

Condition C5: Treating students fairly

Scope

C5.1 The scope of this condition includes:

- a. a provider's relationships with **students**;
- b. the provision of higher education;
- c. the provision of **ancillary services**;
- d. higher education provided (or to be provided) in any manner or form by, or on behalf of, a provider (regardless of which provider holds or will hold the contractual relationship with the **student**);
- e. any arrangements the provider has made or plans to make to attract individuals to study at the provider, encourage individuals to submit applications to study at the provider, or to otherwise communicate with **students** or anyone with an interest in studying at the provider (including, but not limited to, advertising and marketing material, and actual or proposed information that may be published on its website) ("**information about the provider**");

C5.2 For the purposes of this condition:

- a. the provider's relationship with a **student** is treated as being within the scope of this condition:
 - i. regardless of the arrangements for the payment of tuition or other related fees;
 - ii. whether or not the **student** is obtaining higher education services for the purposes of business, trade or profession;
- b. the provision of higher education and **ancillary services** are treated as services;
- c. references to the provision of higher education include offering the provision of higher education;
- d. references to the provision of **ancillary services** include offering the provision of **ancillary services**;
- e. references to **key documents** and **information about the provider** include any draft or proposed versions of the relevant information.

Requirement

C5.3 The provider must, if registered, treat each **student** fairly in relation to any activities that are connected with the provision of higher education and/or **ancillary services**.

C5.4 The provider will be deemed not to satisfy C5.3 if, in the reasonable opinion of the OfS, its actions or omissions (including proposed or likely actions or omissions) fall within one or more of the following categories:

- a. they fall within one or more of the descriptions provided for in the **OfS prohibited behaviours list**; or
- b. they give rise to a likelihood of detriment or actual detriment to the **student** (unless the OfS considers that the detriment would be reasonable in all the relevant circumstances).

C5.5 The provider will be deemed not to satisfy C5.3 if it has been subject to adverse findings under one or more of the following forms of wrongdoing in a context that directly or indirectly relates to the provision of education and/or **ancillary services**, unless it can demonstrate that it has addressed any issues related to any such adverse findings to the satisfaction of the OfS:

- a. non-compliance with **consumer protection law**, as found by a court of England and Wales or **competent authority**;
- b. the offence provided for in section 214(1) of the Education Reform Act 1988 (unrecognised degrees);
- c. the offence provided for in section 76(6) of the Companies Act 2006 (failure to comply with a Secretary of State direction to change a company name); or
- d. the offence provided for in section 1198 of the Companies Act 2006 (name giving misleading indication of activities).

C5.6 The OfS will take the following non-exhaustive matters into account when determining whether a provider satisfies C5.3 (where any of these matters apply):

- a. an undertaking by the provider has been accepted by an **enforcement body**, and the undertaking is in connection with behaviour that relates to the provision of education and/or **ancillary services**;
- b. there is an outstanding application for an enforcement order against the provider made by an **enforcement body**, and the application relates to the provision of education and/or **ancillary services**.

C5.7 In the course of the provider's application for registration with the OfS (and the OfS's consideration of that application), the mere removal of a term, provision or any form of information from **key documents** or from any **information about the provider** will be insufficient to demonstrate that the provider, if registered, will treat its **students** fairly in accordance with C5.3, unless it can demonstrate that it has addressed any underlying issues related to that term, provision or form of information to the satisfaction of the OfS.

Definitions

C5.8 For the purposes of this condition C5:

- a. **“ancillary services”** means services for which there is a contract between a **student** and the provider as part of the higher education experience, including but not limited to contracts governing the provision of library services, disability support packages, scholarships, accommodation and sports facilities.
- b. **“consumer protection law”** is to be interpreted broadly and includes, but is not limited to, the following legislation (as may be amended from time to time):
 - i. Consumer Rights Act 2015;
 - ii. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013;
 - iii. The Provision of Services Regulations 2009;
 - iv. The Consumer Protection from Unfair Trading Regulations 2008;
 - v. Digital Markets, Competition and Consumers Act 2024;
 - vi. Protection from Harassment Act 1997.
- c. **“competent authority”** means the Competition and Markets Authority, or any other body with jurisdiction to make decisions under section 182 of the Digital Markets, Competition and Consumers Act 2024.
- d. **“enforcement body”** means an Enforcer as defined in schedule 5 of the Consumer Rights Act 2015, or an Enforcer as defined in section 151 of the Digital Markets, Competition and Consumers Act 2024.
- e. **“former student”** means a person who was a student of the provider in the past, irrespective of the reason for that person no longer being a student of that provider, where there still exists a current relationship based on the former student having been a student of the provider (for example, where a former student has an ongoing complaint against the provider in relation to issues that occurred while they were a student).
- f. **“information about the provider”** has the meaning given in C5.1e.
- g. **“key documents”** means the provider’s terms and conditions, other documents with contractual effect, notices, policies relating to the circumstances in which it may make changes to its courses, refund and compensation policies, and complaints processes.
- h. **“OfS prohibited behaviours list”** means a separate document published by the OfS from time to time that sets out the descriptions pursuant to the test in C5.4a. For the avoidance of doubt, the OfS prohibited behaviours list forms part of this initial condition of registration C5.

- i. **“prospective student”** means, in respect of a student, that a person has already received any form of offer for or on behalf of the provider to commence a course of study, including research courses, at the provider, irrespective of whether that offer is legally binding or is subject to conditions or formalities.
- j. **“student”** includes current students of the provider, **prospective students**, and **former students**.

Summary

Applies to: all providers seeking registration

Initial or general ongoing condition: initial condition

Legal basis: section 5 of HERA

Guidance

Condition C5.1

1. Where this condition refers to a ‘former student’ who has an ongoing complaint against the provider, the OfS would consider whether the student raised their complaint within time limits specified by the provider and whether the time limit set was reasonable.
2. ‘Ancillary services’ includes (but is not limited to) library services, disability support packages, scholarships, accommodation and sports facilities, where there is a contract between a higher education provider and a student. This applies even where a contract or draft contract exists but is not yet in use. For example, this may be the case where services are newly introduced and not yet being delivered, or where students have not yet signed the relevant contract. This is because C5.2d. states that the provision of ancillary services includes the offering of those services and C5.2e states that reference to key documents (including contracts) includes any draft or proposed versions.
3. Where ancillary services are offered by a third party and the contract for services is between a student and that third party, this falls outside the scope of the condition. Where a provider works with recruitment agents or other entities similarly working on its behalf, it will be held accountable for their behaviour in relation to the ‘fake reviews’ provision in the OfS prohibited behaviours list. The OfS expects a provider to undertake appropriate due diligence on all third parties and on all third parties’ arrangements, and remains responsible for any contracts it enters into with any third parties.
4. In cases where two (or more) providers share ancillary services (for example, where one provider delivers services to another provider’s students), these fall within the scope of the condition for whichever provider holds a contract with the student for these services. The same expectations in relation to appropriate due diligence apply in these shared arrangements.
5. Higher education provided ‘in any manner or form’ includes any higher education course. This includes courses at any level and with any volume of learning, and it applies whether or not a course is recognised for OfS funding purposes, or any other purpose. This means, for example, that postgraduate research courses, the study of modules or courses leading to

microcredentials, and apprenticeships, all fall within the scope of this condition. It also includes courses provided face-to-face, by distance learning, or a combination of delivery approaches.

6. Higher education provided 'by, or on behalf of, a provider' includes courses where students are, or will be, in any of the following categories:
 - taught by the provider seeking registration
 - registered with the provider seeking registration
 - studying for an award of the provider seeking registration (including where these services are provided on that provider's behalf).
7. The condition applies to all higher education provided through all forms of partnership arrangements. This includes instances where there is shared contractual responsibility for a student; this may be the case in a subcontractual partnership. In practice, this may result in more than one provider being responsible for compliance with this condition in relation to the same student. The OfS will assess a provider based on the arrangements it intends to have in place if it is registered. This includes whether it intends only to teach students registered by another provider (for example, through a subcontractual arrangement) or to teach students who it will also register (for example, through a validation arrangement).
8. 'Information about the provider' includes anything individuals may rely on in their decision making about whether (or what) to study at the provider: for example, emails or other forms of communication; presentations delivered at open days; any written material used to inform communications (such as scripts for recruitment phone calls).
9. Arrangements the provider 'plans to make' and 'proposed information' include the situation where a provider applying to register is not yet operating or not yet delivering higher education.

Condition C5.2

10. The condition applies to relationships between a provider and its students, whether the latter pay for higher education or ancillary services directly or indirectly (for example, through Student Loans Company funding). This includes circumstances where a third party pays (for example, an employer or other sponsor).
11. This condition applies to a provider's relationships with students studying for the purpose of their business, trade or profession. This includes, for example, apprentices or other students who are studying as part of employer-sponsored programmes.
12. Higher education and ancillary services are considered 'services' regardless of whether fees are charged and whether it is provided on a 'for profit' or a 'not for profit' basis.
13. The condition applies wherever higher education and ancillary services are offered. This therefore relates to the provider's arrangements to attract, encourage and communicate with students, and includes instances where a provider is not yet delivering such services.

Condition C5.3

14. The overarching obligation of the condition is that a provider must treat its students fairly. Unfair treatment is defined in the condition and is separate from the protections offered by consumer protection law. The OfS expects any higher education provider seeking registration to ensure it understands and complies with its legal obligations.
15. The OfS will consider any of the provider's activities that are connected with providing higher education or ancillary services.

Condition C5.4

16. The OfS will deem that a provider does not treat students fairly where its actions (or its failure to act):
 - fall within the descriptions in a specified list of behaviours (the OfS prohibited behaviours list) (C5.4a); or
 - give rise to actual or likely detriment to students (C5.4b).
17. The OfS will assess the provider's actual 'actions or omissions' and those that are 'proposed or likely' as follows:
 - a. 'Proposed' actions may include, for example, unfair terms and conditions in a contract that is not currently in use, for instance if the provider is not yet delivering higher education.
 - b. 'Likely' relates to circumstances where the provider has not expressly proposed acting or not acting in a specific way but there is evidence to indicate it may do so nevertheless. For example, a provider's contract with its students may be ambiguous, unclear or silent on a particular matter, but its website may contain evidence of unfair treatment of students in relation to that matter.
18. The tests at C5.4a and C5.4b are separate and distinct. If there is evidence of prohibited behaviour, the provider will not meet the test at C5.4a, regardless of whether there is evidence of actual or likely detriment to current, prospective or former students, as defined at C5.8. For example, where the provider displays or presents inaccurate or false information, this is prohibited in all cases according to provisions set out in part b. of the OfS prohibited behaviours list.
19. The OfS prohibited behaviours list is published separately. It forms part of initial condition C5. Some of its provisions are informed by consumer protection law but, in some cases, they may have a different effect in this context. For example, section a. of the OfS prohibited behaviours list specifies some contract terms similar to those that may be regarded as unfair according to the Consumer Rights Act 2015 (the 'grey list'), but which will be treated as always unfair for the purpose of this condition. A provider may satisfy its legal obligations without satisfying the requirements of this condition, and vice versa.
20. 'Detriment' means any harm, damage or loss experienced (or more likely than not to be experienced) by a student. 'Student' in the detriment test has the meaning at C5.8 and therefore includes current, prospective and former students as defined in this condition. The

OfS will consider whether the likely or actual detriment identified, and the action or lack of action leading to it, would be reasonable in all the relevant circumstances.

21. Depending on whether the OfS is considering likely or actual detriment, it expects to take the following non-exhaustive factors into account:

- whether it is reasonable to argue that the course of action proposed or taken is, or was, necessary in the circumstances
- whether these circumstances are, or were, in the control of the provider
- whether the provider is doing, or has done, everything reasonable to limit the extent of the detriment.

Necessary in the circumstances (illustrative examples)

22. In an emergency, a detriment to students may be necessary to avoid a more serious detriment to students, staff or the wider community: for example, a rapid move from face-to-face to online learning may be necessary to avoid risks to public health or health and safety in a pandemic or other localised outbreaks of contagious illness or infection. The provider's actions may give rise to detriment but still be in the interests of all, or the vast majority of, students in the short term.

In the provider's control (illustrative examples)

23. An emergency may be out of a provider's control, or it may be due in part to a provider's actions or inaction. For example, a failure to maintain buildings or equipment, or carry out and act on necessary safety checks, may mean a provider has to take action to safeguard students, but these circumstances may still be assessed to have been within the provider's control. A provider seeking registration should consider how broadly its terms and conditions and other documents are drafted, and the circumstances over which it could reasonably be expected to have control.

Steps taken to limit detriment (illustrative examples)

24. Circumstances relating to staffing and resource allocation (including, for example, industrial action) could be within a provider's control, and it may be able to take measures to limit detriment to students. Such steps, however, may not be sufficient to fully address detriment to students and ensure that they are treated fairly.

Condition C5.5

25. The OfS's starting presumption is that a provider does not treat students fairly if it has been subject to findings of non-compliance with consumer protection law, or other wrongdoing as specified in C5.5. The OfS will consider findings made by UK courts or other competent authorities as defined in the condition.

26. The Protection from Harassment Act 1997 may be relevant to cases where a provider aggressively pursues academic sanctions imposed for non-payment of non-tuition fee debts, as this may amount to harassment.

27. Section 214(1) of the Education Reform Act 1988 relates to offering unrecognised degrees. The Companies Act 2006 contains provisions relating to company names that give a

misleading indication of the nature of a company's activities. This includes a provider claiming to be a 'university' without the relevant permission to do so.

28. The OfS will consider relevant any finding that directly or indirectly relates to the provision of any form of education, including further education, not just to higher education. The OfS will also consider findings in relation to ancillary services.
29. Where there are findings of wrongdoing, the OfS will consider evidence submitted by the provider to reach a judgement. The OfS will consider the following non-exhaustive factors:
 - the recency of the findings
 - whether the findings relate to matters that were repeated or sustained
 - whether the findings include a view about the deliberateness of the provider's actions or inaction
 - how the provider has engaged with the issue since the finding was made
 - the steps it has taken to address the issue and ensure it does not happen again in future.
30. Where the provider has not engaged with the issue and has not described satisfactory steps to address it, the OfS is more likely to consider that the provider does not treat students fairly.

Condition C5.6

31. The existence of undertakings or applications for enforcement orders that relate to the provision of education and/or ancillary services will not automatically lead to a conclusion that the provider does not treat students fairly, as there is no presumption of wrongdoing. The OfS will consider information submitted by the provider, alongside other reasonably available evidence (for example, the provider's documents or information published on its website) to reach a judgement. The OfS will consider whether the information provides reassurance that any issues that led to the undertaking or the application for enforcement order are not – or are no longer – of concern.
32. The context that will be considered relevant to this provision extends beyond higher education and includes, for instance, the provision of further education.
33. For the purpose of this condition, an 'enforcement body' is defined at C5.8d. Enforcement bodies include the Competition and Markets Authority (CMA) and Trading Standards.
34. For the avoidance of doubt, C5.6 relates specifically to applications for enforcement orders by enforcement bodies and not to enforcement orders issued by a court. Where a court makes an enforcement order it will also make a finding of non-compliance with consumer protection law. This will be considered under C5.5, with a starting presumption that the provider does not treat students fairly. The provider will have the opportunity to overturn this presumption, as set out in C5.5.

Condition C5.7

35. During the application process, if there are terms or information of concern to the OfS in any of the provider's documents, simply removing these will not be sufficient, unless the provider can

demonstrate that it has addressed any underlying issues associated with these terms. This would be relevant, for example, where a provider removes a term after the OfS has provisionally determined that it is unfair. The OfS will consider:

- the consequences of the removal
- whether the removal addresses the issues
- whether other related issues remain
- whether the removal itself leads to other concerns.

36. An example is a situation where a provider's student contract includes a clause specifying that it will not consider making refunds under any circumstances, but it subsequently removes this term, and submits a refund and compensation policy that the OfS considers fair. In these circumstances, the removal of the original term is likely to be acceptable, as the provider has taken steps to remedy the issue beyond mere removal of the term.

37. The OfS will also consider the following non-exhaustive factors:

- the extent to which the provider has demonstrated it understands why the term or information that it has removed was of concern
- other actions beyond removal that the provider has taken, and the extent to which these address the concern
- whether the provider has replaced the terms with more suitable terms.

38. The OfS will consider the nature and range of the provider's actions relevant to the nature and extent of the original concerns. The OfS will take more assurance where the provider demonstrates it has understood the concern and taken actions to fully address the issue. For example, where a provider has removed an unfair term from a student contract but continues to make similar statements elsewhere on its website, the OfS is unlikely to conclude that the concerns have been addressed. In all circumstances, the test the OfS will apply is whether the provider will, if registered, treat students fairly.

Assessing compliance with the condition

39. The OfS will assess the documents the provider submits with its application. The OfS will also consider any information published by the provider on its website, such as information about:

- courses, including fees
- ancillary services such as library services, accommodation and sports facilities
- affiliation with other bodies, which may include other awarding bodies, professional, statutory or regulatory bodies and other regulatory agencies
- materials to attract individuals to study at the provider, encourage individuals to submit applications to study at the provider or otherwise communicate with students or anyone with an interest in studying at the provider (including, but not limited to, advertising and marketing material).

40. The OfS's assessment may be informed by other information. This may include (but is not limited to) notifications from third parties submitted to the OfS, or information from other relevant bodies, such as the Office of the Independent Adjudicator for Higher Education (OIA), CMA or Trading Standards. The OfS may seek further information from a provider to verify the information it holds and establish the facts.
41. The OfS considers that providers in partnerships share a responsibility to treat students fairly, including ensuring through their own due diligence processes that the other partner also treats them fairly. The OfS expects any provider applying for registration to ensure that any information it publishes or otherwise shares with students is clear, accurate and consistent with that shared or published by its partner. The OfS will pay particular attention to information outlining each partner's duties and responsibilities.
- a. A provider intending, if registered, to deliver higher education through a subcontractual arrangement will need to submit some documents belonging to the lead provider in that relationship. These include template student contracts (including terms related to tuition fees and additional costs) and refund and compensation policies. The provider seeking registration is responsible for submitting these documents to the OfS and the OfS expects the relevant lead provider to cooperate with its delivery provider.
 - b. Where the delivery provider considers that the lead provider's documents contain provisions that may be contrary to the OfS prohibited behaviours list, the OfS expects the delivery provider to work with the lead provider to address this directly before submitting its application.
 - c. Where the delivery provider has submitted its application and the OfS identifies potential inconsistencies between documents or published information of the delivery provider and those of the lead provider, the OfS will raise its concerns with the delivery provider.
42. Where a provider (or another legal entity that the OfS considers to be operating substantially the same higher education business) has previously been registered, a history of non-compliance with ongoing condition C1 is likely to result in a judgement that initial condition C5 is not satisfied. Similarly, for a provider in these circumstances, any regulatory interventions the OfS has previously made in relation to consumer protection law or treating students fairly, such as a referral to National Trading Standards, will be relevant to the OfS's assessment of compliance with initial condition C5.
43. Where the OfS considers this initial condition satisfied, but identifies an increased risk of not treating students fairly, it may impose one or more specific ongoing conditions of registration, and will also consider whether additional monitoring requirements are appropriate. For example, where a provider does not intend to register any students when it seeks registration (because students will register with a lead provider in a subcontractual partnership), the OfS may require the provider to submit a reportable event if this position changes once it is registered. This may include requiring the provider to submit the contractual and other documents it intends to use in its relationships with students.
44. Any assessment that the OfS makes about whether a provider has satisfied this condition is not a judgement about whether the provider is complying with consumer protection law, and should not be seen as such. Providers will still need to seek their own legal advice to ensure

compliance with the law. The OfS's assessment is also separate from the assessment of any other body (for example the OIA) and any judgement such a body may independently take about a provider and its documents.