

Office for
Students



Regulatory notice 6: Condition C4: Student protection directions

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THE OFFICE FOR STUDENTS

Condition C4: Student protection directions

Presented to Parliament pursuant to section 75 of the Higher Education and Research Act 2017

Introduction

1. This regulatory notice contains an ongoing condition of registration introduced to enable us to intervene more quickly and in a targeted way when we consider there to be a material risk that a registered provider may cease the provision of higher education.
2. The condition applies from 1 April 2021 to all providers registered with the Office for Students (OfS), except Further Education Bodies (as defined in section 4 of the Technical and Further Education Act 2017).
3. This document contains an extract of the OfS's regulatory framework (OfS 2018.01)¹ and therefore constitutes material published by the OfS under section 75 of the Higher Education and Research Act 2017. It should be read in conjunction with the whole regulatory framework, which sets out in full the OfS's approach to registration and regulation.

¹ The regulatory framework is available at www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

Condition C4: Student protection directions

The following provisions collectively constitute general ongoing condition of registration C4:

Condition C4: Student Protection Directions

- i. The provider must comply with any Student Protection Direction in circumstances where the OfS reasonably considers that there is a material risk that the provider will, or will be required by the operation of law to, fully or substantially cease the provision of higher education in England (“Market Exit Risk”).
- ii. A Student Protection Direction may be varied or revoked (wholly or in part) by express provision in a subsequent Student Protection Direction issued by the OfS in accordance with this condition of registration, and the OfS may otherwise revoke a Student Protection Direction by issuing a notice in writing to the provider.
- iii. A Student Protection Direction (or, as the case may be, part of a Student Protection Direction) will cease to have effect in accordance with the following provisions:
 - a. in circumstances where a Student Protection Direction is varied or revoked (wholly or in part) by a subsequent Student Protection Direction, on and from the time and date that the subsequent Student Protection Direction takes effect; or
 - b. in circumstances where a Student Protection Direction is revoked by a notice in writing, on and from the time and date specified in that notice in writing.
- iv. Where a Student Protection Direction ceases to have effect at any time (for any reason), that cessation does not in any way affect the ability of the OfS to investigate and/or take any form of regulatory or enforcement action in respect of any non-compliance with that Student Protection Direction (whether or not the non-compliance remains ongoing in nature) which took place during the period that the Student Protection Direction was in effect.
- v. For the purposes of this condition:

“Student Protection Direction” means, irrespective of whether or not an approved student protection plan exists, a direction requiring a provider to:

 - a. produce a special type of plan setting out Student Protection Measures for approval by the OfS and thereafter implementation by the provider (both in timescales specified in writing by the OfS) (“Market Exit Plan”);
 - b. instead or in addition to a), put in place and/or implement any Student Protection Measures which are specified in writing by the OfS (in timescales specified in writing by the OfS); and
 - c. do (or refrain from doing) such other consequential, ancillary or incidental actions, as the OfS considers is reasonably necessary, for ensuring that a Market Exit Plan or Student Protection Measures are put in place and/or implemented in an effective and expedient manner (including, but not limited to, compliance with general ongoing condition of registration C3, publishing information, deploying human resources, and consulting a registered insolvency practitioner on the feasibility of the Market Exit Plan (all in timescales specified in writing by the OfS)).

“Student Protection Measures” means measures (including supporting arrangements and procedures) which the OfS reasonably considers are proportionate in the context of Market Exit Risk and fall within the scope of the following descriptions:

- a. Teach out: ensuring students are able to complete their intended course of study and achieve a qualification that could reasonably have been expected, or complete their current academic year or term and receive an exit award or credit to recognise their academic achievement at the provider;
- b. Student transfer: ensuring students are able to transfer to another higher education provider to continue and complete their studies, including providing students with appropriate support to understand their options and make an informed choice, and to ensure that administrative arrangements are in place to facilitate such transfers;
- c. Exit awards and unit certification: providing students with a formal record of their achievement at a provider;
- d. Information, advice and guidance for students: ensuring all students receive effective information, advice, guidance and support in relation to any Market Exit Risk;
- e. Complaints: ensuring that robust arrangements are in place for handling and responding to complaints from students;
- f. Refunds and compensation:
 - i. offering students refunds of tuition fees and other costs (for example accommodation costs and other living costs) incurred by students for whom continuation of study has been disrupted as a result of any Market Exit Risk;
 - ii. offering students compensation to cover any financial costs incurred by students as a result of any Market Exit Risk;
- g. Archiving arrangements: ensuring that arrangements are in place to enable students to access evidence of their academic achievements in the future, including arrangements with third parties to store records if necessary.

This condition does not apply to Further Education Bodies (as defined in section 4 of the Technical and Further Education Act 2017).

Summary

Applies to: all registered providers, except Further Education Bodies (as defined in section 4 of the Technical and Further Education Act 2017) as these can be subject to the special administration regime in place for further education (detailed in Part 2 chapter 4 of that Act).

Initial or general ongoing condition: general ongoing condition

Legal basis: section 5 of HERA

Guidance

Condition C4(i)

1. Matters that might cause the OfS to reasonably consider that there is a material risk that a provider will, or will be required by the operation of law to fully or substantially cease the provision of higher education in England (“Market Exit Risk”) include, but are not limited to:
 - a. where a provider cannot demonstrate that it is likely to have access to sufficient funds (for example, operating cash funds, investments, or funding that can be released from surplus assets or obtained from other sources) to meet its day-to-day costs, and any other liabilities due, within the next 12 months, including where a provider’s ability to meet its day-to-day costs or liabilities is likely to be reliant on specific factors and the OfS judges that there is material uncertainty about whether these will be delivered in practice. These specific factors might include, but are not limited to:
 - i. Securing additional borrowing or investment;
 - ii. Delivering significant business restructuring or other cost saving measures;
 - iii. The decision or actions of a third party.
2. For the avoidance of doubt, any assessment would need to be considered on its own facts, and matters other than those in paragraph 1 above may also lead the OfS to conclude that there is a Market Exit Risk.
3. The reference to a provider being “required by the operation of law” to fully or substantially cease the provision of higher education in England includes any relevant law which might have that effect, including insolvency law.

Condition C4(v)

4. ‘Student protection plan’ means a document or documents approved by the OfS under initial and general ongoing condition C3, imposed pursuant to sections 5 and 13(1)(c) of HERA.
5. When the OfS considers whether it is necessary to impose a Student Protection Direction, it will consider all relevant factors and place particular weight on the importance of protecting the interests of current and future students.
6. Where the OfS judges it necessary to impose a Student Protection Direction, it will normally expect to have engaged with a provider before doing so. Where the OfS judges that students would not be disadvantaged by any delay to the imposition of a Direction, it may consult with a provider on all or part of a Student Protection Direction.
7. A provider registered in the Approved (fee cap) category is subject to the public sector equality duty under section 149 of the Equality Act 2010. The OfS expects any registered provider directed to develop and/or implement any Student Protection Measures, to consider the needs of its students, and in particular to develop and implement the measures in a way that minimises the adverse impact of the situation on students with protected characteristics (as defined under section 4 of the Equality Act 2010).

8. Where a Student Protection Direction requires the production of a Market Exit Plan, or requires a provider to put in place and/or implement any Student Protection Measures, the OfS may or may not direct the publication of that plan or of information about those measures. If the OfS judges that publication is in the public interest, the OfS is likely to direct a provider to publish the Market Exit Plan and/or information about the Student Protection Measures. The circumstances in which the OfS might judge publication to be in the public interest include (but are not limited to) where it is in the interests of current or future students to have information contained in a Market Exit Plan and/or Student Protection Measures available (for example to enable students to make informed choices about their future plans for study).
9. For the avoidance of doubt, any type of a direction under this condition can be issued and notified in any written form or manner, including by notifying a provider electronically.



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