

Annex B: Alternative options considered

1. We welcome views on these alternative options alongside comments on the proposals we have set out.

Proposal 1: Introduce a new ongoing condition to replace ongoing condition C1

Retain existing ongoing condition C1

2. We have considered whether we could retain the current condition. Our initial view is that it is not effective for the reasons set out in Proposal 1.
3. We recognise that introducing new requirements will lead to additional effort for providers in understanding and implementing new requirements. However, when taken together with Proposal 5 which would remove the requirements of ongoing C3, we think our proposals represent a more streamlined approach when compared with current requirements. Importantly we think our proposals will also result in more effective protection for students.

Require compliance with the law only

4. We have considered a requirement that replicates consumer protection law, and does not set any regulatory requirement to treat students fairly but instead concentrates on prohibited behaviours. We have considered whether this might represent a more straightforward requirement, as a registered provider should already be complying with the law.
5. Our initial view is that a condition that focuses strictly on consumer protection law may lose the spirit and simplicity of what is fair for students and may not capture all behaviours that are unfair in the higher education context based on our regulatory experience and feedback from students. Our initial view is that the proposal we are putting forward is necessary to address the sector-specific challenges that students face. These include:
 - the one-off, high stakes decision by students to 'purchase' where, if things go wrong, the impact on students is significant
 - the long-term and ongoing relationship between the student and provider, where the value of the higher education service is only realised once the student has graduated
 - the imbalance of power and information asymmetry that exists in favour of providers, particularly as many students are inexperienced as consumers of higher education.
6. Consumer protection law is clear about minimum expectations and certain about what is prohibited. Students may seek redress through the courts when harm occurs.. However, our initial view is that it is preferable to ensure the behaviours that could lead to harm are avoided in the first place.
7. Consumer protection law on its own will not be enough to change the sector's culture. We need a proactive approach of continuous improvement so that providers treat students fairly and help students understand their rights, which should in turn drive further improvements.

Proposal 2: Establish principles and requirements of fairness

Only establish principles and requirements with no overarching requirement to treat students fairly

8. We have considered whether the principles and requirements should stand alone without an overarching requirement to treat students fairly. However, we consider that the overarching requirement sets a clear outcome-focused standard of behaviour that applies across all aspects of a provider's relationship with students. This is important because it creates a clear benchmark for how behaviours are assessed – even where principles and requirements may not cover every scenario.

Only establish principles

9. We have considered whether fairness could be described only through principles. This would support institutional autonomy and allow providers flexibility to determine for themselves how to ensure fair treatment of students. We think it is important to set specific requirements to ensure a consistent baseline of protection for students across a diverse sector, particularly given the sector-specific challenges set out above. Our initial view is that principles alone would not provide sufficient protection for students.

Only establish requirements

10. We have also considered whether rules alone would be sufficient to achieve our aims. A rules-based approach might be simpler for providers to understand and implement and therefore result in less burden. However, this creates a narrower obligation and a more restricted view of fair treatment.
11. Our initial view is that the proposed principles would work together with the requirements to ensure providers adopt a proactive culture of continuous improvement and best practice that would ensure students are treated fairly. This will improve trust and confidence in the sector.

Only establish negative requirements

12. Initial condition C5 came into effect for new providers seeking registration from 28 August 2025. It focuses on the prohibition of specific behaviours and we have considered whether it would be appropriate to mirror this approach in the proposed ongoing condition.
13. An ongoing condition only focused on negative (or 'prohibited') behaviours would allow us to identify and tackle some poor treatment of students on an ongoing basis which would be beneficial for students. However, we think that requiring providers to proactively give students clear, accurate and specific information will reduce information gaps and help students make informed choices about which course to study and which provider to choose.
14. Our initial view is that negative requirements alone, would not be sufficient to promote higher standards of consumer protection across students' end-to-end experience, from pre-application and decision making, offer and acceptance, and delivery of higher education to graduation.

More precisely reflect consumer protection law in our proposed requirements

15. While we have broadly reflected existing consumer protection law and related CMA guidance, our proposed requirements go beyond consumer law. We have considered more precisely reflecting consumer protection law in our requirements in a number of ways. These include:
- Maintaining the provisions of schedule 2 of the CRA 2015 ('contract terms which may be regarded as unfair') as a 'grey list' rather than including these as strict prohibitions.
 - Prohibiting aggressive commercial practices only where they are 'likely to cause a student to take a different transactional decision'. This would be more closely aligned with 'aggressive practices' provisions in the DMCCA 2024.¹
 - Including caveats to 'provision of information' requirements. For example, requiring that a provider provides information that is clear, accurate, intelligible, legible and unambiguous 'where failure to do so is likely to cause a student to take a different decision'. This would be more closely aligned with provisions related to 'misleading actions' and 'misleading omissions' in the DMCCA.²
 - Expanding the proposed OfS prohibited behaviours list to include all provisions from:
 - Schedule 2 of the CRA ('Contract terms which may be regarded as unfair')³
 - Schedule 20 of the DMCCA ('Commercial Practices which are in all circumstances considered unfair')⁴

¹ An aggressive commercial practice is unfair under the Digital Markets, Competition and Consumers Act (DMCCA) 2024 if 'it is likely to cause the average consumer to take a transactional decision that the consumer would not have taken otherwise as a result of the practice', Digital Markets, Competition and Consumers Act 2024, s225(4)

² Under the DMCCA, 'misleading actions' and 'misleading omissions' are unfair where they are 'likely to cause the average consumer to take a transactional decision that the consumer would not have taken otherwise as a result of the practice', Digital Markets, Competition and Consumers Act 2024, s225(4)

³ These are:

- i. A term which has the object or effect of excluding or limiting the trader's liability in the event of the death of or personal injury to the consumer resulting from an act or omission of the trader or someone acting for or on behalf of the trader.
- ii. A term which has the object or effect of enabling the trader to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so.

⁴ These are:

- i. Falsely claiming or creating the false impression that an after-sales service is available, including falsely claiming that it is available in, or accessible from, any particular country or location.
- ii. Stating or otherwise creating the impression that a product can be legally sold when it cannot.
- iii. Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer, a member of the consumer's family or anyone living in the consumer's home, if the consumer does not purchase the product.
- iv. Establishing, operating or promoting a pyramid promotional scheme [where this means] a scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the supply or consumption of products.
- v. Claiming that the trader is about to cease trading or move premises when it is not.
- vi. Claiming that products are able to facilitate winning in games of chance.
- vii. Falsely claiming that a product is able to —

16. Our proposals aim to rebalance the relationship between students and providers to address the sector-specific challenges that students face. We are proposing to set higher expectations in pursuit of this aim. Therefore, our initial view is that it is appropriate to set a higher standard in respect of the 'grey list'. We also consider it is appropriate to raise the bar by setting requirements that do not justify aggressive practices under any circumstances and that encourage providers to provide the best and clearest information possible, without caveats.
17. We also aim to create requirements that are bespoke to the higher education sector. This means that we have not included requirements that reflect all aspects of consumer protection law in our proposals. We would expect all providers to comply with all their legal obligations and the exclusion of particular elements of the CRA or the DMCCA does not mean, of course, that we endorse behaviours that the law otherwise prohibits.

Proposal 3: Include all students, higher education and ancillary services in scope of the condition

Exclude prospective and former students from the scope of the condition

18. We have considered whether 'students' should be limited to current students, in other words those individuals who are enrolled to study higher education at the provider, for the length of time they are formally enrolled.
19. We think students should be protected by our regulation when they are making their decision about what and where to study, through their experiences while studying and, in some

(a) prevent or treat disease or a malformation,

(b) restore, correct or modify a physiological function, or

(c) modify a person's appearance.

- viii. Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that the consumer has already ordered the marketed product when the consumer has not.
- ix. Falsely claiming or creating the false impression that the trader is not acting for purposes relating to the trader's business or falsely representing oneself as a consumer.
- x. Creating the impression that the consumer cannot leave the premises until a contract is formed.
- xi. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to correspondence, in order to dissuade a consumer from exercising the consumer's contractual rights.
- xii. Including in an advertisement a direct appeal to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.
- xiii. Supplying products to a consumer that have not been requested by the consumer and demanding that the consumer —

(a) pays for the products,

(b) returns the products, or

(c) safely stores the products.

- xiv. Explicitly telling a consumer that if the consumer does not buy the product, the trader's job or livelihood will be at risk.

scenarios, beyond (for example where they have completed their studies but have an ongoing complaint). Our initial view is that restricting the definition of students would leave a significant gap in protection for students.

Use a narrower definition of ‘prospective students’

20. We have considered whether a ‘prospective’ student could be defined more narrowly as an individual who has accepted an offer. However, we think a provider’s actions (or omissions) may affect decision making which takes place between offer and acceptance.

Focus only on the provision of teaching (and exclude ancillary services from the scope of the condition)

21. We have considered whether the condition should focus solely on the provision of teaching, given that this is the primary activity of higher education providers. However, we think that library services, disability support packages and scholarships in particular affect a student’s ability to participate in higher education, and achieve positive outcomes.
22. Though not directly connected to the academic experience, other ancillary services (for example, accommodation and sports facilities) can affect students’ choices about what and where to study and their experiences while studying.
23. We have particularly considered accommodation in recognition of the activities of other bodies in this space. Our initial view is that accommodation is too important to students to be excluded from the scope of the condition or our regulatory interests. Our proposal aims to balance this with the overlapping interests and roles of other bodies. We would welcome respondents’ views on other ways the OfS might navigate this in the best interests of students.

Exclude third party ancillary services from the scope of the condition

24. We have considered whether to take a similar approach to ongoing condition C6 as to initial condition C5 by excluding third party ancillary services from the scope of the condition.
25. Our initial view is that it is appropriate to hold a provider directly accountable for the actions of third parties that provide services on its behalf. While we think it is acceptable for a provider to contract out certain services to third parties, it is our initial view that it is right for the provider to retain overall responsibility.
26. We are more likely to have evidence (and impact) of the actions of third parties through our ongoing regulatory activities than at the point in time a provider is seeking registration.

Proposal 4: Require publication of specified documents and information for students

Do not include a publication requirement

27. We have considered whether it is necessary to include a publication requirement. Our initial view is that this is the best way to ensure all students at all providers have consistently easy access to comprehensive information about their rights and responsibilities throughout the student journey.

Exclude contracts between students and third parties from the publication requirement

28. We have considered whether the list of documents a provider would need to publish could be reduced. For example, we have considered whether it is necessary to require providers to:
 - a. publish another provider's contracts with students where two or more providers are working in partnership through a subcontractual arrangement
 - b. publish contracts between students and any third party for ancillary services that are delivered on behalf of the provider.
29. We acknowledge that the publication of a third party's contracts with students adds complexity. This will involve liaising with third parties to obtain these contracts (or links to third party websites where these contracts are published). We acknowledge that providers will need to check that links to external websites are maintained on an ongoing basis. However, our initial view is that this will ensure clarity for students about their rights and which party to hold to account and how, where the provider does not directly deliver the higher education or ancillary service.
30. We welcome feedback and suggestions about alternative ways of ensuring students have access to this information in a way that would meet their needs.

Proposal 5: Remove requirements relating to student protection plans

Continue to impose ongoing condition C3 alongside proposed ongoing condition C6

31. We have considered continuing to apply ongoing condition C3 alongside proposed new ongoing condition C6, meaning a provider would be required to comply with two conditions rather than one, as proposed.
32. The existing requirement to publish a self-assessment of risks would not be carried through under our proposals for ongoing condition C6. This may appear to leave a 'gap' in coverage in the proposed new condition when compared with ongoing condition C3. If we continued to impose ongoing condition C3 alongside proposed ongoing condition C6, this would ensure that there was no 'gap' in this respect.
33. However, for the reasons we have set out under Proposal 5 (see paragraphs 210 to 211 of the proposal), our initial view is that the omission of the self-assessment element of existing student protection plans would not lead to a concerning 'gap' in practice. We therefore think that continuing to impose ongoing condition C3 alongside proposed ongoing condition C6, would create additional regulatory burden for providers but with no additional practical benefit.
34. Compared with existing ongoing condition C3, our initial view is that our proposals for ongoing condition C6 (alongside the existing provisions of ongoing condition C4) provide equally strong protections for students. Furthermore, these protections would exist alongside better information for students about their rights in circumstances where things go wrong, including how to complain and seek redress.

Proposal 6: Take a phased approach to implementation

Allow providers a shorter or longer time to comply with the requirement relating to publication

35. We have considered whether the requirement related to publication could come into effect sooner. This would provide consistent information for students across the sector more quickly. However, our initial view is that a shorter timeframe may not provide sufficient time for providers to comply. We think this may risk publication of inaccurate or incomplete information for students which would be counterproductive.
36. We have considered allowing a longer time for providers to comply with the requirement relating to publication. While this would be more generous to providers, it would delay the provision of consistent information for students across the sector.
37. Our initial view is that three months strikes a balance between allowing providers sufficient time to comply without unnecessarily delaying the intended benefits.

Differentiate between providers that will register, in future, under initial condition C1 and C3 and those that will register under initial condition C5

38. A provider that made an application for registration before 28 August 2025 (and which was live as of 27 August 2025) will be registered following assessment under initial conditions C1 and C3.⁵ We have considered whether to allow these providers more time to comply with the publication requirement compared with providers that have made (or will make) an application on or after 28 August 2025 and will be registered following assessment under initial condition C5.
39. This is because the documents we would require a provider to publish under proposed ongoing condition C6 are very similar to the documents a provider is already required to submit for assessment under initial condition C5. Compliance may therefore be more straightforward for these providers with less additional preparatory work. Providers assessed under initial condition C5 must already publish their documents within two weeks of their registration. If any provider is registered following assessment under C5, before the proposed three-month period has elapsed, the existing expectation to publish documents would, in any case, still apply to such a provider.
40. Our initial view is that a provider seeking registration should keep abreast of regulatory developments and anticipate the ongoing requirements that would be imposed if it is registered, regardless of the initial conditions that apply at the time it submits its application. As noted out under Proposal 6 (paragraph 231), any provider seeking registration must already prepare to comply with other ongoing conditions of registration immediately upon registration. Our initial view is that a three-month period to comply with the proposed requirement relating to publication is adequate for all providers, registered and unregistered.

⁵ For further information, see OfS, [Notice of determination of initial and general ongoing conditions of registration, 2025](#).