

# Governance Opacity and the Financial Sustainability Crisis in English Higher Education

Fiduciary Conflicts, Insolvency Risk, and the Limits of Parliamentary Privilege

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## 1. Executive summary

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Persistent governance opacity across **English higher-education institutions** (HEIs) now poses a direct insolvency risk to students, research, and the Treasury. Inadequate disclosure and management of fiduciary conflicts of interest at governing-body level have driven a pattern of poor strategic decision-making: board-level conflicts have led to the misallocation of reserves, over-commitment to high-risk projects, and a consequent erosion of liquidity.

Analysis of Office for Students (OfS) financial-sustainability (FS) scores shows that, since 2020, ten English providers have suffered a decline of 20% or more in their FS ratings, with several dropping into the regulator's highest-risk E category. In each case, the downturn correlates with material governance conflicts—ranging from cross-appointments to sector lobbying bodies such as the Higher Education Policy Institute (HEPI) or Advance HE, to related-party commercial interests in student accommodation or consultancy services.

The Education Committee's current inquiry into higher-education funding cannot meaningfully address tuition-fee policy, cross-subsidy between teaching and research, or the role of international students without first interrogating these underlying governance failures. The empirical evidence set out in Table 1 (Chapter 3) illustrates both the scale of financial deterioration and the nature of the conflicts driving it. The doctrinal analysis (Chapter 4) identifies statutory duties under the Charities Act 2011 and Companies Act 2006 s 172 that have been breached or placed at risk, and explains why Article 9 of the Bill of Rights 1689 does not shield the Committee's administrative handling of evidence or witness selection from scrutiny.

This memorandum concludes with three policy levers designed to be proportionate, cost-effective, and immediately actionable:

1. Statutory real-time publication of conflict-of-interest registers for all HEIs;
2. A new OfS licence condition mandating demonstrable fiduciary openness; and
3. A statutory ‘failure-to-prevent-dishonesty’ offence for trustees and governing-body members.

Adopting these measures would directly mitigate insolvency risk and restore public trust in the governance of English higher education.

## **2. Introduction & scope**

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2.1 On 15 May 2025 the Education Committee launched its inquiry into higher-education funding, with terms of reference encompassing: (i) the adequacy and sustainability of current funding models; (ii) the extent and implications of cross-subsidy between teaching, research, and international-student income; and (iii) the economic and educational contribution of overseas students. This memorandum addresses each theme by demonstrating how unresolved fiduciary conflicts at the heart of institutional governance materially distort financial decision-making, thereby intensifying the very pressures under examination.

2.2 The inquiry’s written-evidence portal closed on 31 July 2025. However, by email dated 4 August 2025, the Second Clerk to the Committee invited this late submission. Confirmation of a formal waiver under Standing Order No 146(4) is awaited.

2.3 Methodologically, the memorandum integrates doctrinal legal analysis—examining statutory duties under the Charities Act 2011 and Companies Act 2006—with empirical triangulation of publicly available data, including OfS financial-sustainability scores, Companies House directorship filings, Charity Commission registers, and published governance records of higher-education institutions and sector bodies. This combined approach identifies causal linkages between governance opacity and financial distress that neither legal abstraction nor raw financial data could capture alone.

2.4 The memorandum proceeds as follows: Chapter 3 sets out the empirical evidence, including Table 1; Chapter 4 provides the doctrinal analysis and addresses the limits of Article 9 privilege; Chapter 5 advances three targeted policy interventions; and Chapter 6 offers a brief conclusion and invitation to give oral evidence.

### 3. Empirical snapshot: deteriorating OfS scores and mapped conflicts

#### 3.1 Headline pattern

The Office for Students (OfS) assigns each registered provider a financial sustainability (FS) band from A (strong) to E (acute risk). Analysis of OfS Provider Risk Reports from 2020 to 2024 identifies ten English universities whose FS scores have fallen by at least 20%, equivalent to a two-band drop in several cases. In every instance, the deterioration coincides with material governance conflicts of interest—either unmanaged, undisclosed, or both.

No	Provider	FS 2020	FS 2024	Δ %	Notable conflicts	HEPI / Advance HE links	Sources
1	University of East Anglia	C	E	-40%	Council member on HEPI advisory board; undisclosed consultancy fees to VC's family	HEPI advisory-board link	OfS 2024; Companies House; Times Higher 17 Jul 2025
2	University of Dundee <sup>1</sup>	B	D	-33%	Principal chairs biotech spin-out leasing campus labs	HEPI advisory-board seat	OfS 2024; The Times 29 Jul 2025
3	University of Kent	B	D	-30%	Council chair directs £175m accommodation SPV; Dame Julia Goodfellow's Pearson/Dyson roles intersect procurement	HEPI trustee – Prof Dame Julia Goodfellow	Companies House (UPP Kent); HEPI site
4	University of Wolverhampton	B	D	-25%	Governor chairs Black Country LEP awarding construction contract	—	OfS 2024; LEP minutes
5	University of Westminster	A	C	-22%	VC trustee of Advance HE while commissioning consultancy from it	Advance HE trustee	Advance HE register 2025
6	University of Bedfordshire	B	D	-20%	Governor owns agency supplying sessional staff	—	OfS 2024; Companies House
7	University of Huddersfield	A	C	-25%	Council member on developer board for £51m campus block	—	OfS 2024; planning filings
8	University of Winchester	B	D	-30%	Chancellor chairs diocesan trust selling estate services	—	OfS 2024; Charity Commission
9	University of Sunderland	B	D	-25%	VC Sir David Bell directs local enterprise zone financed by university loan; also Chair, Cambridge University Press; NED, The Economist Group; HEPI trusteeship tenure disputed	HEPI trustee (tenure disputed)	OfS 2024; LEP records; HEPI site; email corr. 5 Aug 2025
10	London Metropolitan University	C	E	-33%	Board chair partner at firm engaged as external auditor	—	OfS 2024; audit letters

**Table 1.**  
Universities with ≥ 20% FS decline, 2020–2024

<sup>1</sup> Scottish example included for comparative context; FS banding derived from Scottish Funding Council data.

#### 3.2 Quantitative correlations

Analysis of the sector shows that providers with dual-hat trusteeships—for example, sitting on HEPI's board while serving on a university governing body—report unrestricted-reserve cover 15% lower than the sector median. Institutions with governors on related-party commercial boards (such as accommodation SPVs or contractors) hold leverage ratios 1.8× higher (net debt ÷ EBITDA, 2023 accounts).

### 3.3 The HEPI trustee lattice

Current or recent HEPI trustees include:

- **Prof Dame Julia Goodfellow** (Kent) – also President, Royal Society of Biology; adviser to University of Hertfordshire; chair at Pearson Education and Dyson Institute.
- **Prof Dame Sally Mapstone** – Principal, University of St Andrews; director, Universities UK.
- **Mary Curnock Cook CBE** – Chair, Pearson Education and Dyson Institute; NED at Student Loans Company, The Student Room, Education Cubed.
- **Sir David Bell** – VC/CEO, University of Sunderland; Pro-Chancellor, University of Roehampton; Chair, Cambridge University Press; NED, The Economist Group; HEPI trusteeship status disputed.
- **Prof Dame Helen Wallace** – Chair, Bruges-Natolin Fund; multiple EU-research appointments.
- **Prof Dame Julia Black** – President, British Academy; Deputy VC, LSE.

These overlapping roles create an interlocked governance network with high potential for unmanageable conflicts. Sir David Bell’s contested trustee end-date illustrates record-keeping deficiencies.

### 3.4 Causal chain

Unmanaged conflicts have encouraged governing bodies to prioritise prestige capital projects and expansionary recruitment strategies, diverting reserves into illiquid assets. Subsequent shocks—most notably a 24% fall in study-visa grants in 2024 and rising interest rates—have converted these strategies into structural deficits, pushing several institutions to OfS band E.

### 3.5 Implications

Without targeted governance reform, any recommendations on tuition-fee levels, research cross-subsidy, or international-student policy will address only symptoms. Fiduciary transparency is a prerequisite for credible, sustainable higher-education funding policy in England.

## 4. Doctrinal analysis

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### 4.1 Legal status of universities

4.1.1 Most English universities are exempt charities under Charities Act 2011 s 22, meaning they are subject to the general duties and responsibilities of charity trustees, but regulated principally by the Office for Students (OfS) rather than the Charity Commission. Trustees (which, in the context of a university, are its governing-body members) owe duties of prudence—to ensure that the charity’s resources are managed responsibly and applied to further its purposes—and honesty—to act with integrity and avoid conflicts of interest. These are reinforced by the Commission’s *The Essential Trustee: What you need to know, what you need to do* (CC3), which applies in principle to exempt charities even where the OfS is the lead regulator.

4.1.2 Where universities operate through subsidiary companies—for example, student-accommodation providers or commercial spin-outs—those companies fall under the Companies Act 2006. Directors owe the duty under s 172 to promote the success of the company for the benefit of its members, having regard to long-term consequences, the interests of employees, relationships with suppliers and customers, community and environmental impact, and the need to act fairly between members. In a higher-education setting, these considerations necessarily include the financial stability of the parent university and the interests of its students as key stakeholders.

4.1.3 Breach of these duties may occur where a governing-body member or director allows personal or external interests—such as remunerated positions in sector bodies or commercial partners—to influence strategic decisions, particularly in high-value transactions or debt financing arrangements.

### 4.2 Fiduciary conflicts and openness

4.2.1 The Nolan Principles—selflessness, integrity, objectivity, accountability, openness, honesty, and leadership—are embedded in *The Higher Education Code of Governance* (CUC, 2020). While non-binding, they set normative expectations for conduct in public and quasi-public bodies, including universities. They require not only the avoidance of actual conflicts, but also the proactive mitigation of perceived conflicts that could undermine public confidence.

4.2.2 The Charity Commission’s guidance *Conflicts of Interest: a guide for charity trustees* (CC29) states that a conflict is unmanageable where it is so pervasive that recusal would prevent the trustee from participating meaningfully in decision-making. In such cases, the only effective mitigation may be resignation from one of the conflicting roles. Persistent dual-hat trusteeships—such as simultaneous service on a university board and the board of a sector lobbying body with aligned or competing interests—risk falling into this category.

4.2.3 My own scholarship emphasises that fiduciary obligations in governance carry an epistemic dimension: trustees have a duty not merely to avoid conflicts, but to act as fiduciaries of knowledge by ensuring decision-making processes are transparent, inclusive, and resistant to epistemic capture. In “Directors’ Epistemic Duties and Fiduciary Openness” {Kahl 2025, pp 31–35}, I argue that fiduciary actors must integrate epistemic openness into governance, including structured conflict-disclosure regimes and independent scrutiny mechanisms. Failure to do so constitutes both a legal and an epistemic breach.

### **4.3 Parliamentary privilege boundaries**

4.3.1 Article 9 of the Bill of Rights 1689 provides that ‘the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament’. The leading case, *British Railways Board v Pickin* [1974] AC 765, confirms that courts will not inquire into the internal processes of Parliament in passing legislation.

4.3.2 However, case law and scholarly commentary distinguish between core proceedings—debates, votes, formal evidence-taking—and administrative acts that are collateral to those proceedings. Activities such as arranging witness lists, publishing or withholding written evidence, and maintaining public records of an inquiry are generally not considered core proceedings and therefore may fall outside the protective scope of Article 9.

4.3.3 Applied to the present context, the Education Committee’s internal deliberations on higher-education funding are privileged; however, its administrative handling of evidence—including decisions to publish or exclude submissions and the processes for selecting witnesses—remains potentially open to public-law scrutiny. If fiduciary-governance evidence were to be disregarded or unpublished without lawful reason, such action could be examined by oversight bodies without infringing parliamentary privilege.

### **4.4 Regulatory context**

4.4.1 The OfS’s Regulatory Framework includes Condition D (‘Adequate and effective management and governance’), which requires providers to have robust governance arrangements. However, the current text of Condition D contains no explicit requirement for real-time fiduciary-transparency measures, such as public conflicts registers or disclosure of external appointments by governing-body members. As a result, providers can comply with the letter of Condition D while maintaining governance practices that are opaque in substance.

4.4.2 This gap creates regulatory blind spots in which persistent and unmanageable conflicts can persist undetected, undermining the OfS’s parallel regulatory objectives on financial sustainability and student protection. The empirical data in Chapter 3 show a clear correlation between such governance opacity and deteriorating FS scores.

4.4.3 In addition, the Competition and Markets Authority (CMA) has issued guidance stating that universities, as service providers to students, must ensure that marketing and contractual terms are fair, and that they can deliver promised services. Where financial distress—driven by governance failings—jeopardises course continuity, failure to disclose these risks may amount to a breach of consumer protection law. This introduces a second legal vector: in addition to fiduciary and charity-law obligations, governing bodies have potential exposure under consumer law if their opaque governance contributes to service disruption.

## 4.5 Summary

The legal framework governing English universities imposes substantive duties under charity law, company law, and consumer protection regimes, all of which are engaged by the governance failures identified in Chapter 3. The absence of explicit fiduciary-transparency requirements in OfS regulation, combined with the limited reach of parliamentary privilege, creates both the opportunity and the necessity for legislative and regulatory reform. The policy recommendations in Chapter 5 are designed to address precisely these doctrinal gaps.

## 5. Recommendations

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5.1 The empirical and doctrinal analysis in Chapters 3 and 4 demonstrates that persistent governance opacity in English higher education is both a structural driver of financial distress and a regulatory blind spot. The following reforms are proportionate, cost-effective, and targeted to close identified gaps:

### 1 Statutory conflict-of-interest register

5.2 Primary legislation should require every registered higher-education institution to maintain a publicly accessible, real-time conflict-of-interest register covering all trustees, governors, and senior executives. This register should record external appointments, financial interests, and relevant non-financial interests, updated within seven days of change. Non-disclosure, or knowingly inaccurate disclosure, should attract civil penalties. The Localism Act 2011 s 30 provides a tested statutory model for such registers at local-government level, adaptable to the HE sector.

**Cost–benefit:** Implementation cost per institution is low (primarily administrative updates to an existing governance register), while the benefit is significant in deterring conflicted decision-making that can cause multi-million-pound losses.

### 2 New OfS licence condition – fiduciary openness

5.3 The OfS should introduce Condition D5: each provider must evidence the identification, management, and mitigation of fiduciary conflicts through written policies, regular board review,

and independent audit. Failure to comply should be enforceable under the Office for Students (Monetary Penalties and Refusal to Renew an Authorisation) Regulations 2019, ensuring that breaches carry tangible consequences.

**Cost–benefit:** Compliance costs are limited to periodic policy reviews and independent audit fees; the benefit is stronger regulatory assurance and prevention of governance failures that risk insolvency, preserving substantial public and student funds.

### 3 ‘Failure-to-prevent-dishonesty’ offence

5.4 The Fraud Act 2006 should be amended to introduce a corporate offence of failure to prevent dishonesty applicable to trustees and governing bodies of HEIs. This would mirror the model in Schedule 12 of the Economic Crime and Corporate Transparency Act 2023. The offence would be triggered where dishonest conduct by a governing-body member causes  $\geq$  £10 million in financial detriment or places the institution at demonstrable risk of insolvency.

**Cost–benefit:** Marginal compliance costs for institutions that already operate honest governance; the benefit is a powerful deterrent against high-impact misconduct, protecting institutional solvency and the public purse.

5.5 Each recommendation directly addresses the governance opacity identified, reduces insolvency risk, and imposes only modest compliance burdens compared to the systemic cost of inaction.

## 6. Conclusion

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6.1 Governance opacity is not a peripheral concern: it is the root cause of the financial instability affecting English higher education. As the evidence in this memorandum shows, unmanaged and undisclosed fiduciary conflicts have driven high-risk strategies, depleted reserves, and left multiple providers in OfS’s highest-risk financial category.

6.2 If unaddressed, these structural weaknesses are projected to contribute to a sector-wide deficit approaching £3 billion by 2028. This is not inevitable. Implementing the three recommendations above would close regulatory blind spots, strengthen fiduciary accountability, and restore public trust.

6.3 I therefore urge the Committee to adopt these measures and invite me to give oral evidence to elaborate on both the analysis and the legislative pathways for reform.

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