Artificial Intelligence, Disability Inclusion, and Legal Risk in UK Higher Education

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Introduction

Artificial Intelligence (AI) is transforming the landscape of higher education in the United Kingdom, offering innovative tools such as automated feedback, adaptive learning environments, and predictive analytics. Among its most promising applications is the support it can offer to students with Special Educational Needs and Disabilities (SEND). However, this shift raises legal and ethical questions, particularly under the Equality Act 2010, the UK General Data Protection Regulation (UK GDPR), and sector-specific regulatory frameworks. This article explores the key legal risks associated with AI implementation in relation to disability inclusion and suggests best practice approaches, underpinned by relevant case law.

Legal Framework

1. Equality Act 2010

Universities, as public sector bodies, are subject to the Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010. This duty requires proactive steps to eliminate discrimination, advance equality of opportunity, and foster good relations between disabled and non-disabled individuals. Further, institutions must implement *reasonable adjustments* (s.20, Equality Act 2010) to prevent disabled students from being placed at a substantial disadvantage. These adjustments must be anticipatory in nature, as established in *Archibald v Fife Council* [2004] UKHL 32, where the House of Lords emphasised that public bodies must consider adjustments before~~,~~ they are requested. The anticipatory requirement was also reaffirmed in *Finnigan v Northumbria Police* [2013] EqLR 603, where failure to implement timely accommodations was found to constitute discrimination under the Act.

2. Data Protection: UK GDPR and Data Protection Act 2018

AI tools frequently rely on the processing of sensitive personal data, including health and disability information. Under Article 9 of the UK GDPR and Schedule 1 of the Data Protection Act 2018, such data processing must meet strict conditions, including explicit consent or substantial public interest. The Supreme Court in *Lloyd v Google LLC*

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[2021] UKSC 50 underscored the importance of individual control over personal data, particularly when such data is processed at scale without transparency. In the context of emerging technologies, the judgment in *R (Bridges) v Chief Constable of South Wales Police* [2020] EWCA Civ 1058 is relevant and helpful. The Court of Appeal found that insufficient Data Protection Impact Assessments (DPIAs) when using facial recognition technology breached data protection obligations, a cautionary precedent for universities deploying AI tools.

Emerging Legal Risks

1. Inadequate or Faulty Adjustments

AI tools such as transcription software or adaptive content delivery systems are increasingly used as disability accommodations. However, where these tools are inaccurate or malfunction and no human-led alternative is offered, universities may risk breaching their duty to make reasonable adjustments. It is suggested students could successfully claim discrimination if AI transcription tool failed to produce accurate lecture notes. In such circumstances institutions may fall foul of suggestion they had not provided an adequate fallback mechanism, which would constitute a failure under section 20 of the Equality Act 2010.

2. Algorithmic Discrimination

Bias in AI systems, particularly when trained on non-representative data, can result in discriminatory outcomes. This is especially concerning where algorithms are used for risk profiling or engagement analytics, potentially flagging neurodivergent students as underperforming based on behavioural norms. This form of *indirect discrimination* is addressed in *Home Office v Essop* [2017] UKSC 27, where the Supreme Court held that a discriminatory impact is sufficient to establish liability, regardless of whether the exact cause is known. AI-driven practices with disparate outcomes for SEND students may thus violate Equality Act provisions, even if unintentionally.

3. Procedural Unfairness and Lack of Oversight

Opaque decision-making by AI systems, such as automated progression tracking or sanctions via remote proctoring, risks breaching the principles of natural justice. In *R (G) v Governors of X School* [2011] UKSC 30, the Supreme Court confirmed that decisions affecting individuals' rights must be accompanied by fair procedures and opportunities for redress. In higher education, failure to explain AI-informed decisions affecting academic outcomes may not only breach institutional policies but also sectoral expectations set by the Office for Students regarding transparency and procedural fairness.

4. Data Protection Failures

Universities frequently partner with third-party AI vendors, leading to data transfers beyond the institution's direct control. Under UK GDPR, such arrangements necessitate robust data sharing agreements and clearly defined processing responsibilities. A relevant case is *Scott v LGBT Foundation Ltd* [2020], where the ICO investigated unauthorised sharing of health data without adequate safeguards. Though not a university case, the principles extend to any entity processing special category data without appropriate legal and technical protections.

Compliance and Mitigation Strategies

To avoid legal liability and reputational damage while embracing AI innovation, universities should:

- Conduct Equality Impact Assessments (EqIAs) before implementing AI systems impacting disabled students.
- Ensure reliable human-led alternatives are available when using AI as an adjustment mechanism.
- Involve disabled students and accessibility officers during the design and testing of AI systems.
- Implement human oversight in all AI decision-making processes to uphold fairness.
- Draft clear data processing agreements with all AI vendors, specifying liability and jurisdiction.
- Ensure privacy notices fully explain the scope and purpose of AI data use.
- Provide mandatory training to staff on the legal and ethical use of AI, especially regarding equality and data protection.

Conclusion

AI offers transformative potential for promoting inclusion in UK higher education. However, its application must be grounded in legal compliance and ethical awareness. The Equality Act 2010 and UK GDPR provide a robust framework to protect SEND students, and recent case law illustrates that courts and tribunals are prepared to enforce these protections. Universities that treat AI as a supplementary tool—rather than a replacement for inclusive practice and human engagement—will be best positioned to innovate lawfully and equitably.

Members of 4-5 Gray's Inn Square Chambers Education group are ready to take instructions providing advocacy and advisory support to educational institutions and private clients including judicial reviews on school exclusions, SEND (Special Educational Needs and Disability) disputes, challenges to admissions policies, disciplinary proceedings, and issues relating to safeguarding and equality in education. Queries as to the professional availability of members of the group can be directed to Gary Carney, on +44 (0)20 7404 5252 or by email to clerks@4-5.co.uk