

Office for
Students



Regulatory advice 21: Publication of information

Guidance for higher education providers

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Introduction

1. The Office for Students (OfS) receives and generates information about the higher education sector as a whole and about individual higher education providers' performance and regulatory compliance. As it performs its functions, the OfS is required to have regard to the principles of best regulatory practice, including the principle that regulatory activities should be transparent and accountable. This means that we routinely consider whether it would be appropriate to publish information about regulatory matters, including information that an individual provider, or individual connected with that provider, may prefer remained confidential.
2. There are some types of information that we would not normally expect to publish about a provider, but our general view is that it is appropriate for us to publish information about our regulatory decisions. This is because we consider there to be a fundamental principle that our regulation should be transparent. It is a matter of strong public interest for the OfS's regulatory decisions, and the reasons these have been taken, to be visible. Visibility provides confidence in the regulatory system and this is in the interests of the public, of current and potential students, and of other providers that have satisfied the OfS's regulatory requirements.
3. Our ability to publish information is set out in sections 67A to 67C of the Higher Education and Research Act 2017 (HERA), which give the OfS express powers to publish notices, decisions and reports given or made in the performance of our functions.
4. This guidance document sets out how we will normally use those powers and contains our general policy for the publication of information about particular providers and particular individuals connected with them. It sets out the information we would normally expect to publish and the information that we would not normally expect to publish. It also sets out the factors to which we will have regard in making a publication decision.
5. This document should be read with the OfS's regulatory framework (OfS 2018.01).¹ If there are any inconsistencies between the regulatory framework and this document, then the regulatory framework will prevail. All registered providers should be familiar with the content of the regulatory framework.

¹ See www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

Information we would normally expect to publish

6. We would normally expect to publish information on the subject matter set out in Table 1. In making publication decisions we will consider the factors set out later in this document in the manner we consider to be appropriate. The ‘related or ancillary material’ listed in Table 1 reflects material that we will, in particular, consider publishing in relation to these subject matters, but it is illustrative and not exhaustive.

Table 1: Information the OfS would normally expect to publish

	Main subject matter	Main content in respect of that subject matter	Any related or ancillary material
1	A decision to register a provider	Publication of the provider’s entry in the Register and, in addition: Any final decision to impose a specific condition of registration (see row 7)	The report of any assessment of quality and standards undertaken for the provider
2	The information listed in regulations made under section 3(6) of HERA ²	Publication in a provider’s entry in the Register of the information listed in the Regulations	N/A
3	A decision to refuse registration for a provider	The refusal decision and the reasons for that decision	A summary of the reasons that one or more initial conditions of registration have not been satisfied The report of any assessment of quality and standards undertaken for the provider, whether or not the OfS has decided that initial conditions relating to quality and standards have been satisfied The OfS’s detailed assessment of a provider’s application for registration, including the underlying evidence considered in that assessment

² The Office for Students (Register of English Higher Education Providers) Regulations 2017 (SI 2017/1196), which are available at <https://www.legislation.gov.uk/uksi/2017/1196/made>.

4	<p>Information about an investigation into any type of potential non-compliance with a condition of registration or into other potential regulatory harm:</p> <p>A decision to open an investigation, or information about a live investigation at any time after it has been opened</p> <p>The progress of an investigation at key milestones where that investigation has previously been announced</p> <p>Any provisional decisions taken as a result of an investigation that has previously been announced</p> <p>Where information has been published about a decision to conduct an investigation, any decision to close that investigation without making any finding, or if the findings of that investigation do not result in any further action</p>	<p>The identity of a provider subject to investigation, a summary of the matters being investigated, and the progress of an investigation</p> <p>A provisional decision and the reasons for that decision</p> <p>A decision to close an investigation and the reasons for that decision</p>	<p>The OfS's detailed assessment of the relevant issues, including the underlying evidence considered in that assessment</p>
5	<p>A report of any assessment of potential regulatory concerns, including an assessment of quality or standards undertaken for a provider, regardless of whether that report has been produced as part of an investigation or results in an investigation being opened</p>	<p>An assessment report and the reasons that assessment was conducted</p>	<p>The OfS's detailed assessment of the relevant issues, including the underlying evidence considered in that assessment</p>
6	<p>Any referral to another regulatory or enforcement body, for example, the Competition and Markets Authority, trading standards, the Charity Commission, the</p>	<p>A decision to make a referral and the reasons for that decision</p>	<p>The OfS's detailed assessment of the relevant issues, including the underlying evidence considered in that assessment</p>

	Equality and Human Rights Commission or the police		
7	<p>Information about a provider's compliance with its conditions of registration and any action the OfS has taken in response to actual or likely non-compliance:</p> <p>A breach of a condition of registration</p> <p>Imposition of a specific condition of registration, whether or not there has been a breach of a condition</p> <p>Imposition of a monetary penalty</p> <p>Suspension of registration</p> <p>Deregistration</p>	<p>The decision that there is or has been a breach of a condition of registration and the reasons for that decision</p> <p>The content of any specific condition and the reasons it has been imposed</p> <p>The decision to impose a monetary penalty, the amount of that penalty (and how it was calculated), and the reasons for those decisions³</p> <p>The information about suspension of registration listed in section 16 of HERA and the reasons for that suspension</p> <p>The information about deregistration listed in section 18 of HERA and the reasons for that deregistration, and the reasons for the imposition of any transitional or saving provision</p>	<p>The OfS's detailed assessment of a provider's compliance with the relevant condition(s) of registration, including the underlying evidence considered in that assessment</p> <p>The report of any assessment of quality and standards undertaken for the provider where that is relevant to the main subject matter</p>
8	<p>Information that relates to individuals connected with a provider:</p> <p>A finding that an individual is not suitable to be approved as a provider's accountable officer</p> <p>A finding that an individual is not a fit and proper person</p> <p>The conduct of an individual where this is relevant to the reasons for a regulatory finding about a provider,</p>	<p>The decision about an individual and the reasons for that decision</p>	<p>The OfS's detailed assessment of the relevant issues, including the underlying evidence considered in that assessment</p>

³ See www.officeforstudents.org.uk/publications/consultation-on-ofs-approach-to-monetary-penalties/.

	including a breach of a condition		
9	The information about voluntary deregistration listed in section 22 of HERA	As listed in section 22 of HERA and the reasons for the imposition of any transitional or saving provision	
10	Information about a provider's authorisation for degree awarding powers: A decision to grant an application for an authorisation for a provider A decision to refuse an application for an authorisation for a provider A decision to vary a provider's authorisation to restrict its scope A decision to revoke a provider's authorisation	Publication in a provider's entry in the Register of the information listed in the Regulations and, in addition: The type of authorisation granted to a provider The decision to refuse an application for an authorisation and the reasons for that decision The decision to restrict an authorisation and the reasons for that decision The decision to revoke a provider's authorisation and the reasons for that decision	The OfS's detailed assessment of a provider's authorisation, including the underlying evidence considered in that assessment The report of any assessment of quality and standards undertaken for the provider, where that is relevant to the main subject matter
11	Information about a provider's authorisation to use the term 'university' in its title: A decision to authorise the use of the term 'university' A decision to refuse to authorise the use of the term 'university' A decision to revoke authorisation for the use of the term 'university'	Publication in a provider's entry in the Register the information listed in the Regulations and, in addition: The decision to refuse an application for an authorisation and the reasons for that decision The decision to revoke a provider's authorisation and the reasons for that decision	The OfS's detailed assessment of a provider's authorisation, including the underlying evidence considered in that assessment
12	Other information to be published in the provider's entry on the Register as listed in the table at paragraph 72 of the regulatory framework, and not covered by the preceding rows in this table: The provider's unique identifier (UKPRN) assigned	N/A	N/A

	<p>by the UK Register of Learning Providers</p> <p>Information about the provider's legal form and whether it is an exempt charity or registered charity⁴</p> <p>The general ongoing conditions of registration that apply to the provider</p> <p>Information about the provider's primary regulator where this is not the OfS (for example, the Education and Skills Funding Agency for further education and sixth form colleges)</p> <p>Where the provider holds a Home Office student sponsor licence to recruit international students, confirmation that this is the case</p> <p>A link to the provider's entry on the Discover Uni website</p> <p>Information about the provider's sub-contractual arrangements and, where the provider is the lead provider, information about which providers deliver its courses under sub-contractual arrangements</p> <p>A link to the provider's access and participation statement (on the provider's website), where it has one in place</p> <p>Where the provider is accredited by the Department for Education to deliver initial teacher training courses for which student support funding</p>		
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⁴ An exempt charity is exempt from registration with and direct regulation by the Charity Commission. The OfS is the principal regulator for registered providers that are exempt charities, and for exempt charities that are closely connected with them.

	<p>is available, confirmation that this is the case</p> <p>Where the OfS has determined that access to student support funding should be determined on a course-by-course basis, a list of the provider's courses that have been approved for that purpose.</p> <p>Whether the provider is eligible to take part in the Teaching Excellence Framework (TEF) and the provider's current TEF outcome.</p>		
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Information we would not normally expect to publish

7. The information we would not normally expect to publish, unless we make an exception based on our consideration of relevant factors, is set out in paragraphs 8 to 10.

Enhanced monitoring requirements imposed on a provider

8. We may impose additional reporting requirements on a provider where we consider that appropriate to mitigate areas of increased regulatory risk and we refer to this as ‘enhanced monitoring’. We would not normally expect to publish information about an enhanced monitoring requirement, except where this is relevant to a publication we would normally expect to make.

Information provided to us by third parties through notifications

9. Notifications come to us from a variety of sources, such as students or whistleblowers. We would not normally expect to publish information about individual notifications, except in anonymised form or where this is relevant to a publication we would normally expect to make.

OfS risk profile for a provider

10. At registration, the OfS assesses for each provider the risk of a future breach of each ongoing condition of registration. This assessment forms the basis of a ‘risk profile’ for each provider and this profile is updated through our monitoring of the provider in relation to its conditions of registration. A risk profile is not equivalent to a regulatory judgement. We would not normally expect to publish a provider’s risk profile.

Factors to which we will have regard in making publication decisions

11. When making a publication decision, we will have regard to the factors set out below and will consider them in the manner we consider to be appropriate for an individual case.
12. We will consider the factors as we decide whether information about a particular subject matter should be published and, if so, the particular content of that publication. It follows, for example, that our consideration of the factors may result in content being included in a publication that seeks to address the potential for publication to result in misunderstanding or unintended consequences. We may also consider these factors when deciding when, how or where to publish information.
13. In addition to the factors set out below we will have regard to other relevant factors on a case-by-case basis. For example, we may consider principles from relevant legal cases or judgments insofar as they remain good law. For example, at the time of publication of this document, we consider the judgment of the High Court in *R (on the application of Barking & Dagenham College) v Office for Students* [2019] EWHC 2667 (Admin) to be a particularly relevant judgment, particularly following the endorsement by the Court of Appeal in *R (on the application of the Governing Body of X) v Ofsted* [2020] EWCA Civ 594. Similarly, in some cases we may consider case law relating to privacy rights.
14. The factors we will consider in making publication decisions are as follows:
 - a. **The student interest.** We will consider the interests of students on higher education courses provided by English higher education providers and the interests of people thinking about undertaking, or who have undertaken, such courses.

Considerations in favour of publication may include, but not be limited to, the following illustrative and non-exhaustive examples:

- i. Publication provides prospective students with more information, enabling them to understand the value of the course and provider they are considering and make an informed choice about what and where they study.
- ii. Publication provides current students with more information about their provider and its performance, enabling them to understand the value of their course and provider and make an informed choice about whether to continue studying with that provider.
- iii. OfS regulation helps to promote quality in higher education. Providing clear information about providers reinforces this.
- iv. Publication signals to students, and others, the types of information we may be able to act upon if it is submitted to us.

Considerations against publication may include, but not be limited to, the following illustrative and non-exhaustive examples:

- v. Publication may result in prospective students deciding not to study with that provider and this could result in the course or provider no longer being viable and mean that current students may not be able to complete their course with that provider.
- vi. Publication may result in prospective or current students deciding not to study with that provider and this could result in the course or provider no longer being viable and that could reduce choice for future students.
- vii. Publication may result in a third party taking action in relation to that provider and this could result in the course or provider no longer being viable and mean that current students may not be able to complete their course with that provider.
- viii. Publication could damage the reputation of the course or provider, and this could mean that the qualifications held by past students could be undermined.

b. **The public interest.** We will consider the public interest.

Considerations in favour of publication may include, but not be limited to, the following illustrative and non-exhaustive examples:

- i. There is a general public interest for regulators to be transparent about decisions they take about those they regulate.
- ii. Publication may encourage staff, students and members of the public to come forward to provide the information about that provider, or other providers, that supports the OfS's registration, monitoring and investigatory activity.
- iii. Publication may enable the OfS to regulate in a way that is proportionate and cost effective because it may encourage staff, students and members of the public to come forward to provide the information about that provider, or other providers.

Considerations against publication may include, but not be limited to, the following illustrative and non-exhaustive examples:

- iv. Publication of specific details may limit the ability of the OfS to perform its functions effectively, for example, by reducing the likelihood of providers reporting regulatory risk. Publication may limit the ability of the OfS to address issues in a way that limits the costs to providers, the OfS, students and the public.
- v. Where there are credible risks that specific details could compromise confidential sources of intelligence and evidence about potential wrongdoing, for example, through publishing information that could potentially reveal the identity of members of staff at providers or third parties who have decided to 'blow the whistle' on suspected wrongdoing.
- vi. Where there are credible risks of prejudicing investigatory or compliance activities of the OfS or other regulatory or enforcement bodies, for example, where the timing of publication could lead to evidence being concealed or destroyed.
- vii. Where there are genuine questions about the accuracy or reliability of information.

- viii. Where specific details could be considered to be commercially confidential information of a nature whereby publication (or other forms of disclosure) would be likely to give rise to actual or potential competition law concerns.
- c. **The provider interest.** We will consider the impact of publication on English higher education providers.

Considerations in favour of publication may include, but not be limited to, the following illustrative and non-exhaustive examples:

- i. Publication signals to other providers issues that are of concern to the OfS and that encourages compliance.
- ii. Publication demonstrates to providers that are compliant that action is taken in relation to providers that are not compliant.
- iii. Publication of the reasons for a decision about a provider may have a more positive effect than would be the case if no explanation of a negative decision were published.

Considerations against publication may include, but not be limited to, the following illustrative and non-exhaustive examples:

- iv. Publication may damage the provider's legitimate commercial interests if it generated adverse publicity or would create a competitive advantage for other providers.
 - v. Publication may damage the legitimate commercial interests of the owners of a provider if it generated adverse publicity or would create a competitive advantage for other providers.
 - vi. Publication may damage the interests of a provider's staff if prospective or current students decide not to study with that provider and this could result in the course or provider no longer being viable and that could put employment at risk.
- d. **The risk of seriously and prejudicially affecting the interests of a body or individual.** We will consider the need for excluding from publication, so far as practicable, any information which relates to the affairs of a particular body or individual, where publication of that information would or might, in the opinion of the OfS, seriously and prejudicially affect the interests of that body or individual.
- e. **Other legal duties placed on the OfS.** We will consider matters to which we are required to have regard, for example, our general duties under section 2 of HERA.

Engagement with providers and connected individuals

15. The nature of our engagement with a provider in relation to a publication decision will depend on the particular circumstances of the case. We will seek representations from a provider before making a final decision to publish information where we consider it is appropriate to do so and in the manner we consider appropriate.
16. We would normally seek the views of a provider, and an individual connected to that provider where relevant, before making a final decision to publish information about an investigation, a

report of an assessment of potential regulatory concerns, or a referral made to another regulatory or enforcement body – these are the subject matters covered in rows 4, 5 and 6 in Table 1.



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