

Office for
Students



Agreement on Institutional designation

For the period to 31 July 2019

Reference **OfS 2018.17**

Enquiries to regulation@officeforstudents.org.uk

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Introduction

1. This document provides an updated version of the Agreement on Institutional Designation (the 'Agreement') (see Annex A). The Agreement is applicable to all publicly subsidised student support that you receive, including student support arrangements for postgraduate loans. This document applies to you if you are:
 - a higher education institution funded by the Higher Education Funding Council for England (HEFCE) or the Office for Students (OfS) during 2017-18 or 2018-19 or
 - a further education college or a sixth form college funded by HEFCE or the OfS during 2017-18 or 2018-19.
2. The guidance should be read in conjunction with the terms and conditions of funding for HEIs (OfS 2018.15) and FECs (OfS 2018.16).
3. We have made some small changes to the Agreement to reflect the terms and conditions of OfS funding for the providers that the OfS funds. The operation of the Agreement has also been extended to 31 July 2019 when the OfS's regulatory framework comes fully into effect.
4. The changes to the Agreement have been discussed and approved by Universities UK, GuildHE and the Association of Colleges, who are the signatories of the Agreement in Annex A on behalf of their members.

Annex A: Agreement on institutional designation

Foreword

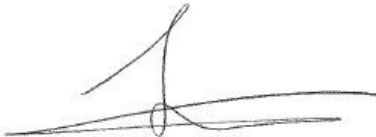
1. The Agreement on Institutional Designation was introduced in 2014 to make a more explicit link between institutional accountability requirements and the automatic designation for publicly subsidised student support that is given to providers receiving Higher Education Funding Council for England funding, and now Office for Students (OfS) funding. It aims to provide reassurances to students and the public more widely, while continuing to support the dual principles of academic freedom and institutional autonomy.
2. The arrangements set out in this Agreement are transitional and will be in place until 31 July 2019 – the provisions of this document will no longer be necessary when the OfS's new regulatory framework is fully implemented from 1 August 2019.
3. It is a voluntary agreement that sits alongside the terms and conditions of OfS funding¹. This Agreement is aligned with the requirements in the terms and conditions, thus adds no burden on institutions.
4. The Agreement took effect from 1 August 2014 with an intention that it should last for three years until 31 July 2017, and was subsequently extended until such a time as new legislation came fully into effect. We now have the Higher Education and Research Act 2017 which updates the regulatory architecture and introduces a new risk-based regulatory framework operated by the OfS. As the OfS's regulatory framework will not be fully operational until 1 August 2019, and to ensure continued accountability for access to the publicly subsidised student support system, we are extending the duration of the Agreement until 31 July 2019.
5. We reviewed the Agreement in light of the introduction of postgraduate masters loans in 2016-17 and believe it is sufficiently flexible to cover the new student support arrangements. There is therefore no explicit reference to postgraduate student support in the Agreement but institutions, particularly those which have only postgraduate courses, should be aware that it is applicable to all publicly subsidised student support that they receive.
6. We expect higher education institutions (HEIs) and further education and sixth form colleges (FECs) with automatic designation of their courses to adhere to the terms of this Agreement. Where the OfS judges there is a breach of the terms of this Agreement by an HEI it will make use of the provisions set out in the terms and conditions of OfS funding. In the case of an FEC, the OfS will work with the Education and Skills Funding Agency (ESFA) to ensure any issues are resolved.
7. These accountability arrangements put in place steps before the de-designation of a provider becomes the only option. The processes are escalatory, designed to reach an agreed resolution, where possible. However, it is important that all institutions are party to this Agreement, as students and Government rightly need assurance that HEIs and FECs are meeting regulatory conditions.
8. This Agreement is sponsored by Universities UK, GuildHE and the Association of Colleges.

¹ www.officeforstudent.org.uk/#documents



Dame Janet Beer

President, Universities UK



Professor Joy Carter

Chair, GuildHE



Carole Stott

Chair, Association of Colleges

I confirm that the OfS will carry out its role as set out under this Agreement.



Nicola Dandridge CBE

Chief Executive, Office for Students

Introduction

9. This Agreement is between the OfS and all HEIs or FECs in receipt of recurrent grant funding from the OfS that therefore have automatic designation of their courses for student support purposes. The Agreement only applies to English HEIs and FECs in receipt of OfS funding up to 31 July 2019 and will no longer be necessary once the OfS's regulatory framework is fully implemented from 1 August 2019. Higher education providers not in receipt of OfS funding that wish their students to have access to the student support system are subject to the terms and conditions for specific course designation set by the Department for Education.
10. This Agreement has been developed around a set of principles:
 - maintaining stakeholder confidence
 - institutional autonomy
 - the collective student interest
 - the public interest and accountability for public funds
 - proportionate accountability
 - transparency and openness
 - minimising burden and removing duplication.
11. HEIs and FECs are agreeing to:
 - abide by the terms of this Agreement
 - provide data and information to the Student Loans Company (SLC) in line with their service agreement with the SLC
 - engage with the OfS to resolve any issues of non-compliance
 - accept the consequences should a resolution to issues of non-compliance not be achieved, after exhausting the OfS's institutional support strategy.

Terms of the Agreement

12. HEIs and FECs that have automatic designation of their courses have entered into this Agreement with the OfS. The heads of terms of the Agreement apply up to 31 July 2019 and are set out below.

Governance and sustainability

13. The institution agrees to:
 - remain financially sustainable
 - have adequate and effective arrangements for risk management and internal control
 - have in place adequate and effective governance arrangements
 - appoint an accountable officer
 - comply with the OfS's or ESFA's accounts directions and Audit Codes of Practice.

Quality

14. The institution agrees to:
 - comply with the OfS's requirements for quality of provision set out in the terms and conditions of OfS funding
 - subscribe to the Quality Assurance Agency for Higher Education.

Provision of information

15. The institution agrees to:

- provide data to the OfS and the SLC
- subscribe to and provide data to the Higher Education Statistics Agency and display Unistats data on its website and meet any wider requirements and expectations in the provision of data
- provide information in respect of the OfS's role as principal regulator for exempt charities, where appropriate.

Student interest

16. The institution agrees to provide mechanisms to enable student complaints to be addressed. This includes the requirement of Higher Education Act 2004, as amended by the Consumer Rights Act 2015, for all providers in receipt of student support to subscribe to the Office of the Independent Adjudicator.

Accountability

17. The institution agrees to:

- ensure regularity in the use of public funds
- provide assurance on data quality
- meet requirements on financial sustainability, as set by the relevant funding bodies²
- engage with the institutional support strategy
- report material adverse events
- meet OfS requirements, as mutually agreed with the OfS, on access and widening participation
- comply with student number controls (where these remain in force)³.

Requirements of the Student Loans Company

18. In addition, HEIs and FECs agree to meet their obligations to the SLC to provide the information necessary to administer student support in line with the Education (Student Support) Regulations 2011 (as amended). The information requirements relate to the following areas:

- data related to the course of study that is designated for support
- verification that the fee charged to the student, and the course quoted by the student in their application, accurately reflect the student's position
- timely information related to student registration and attendance
- timely confirmation of changes of any circumstance that affect the student's entitlement
- timely reporting of when a student withdraws from their course.

² These include the annual accountability returns and assurance reviews, and complying with arrangements to secure approval for financial commitments (as defined in the terms and conditions of OfS funding). They also include the reciprocal agreements whereby letters of assurance over the financial sustainability and financial controls of HEIs providing further education and FECs providing higher education are exchanged between the Chief Executive of the OfS and the Chief Executive of the ESFA.

³ Student number controls are still applied to medical and dental students.

Duration of the Agreement

19. This Agreement will operate until 31 July 2019, after which it is no longer required as the new regulatory framework of the OfS will be fully implemented.

The OfS's role under the Agreement

20. This Agreement is separate from but sits alongside the terms and conditions of OfS funding, which set the terms and conditions for payment of OfS funding to HEIs and FECs.
21. The OfS's role under this Agreement is to:
 - monitor HEIs' and FECs' compliance with the terms of the Agreement
 - engage with HEIs and FECs where there are indications of possible non-compliance, and reach a resolution so that the terms of this Agreement continue to be met, as set out in paragraphs 12 to 18; this will include working with the ESFA where relevant.
22. Where the OfS considers there to be serious or persistent non-compliance with the terms of this Agreement and no resolution can be reached, the consequential actions that the OfS will take are set out later in this Agreement.

The OfS's monitoring role: identifying, assessing and addressing non-compliance with the terms of this Agreement

23. Where there is an indication that an HEI or FEC may no longer comply with the terms of this Agreement, this will be investigated by the OfS. It is expected that dialogue between the HEI or FEC and the OfS will resolve any issues that might have arisen, and that action will be taken by the HEI or FEC so that it continues to comply with the terms of this Agreement. In the case of FECs, the OfS will also engage with the ESFA under the terms of their reciprocal assurance arrangements.
24. This follows the processes that the OfS will operate up to 31 July 2019 in its relations with HEIs and FECs under the terms and conditions of OfS funding.
25. If an HEI fails to take any agreed action the OfS will seek explanations and, if appropriate and justified, issue warnings to improve. The ultimate sanction is the withdrawal of some or all funding from the OfS (for HEIs and FECs) and Research England (for HEIs).

Stages and possible actions that the OfS may take

26. Overall, the following will apply:
 - a. The OfS may require institutions to make changes if the OfS feels that risks to the interests of students and the public are not being addressed. It will always be the OfS's intention to make only reasonable demands of institutions.
 - b. The OfS's action will be proportionate to the risk and the nature of the concerns caused by the institution.
 - c. If institutions do not comply with this Agreement, and after the OfS has exhausted the elements of the support arrangements, the consequential actions that the OfS can take are set out in paragraphs 27 to 31.
 - d. The OfS will consider any action that it believes is necessary to support institutions and protect the interests of the public, the taxpayer and the collective interest of students.

Consequences where an HEI or FEC no longer complies with this Agreement

27. The previous section has set out the process that the OfS will undertake to secure resolution where non-compliance with the terms of this Agreement has been identified. It is expected that the stages set out, and the escalatory nature of those stages, will secure a satisfactory outcome for the HEI or FEC and for the OfS. Only in exceptional circumstances is this likely not to be the case.
28. Where no resolution can be reached, the OfS will first explore options to remove automatic designation from providers through withdrawal of all grant funding. However, where this is not possible, the OfS will alert the Secretary of State that the institution is no longer in compliance with the terms of this Agreement. Should such an alert be provided by the OfS to the Secretary of State, this would need to be agreed by the OfS's Board on the advice of the OfS's chief executive.
29. The Secretary of State will then consider the OfS's alert and, if appropriate, remove automatic designation by introducing new regulations which will attach specific conditions to automatic designation for student support. This will provide the Secretary of State with the explicit power to remove automatic designation for institutions not complying with the conditions.
30. This will be the last resort. To be clear, no student at an institution that has lost automatic designation will then be able to access student loans for tuition and maintenance once automatic designation has been withdrawn. Institutions that lose designation will have a duty to protect the interests of their students and wherever possible must make arrangements to enable students to complete their course of study.
31. In such circumstances it is probable that an HEI or FEC would be unable to meet the conditions of specific course designation. As such, the loss of automatic designation would mean that students at that HEI or FEC would lose all access to student support. The HEI or FEC would therefore have to comply with the terms of this Agreement if it wished its students to regain access to student support.



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