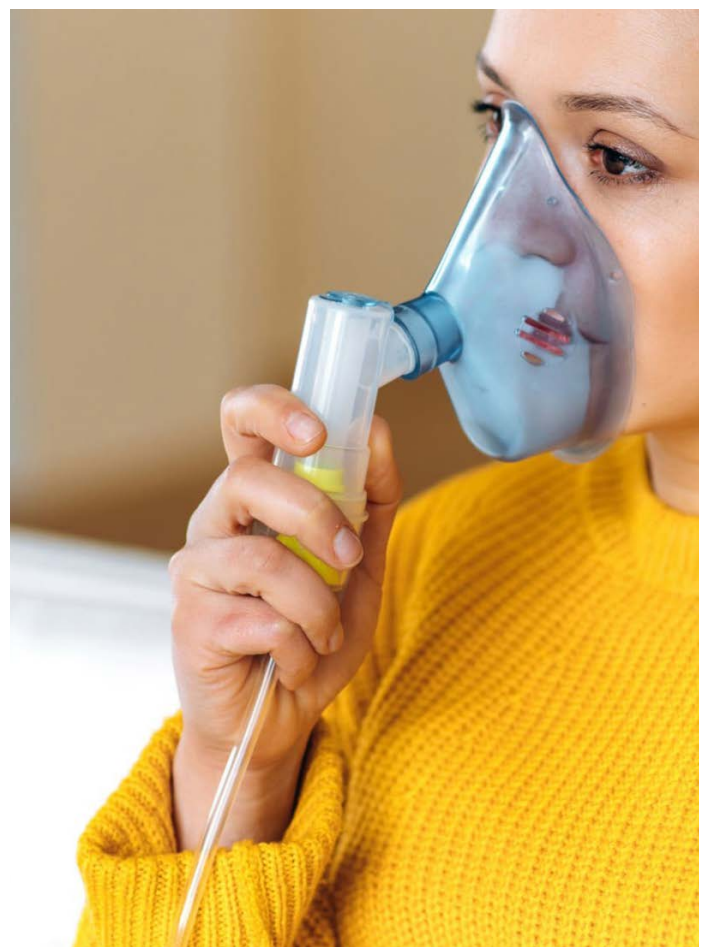
Potential claims and evidential issues

If a claim was to be made the duty owed will depend on the setting, but in practice the steps that should be taken include: identifying silica-generating tasks; assessing exposure; eliminating or reducing dry processes; ensuring local exhaust ventilation and/or wet cutting; providing and enforcing suitable respiratory protective equipment; safe cleaning and waste-handling; restricting access; warning and segregating visitors; and putting in place health surveillance where needed.

Silicosis claims still raise causation complexities. Some cases involve long latency periods, multiple sources of dust exposure, smoking histories or mixed occupational backgrounds. Those features may continue to provide defendants with substantial causation arguments.

That said, the newer engineered-stone pattern of disease may reduce some of the traditional difficulties, because the alleged exposure can be more intense, more time-limited and more closely linked to a particular activity or environment. The greater the concentration of exposure evidence - for example, repeated cutting in a particular workshop without wet methods or extraction - the easier it may be for a claimant to establish a causal link between institutional failings and illness. HSE’s recognition that dry cutting produces significantly higher exposure levels is likely to be especially important in that regard.

For institutions defending a potential claim documentation is therefore critical. Exposure measurements, maintenance records, COSHH assessments, respiratory protective equipment fit testing, training records, contractor management documents, cleaning regimes, surveillance arrangements and incident reports will all be central both to breach and causation. The COSHH regulations are particularly onerous and so if contemporaneous evidence of prevention or control cannot be produced the institution is likely to face difficulty defending the proposition that reasonable care was exercised.



Practical implications for higher education organisations

The current combination of regulatory attention, medical concern and media reporting should prompt those who use or are involved with silica in any way to review their arrangements. As a minimum, institutions should identify every environment in which silica-containing materials may be worked or disturbed, whether in teaching, maintenance or building projects. They should also review whether any dry process remains in use, whether local exhaust ventilation is present and tested, whether wet methods and water suppression are used wherever appropriate. They should also consider whether contractors are properly managed, whether visitors can enter risk areas and whether those with recurring exposure are under health surveillance. The HSE's recent guidance shows that the legal expectation is not passive awareness but active control, monitoring and intervention.

For institutions with art, design, architecture, engineering, or construction-related teaching provision, there is a further governance point: the separation between academic autonomy and health & safety responsibility should be carefully managed. A department may decide pedagogically what is taught, but the institution as occupier and employer remains responsible for ensuring that facilities, methods and supervision comply with the law and recent guidance.

Silicosis is an active and developing risk area and one that is currently under a fairly intense spotlight. If there is any concern of students, staff or visitors being exposed, proactive steps must be taken to prevent or control that exposure to the lowest level possible. If such steps are not taken the risk is run of serious illness or even worse but with the appropriate steps and systems in place such harm can be avoided.

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