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Insights

WHAT HAPPENS IF A UK UNIVERSITY FAILS?

The regulatory gap no one wants to discuss

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Summary

UK universities are facing mounting financial pressures from rising costs, constrained domestic tuition fee income and increased regulatory demands. As concerns about the sector's financial sustainability grow, questions are increasingly being asked about what would happen if a university became insolvent and whether the current legal and regulatory framework could manage such an outcome in an orderly way.

In this three-part series, Richard Obank, Partner in BCLP's Restructuring & Insolvency practice, explores the challenges posed by a potential university failure, the limitations of the existing insolvency framework, and the lessons that higher education might draw from other regulated sectors.

Part 1 examines why university failure is no longer a theoretical concern, the consequences for students and other stakeholders, and the fragmented insolvency options available to institutions with different legal forms. It sets the context for the central question running through this series: is the present framework capable of delivering an orderly outcome if a university fails?

No special administration regime for failing universities – an opportunity lost or a neat political sidestep?

Despite alarming headlines coming thick and fast for those working in and around higher education institutions ('**HEIs**')[1], Government has rejected calls to establish a special administration regime ('**SAR**') for bailing out universities facing insolvency.[2] This is despite the House of Commons Education Committee report on higher education and funding warning that Government is not prepared for university failures and the devastating impact this would have for students, local communities and the wider economy. Indeed, the Education Committee reported there is 'a clear possibility' of a university closing given mounting financial pressures.[3]

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The Education Committee had recommended the creation of a SAR to ensure an orderly exit for insolvent universities. On 22 July 2026, Government responded saying it would only intervene 'where this is necessary to protect students and taxpayers' and that 'higher education providers are responsible for managing their finances and must have robust contingency planning in place to protect students in an insolvency scenario'.[4]

The main objection by Government appears to be that introducing a new insolvency framework for HEIs is highly complex and could have unintended consequences, including impacts on investment and other sectors. As such, Government is 'not persuaded' that the case for a SAR is sufficiently demonstrated. Government did confirm it was working with the regulator, the Office for Students ('**OfS**'), to improve the existing regulatory framework.

This article examines the case both for and against a special administration regime for HEIs and highlights two examples in other regulated sectors which could serve as practical guides to improving the existing framework for avoiding a disorderly exit following the failure of a university arising on insolvency.

Sector at breaking point

Falling international student numbers following tighter visa restrictions has gutted university revenue streams. The domestic tuition fee cap, frozen at £9,250 for years before a modest increase to £9,535, has left universities operating at a loss. School leavers question the value of a university education because a degree no longer guarantees a career. Students with degrees are left with a massive student loan burden impacting their life choices.

Universities face a perfect storm of escalating operational costs, increased regulatory burdens, higher employer NICs and higher employer contributions to the Teachers' Pension Scheme. Government research funding is below 80% target. Overseas franchising is creating financial and reputational headaches. Commercial debt incurred at a time of low interest rates is increasingly problematic to service. Weaknesses in corporate governance and culture at some universities compounds the crisis.

Numerous universities have announced redundancies and the closure of degree courses to alleviate financial pressures. They include the University of Sussex, Sheffield Hallam University, University of Essex and University of Nottingham. It was recently reported by the BBC that lecturers at Glasgow Caledonian University voted for industrial action to protect jobs, research and course provision.[5] Elite universities are now accepting applicants with lower grades to fill the gap left by an exodus of higher paying international students leading to a 10 per cent drop in students from overseas studying in the UK.[6]

The OfS has warned that 'provider failure' is no longer a theoretical concern. It has reported that 24 institutions, seven with over 3,000 students, are at risk of insolvency/market exit within 12 months.

Another 26 institutions are at risk of exit within two to three years.[7]

Against this backdrop, HEIs traditionally turn to mergers as a lifeboat. But mergers are complex, require regulatory approval and depend for their success on a financially capable counterparty. For a university facing acute financial distress, a carefully negotiated merger may simply be unrealistic because of the time it can take to implement.

For example, on 3 August 2026, the University of Greenwich and University of Kent confirmed their merger successfully complete and the new London and South East University Group is now an official legal entity. The official launch date is on 7 September 2026 – exactly one year since the two universities announced their intention to formally explore a merger.[8]

What happens if a university fails?

The practical consequences of a university failure would be stark. Students would face massive disruption to their studies, uncertainty about the validity of their qualifications, and potential loss of access to their student loans. Research grants and contracts, many with complex intellectual property and publication obligations, would fall into limbo. Charitable funds and donations would dry-up and be unavailable for general purposes. Employers of academic staff would face the blunt instrument of TUPE in circumstances it was never designed to address. And reputational damage to the UK's higher education 'brand' would be incalculable.

Availability of winding up

HEIs occupy an unusual legal position because they are established under different corporate structures. Unlike banks, energy suppliers, water companies, investment firms and NHS Foundation Trusts, HEIs have no SAR.

The proliferation of SARs has attracted some judicial criticism. In the case of *Secretary for State v Hadlow College [2019] EWHC 2035 (Ch)*, the court expressed 'hope' that legislators would have regard to 'the potential for confusion' caused by multiple regimes and that, as far as possible, the same regime should apply to all special administrations, with bespoke provisions limited to those cases which require them (at paragraphs 24 and 25). In *Hadlow College*, the court made an education administration order in respect of the college under the Technical and Further Education Act 2017 ('**TFEA 2017**'), being a further education corporation established under section 15 of the Further and Higher Education Act 1992 ('**FHEA 1992**'). In making the order, which was not without some procedural uncertainty, the Education and Skills Funding Agency ('**ESFA**') provided funding to enable the administrators to minimise disruption to the studies of existing students and achieve the statutory objective of an education administration.

Higher education corporations ('**HECs**) are established under sections 121 and 122 of the Education Reform Act 1988 ('**ERA 1988**'). They are not companies registered under the Companies

Act 2006 (‘**CA 2006**’).

If a HEC falls into insolvency, winding up under Part V of the Insolvency Act 1986 (‘**IA1986**’) should be available. This is because section 220(1) of the IA1986 states an ‘unregistered company’ includes ‘any association and any company, with the exception of a company registered under the CA 2006 in any part of the United Kingdom’. Section 221(1) of the IA 1986 provides that ‘any unregistered company’ may be wound up under the IA 1986.

A company limited by guarantee registered under the CA 2006 can be wound up under the ordinary registered companies’ provisions in Part IV of the IA 1986, not as an unregistered company.

Section 221(4) of the IA 1986 expressly prohibits voluntary winding up of an unregistered company. Only compulsory liquidation by court order is available under Part V of the IA 1986 for unregistered companies.

Universities established by Royal Charter

A university established as a Royal Charter Institution (‘**RCI**’) should satisfy the statutory definition of an ‘unregistered company’ (see above). Indeed, the case of *Peninsular and Oriental Steam Navigation Co v Eller [2006] EWCA Civ 432* confirms that a company incorporated by Royal Charter is liable to be wound up under Part V of the IA 1986 as an unregistered company. Under section 221(1) of the IA 1986, any unregistered company may be wound up under the IA 1986, subject to the provisions of Part V.

The Court of Appeal decision in *Re International Tin Council [1989] Ch. 309* assists in understanding the scope of the statutory definition. The case concerned an international organisation, established by treaty between states, which the Court of Appeal held was immune from being wound up by the English court. The key principle is that not every such association falls within section 220(1) of the IA 1986. What is important is that Parliament must have intended the relevant entity to be subject to winding up.[9]

Appoint special managers

When the multinational construction and facilities management services group, Carillion plc and associated companies (‘**Carillion**’) entered compulsory liquidation in January/February 2018, the Official Receiver (‘**OR**’) was appointed as liquidator by the court.[10]

Carillion provided critical public services under hundreds of government contracts. The OR had neither the capacity, nor sector experience, to manage the situation. The solution was to appoint special managers under section 177(1) of the IA1986. Section 177(2) of the IA 1986 provides that special managers have such powers as may be entrusted to them by the court (and may be subject to any statutory provisions that apply to liquidators; for example, the powers set out in Schedule 4 (*Powers of the Liquidator in a Winding Up*) to the IA 1986).

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A special manager is an officer of the court, acts under the OR's supervision, and can carry on the business of the company for its beneficial winding up. The special managers in Carillion continued operating the business which enabled contracts to be completed over a period of months for the purpose of achieving a better outcome for creditors.

If a compulsory winding up order were made in respect of a HEC or RCI, the court could appoint a special manager, based on the Carillion model, to carry on the operations of the university under the OR's supervision. However, it would not be a perfect solution as significantly different complications to those arising in Carillion would be faced by any HEI special manager:

- **Financial support by the Student Loans Company ('SLC')**: a special manager would have to engage urgently with the OfS to seek comfort that registration is maintained over the wind-down period such that SLC funding continued to flow.
- **Degree Awarding Powers ('DAPs')**: these vest in the institution during its corporate existence. In theory, a special manager could continue to award degrees to completing students prior to dissolution, but it is uncharted territory.
- **The charitable dimension**: a special manager could not apply restricted funds and endowments for general trading purposes and would have to work within the constraints of charity law in close liaison with the Charity Commission about the treatment of charitable assets.
- **Research and funding grants**: there are likely to be insolvency termination and default provisions to navigate if funding is to remain in place. This will require intense stakeholder management to secure waivers or consents from funders to continue research activities. It would be inherently uncertain as to how each funder might react.
- **TUPE and staff**: complex employment law issues would arise in the context of academic staff with security of tenure protections that have no direct commercial equivalent.

The court would be unable to direct a special manager to override the rights of third parties not before the court (e.g. OfS registration conditions, SLC disbursement terms, and charitable trusts).

Whilst the special manager option exists, it is not designed for a university failure and cracks in the efficacy of the process would quickly become apparent.

Appoint administrators

Whether a university can be placed into administration under Schedule B1 of the IA 1986 depends entirely upon its legal form and constitution.

However, most leading universities are not established registered companies under the CA 2006. Many are HECs created under the ERA 1988. As such, they cannot enter Schedule B1 administration because they are not ‘companies’ within the meaning of paragraph 111(1A) of Schedule B1 to the IA 1986. They are statutory corporations, not companies registered under the CA 2006. The definition of ‘company’ in Schedule B1 is specific and does not extend to statutory corporations.

Some universities are established as RCIs which can be wound up as unregistered companies under Part V of the IA 1986 (see above), but they cannot enter Schedule B1 administration because they are not companies for the purposes of the CA 2006 and do not fall within the other categories in paragraph 111 (1A) of Schedule B1.

HECs facing financial difficulty are typically dissolved by statutory order rather than through an insolvency process. The Secretary of State (in England) or the Welsh Minister (in Wales) may, by order, provide for the dissolution of a HEC and transfer of its property, rights and liabilities.[11]

The Insolvency Act 1986 (Amendment) Regulations 2005 clarified the anomaly[12] which occurred in the case of *Re The Salvage Association [2003] EWHC (Ch) 1028*[13] by making clear that it is only companies defined in companies legislation and certain companies formed or incorporated outside the UK that can enter administration.

BCLP's Restructuring & Insolvency practice advises universities, colleges, lenders, investors, governing bodies and other stakeholders on financial distress, restructuring, mergers, governance, contingency planning and complex stakeholder situations. Drawing on expertise across restructuring, higher education, charity law, employment, real estate and regulation, our multidisciplinary team helps clients navigate periods of change and uncertainty. To discuss any of the issues raised in this series, please contact ***Richard Obank*** *or your usual BCLP contact.*

Coming next

Part 2 considers the remaining restructuring options and compares the position of higher education institutions with the bespoke education administration regime available to further education institutions.

FOOTNOTES

[1] ‘*Our universities are in crisis – and they must share the blame*’ (The Times, 17 April 2026); ‘*The funding crisis reshaping UK universities*’ (The Financial Times, 11 September 2025); ‘*Several UK universities nearly ran out of cash last year, says report*’ (‘The Financial Times, 3 June 2026); ‘*How UK higher education’s financial model broke in 2024-25*’ (Times Higher Education, 22 June 2026); ‘*Excessive’ financial risks threaten survival of many English universities, report warns*’ (The Guardian, 9 April 2026).

[2] '*No case for insolvency regime for universities, government says*' (Times Higher Education, 22 July 2026)

[3] House of Commons, Education Committee 'Higher Education and Funding: Threat of Insolvency and International Students', Ninth Report of Session 2024-26 (HC 807), published 12 May 2026

[4] 'Ministers rule out insolvency regime for struggling universities' (Research Professional News, 22 July 2026).

[5] '*Glasgow Caledonian lecturers begin series of graduation-day strikes*', 30 June 2026

[6] 'BBC news report', 9 August 2026

[7] House of Commons, Education Committee report (supra note 3), at paragraph 106.

[8] See 'UK's first 'super-university', merging Greenwich and Kent, to launch in September', reported in The Guardian on 3 August 2026.

[9] see in *Re The Construction Confederation [2009] EWHC 3551 (Ch)* where the relevant legal text is articulated in the judgment. It was concluded that the Construction Confederation was the sort of organisation within Parliament's contemplation for the purposes of winding up.

[10] For other high profile examples involving 'big firm' practitioners as special managers see *Re British Steel Ltd [2019] EWHC 1304 (Ch)* and *Re Thomas Cook Group plc [2019] EWHC 2626 (Ch)*.

[11] For example, the dissolution of Writtle University College on 29 February 2024 with all property, rights and liabilities transferred to Anglia Ruskin University. The dissolution was legally executed under the Government's Writtle University College HEC (Dissolution) Order 2023 (2023 No.1365). Writtle had been facing severe financial challenges brought on by the pandemic, Brexit and inflation. The merger was executed to avoid institutional failure and secure a sustainable long-term future.

[12]Regulation 2(4) amended paragraph 111 of Schedule B1 to the IA 1986 by inserting the new sub-paragraph (1A) which defines 'company' for administration purposes. This restrictive definition has the effect of excluding RCIs from entering Schedule B1 administration as they are not companies registered under the Companies Acts and do not fall within categories (1A)(b) and (c).

[13] in *Re The Salvage Association*, it was held that an administration order could be made in respect of an entity incorporated by Royal Charter based on sections 1(4) and 8(7) of the IA 1986 which had been inserted by the Insolvency Act 1986 (Amendment No.2) Regulations 2002 (effective 31 May 2002).

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