

Office for
Students



Guidance for providers about student and consumer protection during the coronavirus (COVID-19) pandemic

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Enquiries to regulation@officeforstudents.org.uk

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Summary

1. This document provides guidance for registered providers about how the Office for Students (OfS) will approach the regulation of student protection during the period of disruption resulting from the coronavirus (COVID-19) pandemic. It is temporary guidance which supplements the information provided in the OfS's guidance relating to quality and standards¹ and will be in place until the OfS's normal regulatory requirements are re-introduced.
2. The pandemic is causing immense disruption to students' experience of higher education and has created significant challenges for providers. Providers have had to make adjustments to their normal arrangements for teaching, learning and assessment to respond to the disruption and to implement government public health advice in order to protect the health and safety of staff, students and the public. They have made enormous efforts to do this. Students' expectations of what would be delivered by providers, and when, will differ according to when they started their course. For students continuing in 2020-21, their experience of higher education and the delivery of their course will have been, in the majority of cases, significantly different from their experience before the pandemic. For students starting their studies in 2020-21, the information they received before the pandemic and which has informed their decisions about what and where to study is likely to have changed significantly.
3. Notwithstanding the significant uncertainty regarding the impact of coronavirus, providers will need to ensure that prospective students have information that is clear and timely (including any information about changes to the courses for which they have applied). Prospective students will need to understand what a provider is committing to deliver in the current circumstances and in different scenarios, how this will be achieved, and the changes that might need to be made in response to changing public health advice, so that they are able to make informed choices. Existing students also need clear information about any adjustments to their courses and assessment that may take place in the next academic year.
4. Providers need to continue to ensure that their terms and conditions are fair and transparent, and students must continue to have access to complaints processes which are accessible, clear and fair. It is our expectation that complaints processes should be operated flexibly and in a way that recognises the significant disruption that students have faced. Providers must inform students of the avenues of redress that might be available to them.
5. It is important that all providers consider how their approaches to the current situation will affect all students, and in particular those who might be most vulnerable to disruption. This includes students suffering from coronavirus or who need to self-isolate, international students, and students unable or less able to access and effectively participate in remote learning for whatever reason, together with care leavers, those estranged from their families, and students with disabilities.
6. We will continue to encourage students and other third parties to notify us of any concerns about the information they have received, and about the changes made by a provider to its teaching and assessment arrangements. We have published guidance to support students in

¹ Available at www.officeforstudents.org.uk/publications/guidance-for-providers-about-quality-and-standards-during-coronavirus-pandemic/.

making notifications.² We will also be interested in the number and patterns of complaints that are made to the Office of the Independent Adjudicator for Higher Education (the OIA).

7. During the exceptional circumstances caused by the pandemic, we do not intend to take regulatory action unless we become aware of practices that appear to us to constitute a significant disregard for the Competition and Markets Authority (CMA) guidance (and a significant breach of consumer protection law which is not as a result of actions that were necessary to implement public health advice may be evidence of that), or where we consider that reasonable efforts have not been made to protect the interests of students. We will, as a matter of course, take into account the impact of the pandemic on a provider's ability to satisfy conditions of registration during this period.
8. Whether or not the OfS takes regulatory action in a particular case, students may complain to the OIA³ or seek redress by taking legal action for breach of contract, or under consumer protection law. Bodies such as the CMA, Advertising Standards Authority and local authority trading standards departments may also intervene where a provider does not comply with consumer protection law.⁴ Providers will need to continue to consider their own broader legal obligations as is normally the case.
9. The approach we are taking during the pandemic does not reflect the approach we would normally take to compliance with our regulatory framework. For example, in more normal times we would be likely to have regulatory concerns about providers not delivering courses as advertised. This reflects the unprecedented nature of the pandemic and the impact it has had on all sectors of society and the economy.
10. Providers are able to contact the OfS at regulation@officeforstudents.org.uk if they have any questions about this guidance.

² See www.officeforstudents.org.uk/publications/office-for-students-notifications/.

³ In this guidance, where we have made reference to complaints being made to the OIA, we are assuming for simplicity that the student has followed the necessary procedure (such as first making their complaint to their provider), and that they are eligible to complain to the OIA. More information on eligibility and process for complaining to the OIA is set out on its website at <https://www.oiahe.org.uk/>.

⁴ This guidance does not prevent action being brought for any alleged breach of consumer protection law and should not be read as a complete guide on consumer protection law or as legal advice.

Introduction

11. All registered providers are subject to ongoing conditions of registration relating to student protection – these are collectively referred to as ‘the C conditions’ and are as follows:

Condition C1: Guidance on consumer protection law. The provider must demonstrate that in developing and implementing its policies, procedures and terms and conditions it has given due regard to relevant guidance about how to comply with consumer protection law.

Condition C2: Student complaints scheme. The provider must:

- i. Cooperate with the requirements of the student complaints scheme run by the Office of the Independent Adjudicator for Higher Education, including the subscription requirements.
- ii. Make students aware of their ability to use the scheme.

Condition C3: Student protection plan. The provider must:

- i. Have in force and publish a student protection plan which has been approved by the OfS as appropriate for its assessment of the regulatory risk presented by the provider and for the risk to continuation of study of all of its students.
- ii. Take all reasonable steps to implement the provisions of the plan if the events set out in the plan take place.
- iii. Inform the OfS of events, except for the closure of an individual course, that require the implementation of the provisions of the plan.

12. Further information about these conditions can be found in the OfS’s regulatory framework.⁵

13. This document contains guidance about how the OfS will approach regulation of the C conditions during the coronavirus pandemic, and specifically focuses on:

- Provision of information to current students and applicants
- Contractual terms and conditions
- Complaints
- Student protection plans.

14. It is designed to provide guidance to providers in relation to students who began their course in or before the 2019-20 academic year (current students), students who began a course in 2020-21 and applicants who intend to begin a course in 2021-22 (prospective students).

⁵ See www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

Consumer protection law

15. This guidance focuses on the OfS's approach to the regulation of providers in relation to their conditions of registration. We recognise that the issues that providers are having to consider in relation to consumer protection law are complex and varied, likely to span several years, affect individual students in different ways and have wider implications for both the student experience and a provider's financial viability and sustainability.
16. It is important to note, however, that consumer protection law continues to apply during this period of disruption.⁶ Consumer protection law applies to the relationship between providers and applicants for their courses (prospective students) and current students. Students pay a significant amount for their course and, although the 'purchase' of higher education is not a straightforward transaction and students have their own obligations that will affect their experience, their rights as consumers are important not only in protecting students but also in maintaining confidence in the integrity of the higher education sector.
17. Providers will need to ensure that their contractual terms, their behaviour in seeking to rely on any contractual terms, and their behaviour in negotiating, and advertising potential courses, is compatible with legislation applying to consumer protection, unfair contract terms and unfair trading practices.⁷
18. This guidance is intended to describe the OfS's approach to its regulatory role and does not prevent students exploring alternative routes available to them for any alleged breach of consumer protection law. The OfS does not make judgements about whether consumer law may have been breached for any purposes beyond the conditions of registration and other regulatory requirements – only a court can decide whether a breach of the law has occurred for wider purposes, including whether any remedies for consumers apply.

The OfS's regulatory approach to student and consumer protection

19. The OfS's regulatory framework is designed to deliver the OfS's regulatory objectives: we are seeking to deliver significant improvements in access and participation for particular groups of students and a high-quality higher education experience and good outcomes for all students. The primary regulatory tools we use to do this are access and participation plans, and the baseline conditions of registration for quality and standards (the B conditions). We use the Teaching Excellence and Student Outcomes Framework (TEF) to incentivise excellence and improvement beyond the regulatory baseline.
20. The C conditions are necessary to underpin the delivery of the regulatory objectives. This means that the student protection mechanisms are primarily designed to work effectively in

⁶ See www.gov.uk/government/news/covid-19-sales-and-pricing-practices-during-coronavirus-outbreak.

⁷ None of the examples in this document should be interpreted as preventing students from exploring other avenues of enforcement available to them, for example through the OIA, remedies under the Consumer Rights Act 2015, potential litigation, and any other enforcement action that may be taken by bodies that regulate consumer protection. This guidance does not prevent action being brought for any alleged breach of consumer protection law and should not be read as a complete guide on consumer protection law or as legal advice.

support of our objectives, rather than as ends in and of themselves. In other words, they protect students when, for example, the requirements of the B conditions are not being delivered in practice.

21. The C conditions are generally expressed as a minimum baseline that all providers are required to meet, but the OfS does not prescribe how a provider should do so. This reflects the OfS's approach as a principles-based, rather than rules-based, regulator as it recognises that specifying particular approaches to be followed risks 'tick-box' compliance on the part of providers and would stifle innovation and diversity of approaches.
22. For example, this means that a provider is required to have regard to guidance on how to comply with consumer protection law, but the OfS does not normally prescribe how the provider should demonstrate such compliance. Judgements about whether condition C1 continues to be satisfied are based on a provider's behaviour and evidence that it is operating in a way that demonstrates that it has due regard to guidance by delivering it in practice and as a result is complying with the law – for example by providing accurate information to prospective students. Similarly, in respect of condition C3, a provider is required to have in place an appropriate student protection plan, but the OfS will not normally prescribe the detailed approach the provider should take to student protection nor the content of its plan.
23. When assessing providers' behaviour in relation to compliance with the C conditions, the OfS expects them to protect the interests of their students by providing clear and timely information to prospective and current students, ensuring that terms and conditions are fair and transparent, and that complaints processes are accessible and fair.
24. As set out in our guidance on quality and standards⁸ during the pandemic, providers should make all reasonable efforts to provide alternative teaching and support for students that is broadly equivalent to the provider's usual arrangements. We also expect providers to ensure that they follow the principles set out in their student protection plans in relation to ensuring continuation of study for students, even where their plans do not specifically refer to pandemic-related risks.
25. Providers adapted their arrangements for 2019-20 following the first national lockdown and have done so again for the 2020-21 academic year. They will also be planning for any adjustments that may be necessary for 2021-22. As set out above, we expect only to take regulatory action where we consider that there has been a significant disregard for CMA guidance, or reasonable efforts have not been made to protect the interests of students. We will, as a matter of course, take into account the impact of the pandemic on a provider's ability to satisfy conditions of registration.
26. During this period, we are using four primary mechanisms to enable us to identify regulatory concerns about student and consumer protection:
 - We require a provider to report to us when it intends or expects to cease teaching some or all of its courses to one or more groups of students, and we are likely to seek further

⁸ Available at www.officeforstudents.org.uk/publications/guidance-for-providers-about-quality-and-standards-during-coronavirus-pandemic/.

information as a result of such a report. Further information about our reduced reporting requirements is available on our website.⁹

- We will continue to encourage students and other third parties to notify us of any concerns about the arrangements put in place by an individual provider. Such notifications will be particularly important to help us identify any providers that may not have made reasonable efforts to protect the interests of their students.
- We will use our engagement with providers to understand their approaches to teaching and assessment during the pandemic, ensure they understand our guidance and expectations and to follow up any notifications that cause concern.
- As part of our normal regulatory approach we consider the number and pattern of complaints to the OIA and we will continue to use this information to inform our assessments after the pandemic and so will be able to take into account issues raised by a provider's students and the OIA's response to these.

27. In this context it is important that all providers consider how their approaches to any lockdowns will affect all students, and in particular those who might be most vulnerable to disruption. This includes students suffering from coronavirus or who need to self-isolate, international students, and students unable or less able to access or effectively engage in remote learning for whatever reason, together with care leavers, those estranged from their families, and students with disabilities.
28. Providers should engage with student unions or other student representative groups in order to understand the concerns of students collectively as well as considering concerns raised by individual students.
29. In order to satisfy our regulatory requirements, we were clear that students who began their studies in 2020-21 needed to be able to understand what a provider was committing to deliver, how it intended to achieve this and what plans were in place to manage possible changes should these be required in response to the pandemic and changing public health advice. For example, we expected providers to be clear with students starting in 2020-21 about the extent to which they planned to deliver teaching online rather than face-to-face and over what period. We have asked providers to review the commitments that they made to students to assure themselves that they have complied with consumer protection law.
30. It is also important that all providers consider the needs of prospective students planning to start courses in 2021-22. It is not clear when the progress of the pandemic might allow for the delivery of courses to return to the format originally intended. Providers must ensure they are clear with applicants about what they are committing to deliver and what would happen in the event of further disruption. Although providers cannot predict what might happen, they can set out what arrangements are planned based on their experience to date. Prospective students should be able to apply for and confirm their choice of a course and a provider with confidence on the basis of such information.

⁹ See www.officeforstudents.org.uk/publications/regulatory-requirements-during-the-coronavirus-covid-19-pandemic/.

Condition C1: Guidance on consumer protection law

31. All registered providers are subject to ongoing condition of registration C1:

Condition C1: Guidance on consumer protection law.

The provider must demonstrate that in developing and implementing its policies, procedures and terms and conditions it has given due regard to relevant guidance about how to comply with consumer protection law.

32. The regulatory framework says that ‘relevant guidance’ for these purposes is the Competition and Markets Authority’s (CMA’s) publication ‘UK higher education providers: advice on consumer protection law’¹⁰ (CMA guidance). The CMA guidance sets out three areas which are particularly relevant to ensure compliance with consumer protection law. These areas are:
- a. **Provision of information to students at different stage of their engagement with a provider:** We expect providers to give prospective students clear and timely information about their course. We also expect providers to let prospective and current students know about any planned and possible changes and to keep them well informed as circumstances change.
 - b. **Terms and conditions:** Terms and conditions must continue to be fair and students need to have access to complaint processes that are easily accessible, clear and fair.
 - c. **Complaints:** It is our expectation that complaint processes should be accessible, clear and fair. They should be operated flexibly and in a way that recognises the significant disruption that students have faced. There should be clarity for students about who they can complain to if their provider is operating in a partnership arrangement.
33. We recognise that providers have had to adapt their approaches to teaching, learning and assessment as a result of the pandemic and this is likely to have resulted in a change to the material information that was provided to both continuing and new students. Such changes have been necessary to comply with public health advice and to protect the health and safety of students, staff and the public.
34. We expect providers to have regard to requirements set out in the CMA guidance in order to comply with condition C1, even in the circumstances where the actions a provider has taken were necessary in order to implement public health advice. This means that students continuing or starting their studies in 2020-21 should have been given clear information about possible changes to their courses. Regardless of whether there may be a breach of contract or a breach of consumer law, we are unlikely to take regulatory action if a provider can demonstrate that it had had regard to requirements set out in the CMA guidance.

¹⁰ See

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/428549/HE_providers_-_advice_on_consumer_protection_law.pdf The CMA guidance also refers to other relevant guidance on consumer protection law and therefore all such guidance is within the scope of condition C1.

35. Where there is evidence of practice that, in the OfS's view, demonstrates a significant disregard for the CMA guidance we would be very likely to investigate whether there had been a breach of condition C1. For example, if a website contained misleading or inaccurate information, if prospective students were not informed of material changes to their course, or if current students were prevented from making complaints.
36. Further examples of behaviour that would be likely to cause us regulatory concern are set out in Annex A.

Prospective students

37. Prospective students will have a different relationship with providers to current students of those providers. This is because they will be making decisions about which course to choose, and where to study, based on the information given by providers. When prospectuses and other marketing materials were published for courses starting in 2020-21 and prospective students made their applications, the information provided would have been based on the way a course would normally run. Marketing materials for applicants in 2021-22 may have been based on assumptions about when the pandemic was likely to be under control or would allow for courses and the student experience to be delivered as normal.
38. Some information may change significantly as a result of the continued impact of the pandemic. Notwithstanding the significant uncertainty regarding the impact of coronavirus, providers will need to be clear about any changes, for example the extent to which teaching may be delivered online rather than face-to-face in the event of further disruption. Prospective students will need to understand what a provider is committing to deliver in normal circumstances and in different scenarios, how this will be achieved, and the changes that might need to be made in response to changing public health advice. Sufficient information needs to be provided to allow prospective students to make an informed decision about whether they are willing to start a course and accept those possible adjustments or whether they would prefer to defer until the provider is able to deliver the course as normal, or whether they might choose a different course or different provider.
39. It is important to note that when an offer is accepted by an applicant a contract is formed. Any changes to material information that has been provided to the prospective student should be communicated to them before an offer is accepted, and they should expressly consent to those changes. Material information is information that students need to make an informed choice or decision and will cover details about the course and fees and includes the information described in paragraph 40.
40. Sufficient information needs to be given to prospective students about the course, in line with CMA guidance, including information about any planned changes and the provider's plans for different scenarios. Providers must set out information that includes the following:
 - a. **Content of the course.** If the modules, or other course components such as placements or field trips, that will be offered have or may change or reduce, or will be delivered in different years, this needs to be made clear. We expect providers to give applicants clear information about the content that will be delivered in 2020-21 and beyond.
 - b. **Length of the course.** For example, if there may be changes to the anticipated length of the course to take account of particular assessment methods or placements that might

be core requirements for the course which can only be undertaken in a normal operating environment, then these should be explicit.

- c. **How the course will be delivered.** This includes the extent to which the course may be delivered online rather than face-to-face and how the balance between, lectures, seminars and self-learning may change. Prospective students will be particularly interested in the volume and arrangements of contact hours and support and resources for learning if this may take place online and virtually.
- d. **Cost of the course.** Information about the cost of a course should be explicit up front and should not increase once the course has started and so if a provider is offering a discount only for the year(s) in which any adjustments will be made and the cost will increase to a 'normal' level thereafter this needs to be made clear to the applicant. Providers should also be clear about any extra costs that students might need to bear to access resources or buy equipment as a result of the changes to teaching. Providers should also be clear about any extra costs that students might need to bear to access resources or buy equipment as a result of the changes to teaching.
- e. **How the course will be assessed.**
- f. **Award.** If there are potential changes to the qualification that is awarded, for example professional accreditation, as a result of the pandemic. If professional accreditation may be delayed as a result of the pandemic then this should be made clear.
- g. **Possible locations.** If the pandemic may affect where teaching is delivered (for example because social distancing requirements may mean additional space may need to be made available at a location that is not the normal teaching location for the course), then this should be explicit.

- 41. We recognise that in the current circumstances it is difficult for providers to give exact information to students on how a course will be delivered. However, providers should acknowledge what is definite and what is not, set out their plans for the delivery of the course and properly explain the differences in delivery that will apply in different circumstances.
- 42. Providers should let students know about their plans for delivery in different scenarios and changes in public health advice. They should, for example, say that teaching will be online if there is either a national or local lockdown, or describe that face-to-face teaching will be delivered following guidelines on social distancing and increased health and safety measures.
- 43. Plans need to be explained in a way that would allow a prospective student to make an informed choice about what and where they study.
- 44. Providers should also let applicants know how they would communicate with them about these plans and any further changes that are necessary in response to changes in public health advice.
- 45. Changes to material information should be drawn to the attention of applicants before they accept an offer, so they can make informed choices. Once an offer is accepted, the express consent of the student is needed to make any changes to material information that was included in the offer. If an applicant is not made aware of, or does not consent to, changes to

the material information in the offer for 2021-22, they may have a legal right to redress including a request for repeat performance or a partial refund (as applicable).

Current students (with existing contracts)

46. Providers have entered into contractual relationships with their current students and the material information they provided as part of the offer forms part of the contractual responsibility to the student. The content of those contracts and the relevant consumer protection law will determine the scope of the relationship, and potential remedies available for the student for any alleged breach of the contract (or relevant consumer protection law).
47. For students who began their course in 2019-20 or earlier, we recognise that where providers have had to make changes to courses to comply with government public health advice it is likely that delivery will have been, in the majority of cases, significantly different to that which was offered to the student. Where providers have existing contracts with their students, the terms and conditions that were agreed at the time the contract was formed will apply to the contractual relationship. This includes information that was provided to students at the application stage about how the course would be delivered.
48. For students who started their courses in 2020-21, once an offer was accepted, the express consent of the student should have been obtained in order to make any changes to material information that was included in the offer. Providers had the opportunity to set out in advance of the student starting their course in 2020-21 the changes that might have to be made and what it planned to deliver in different scenarios. Our expectations in relation to consumer protection are therefore different depending on when a student started their course.

Students who started their courses in 2020-21

49. If students who started their courses in 2020-21 were not made aware of, or did not consent to, changes to the material information in their offer, before they confirmed their place, we expect the provider to ensure that those students are aware of the options available to them, including the right for the student to seek repeat performance or a partial refund (as is applicable in the circumstances).
50. Any changes to courses that have been made to comply with government public health advice and the introduction of tiers or the national lockdown should not be significantly different to that which was promised to the student. The material information provided to students before offers were accepted should have set out what might change and how this would be implemented. In these circumstances, although the course may be different to that advertised at the point the student made their application, this should already have been clearly and properly explained to the prospective student.

Students who started their courses in 2019-20 or earlier

51. As a general principle, the OfS expects that a provider should make all reasonable efforts to fulfil its contracts with students by continuing to deliver higher education that is broadly equivalent to that which was originally advertised even if that education is being delivered through a different method as a result of public health advice.
52. The OfS will continue to expect providers to comply with its guidance on quality and standards. As set out in paragraph 8 above, we will generally only take regulatory action where a provider

has demonstrated significant disregard for CMA guidance, or a significant breach of consumer law which is not a result of public health advice, or where reasonable efforts have not been made to protect the interests of students.

53. We consider that providers will need to provide current students with clear and timely information about any changes to material information about the course as set out in paragraph 40 above and should seek their consent to this change.
54. Providers should also let current students know what options are available to them if they are not satisfied with the changes that have been made; for example, if there is an option for students to take a year out or to transfer to another course.
55. Providers should note that while following this approach may be appropriate for regulatory purposes it does not imply that providers will be compliant with the law.
56. Students have rights under consumer protection law, which includes the right to redress in certain circumstances.
57. We expect providers to properly consider their obligations under consumer protection law, including students' rights to redress. Providers should seek their own legal advice and properly document their decisions in relation to consumer protection law.
58. As noted in paragraph 9, this guidance does not affect students' rights under breach of contract or consumer protection law or prevent action being taken by students or other authorities. Ultimately only a court can decide whether a breach of the law has occurred including whether any remedies for consumers apply. Students also have the right to complain to the OIA if they have completed their provider's own internal complaints process.

Condition C2: Student complaints scheme

59. All registered providers are subject to ongoing condition of registration C2:

Condition C2: Student complaints scheme

The provider must:

- i. Cooperate with the requirements of the student complaints scheme run by the Office of the Independent Adjudicator for Higher Education, including the subscription requirements.
- ii. Make students aware of their ability to use the scheme.

60. Co-operating with the requirements of the OIA scheme includes a provider having rules and regulations that are compatible with the rules of the scheme. Students should be provided with clear accessible information about their right to complain to the OIA if they are not satisfied with a provider's response to a complaint or appeal.

61. The OIA has published a briefing note about complaint handling in general and in relation to the pandemic.¹¹ We expect providers to take account of OIA guidance and its good practice framework. Where providers work in partnership with other providers, there needs to be clarity for students about which organisation the student can complain to.
62. The OfS is only likely to have regulatory concerns in relation to condition C2 if providers do not operate complaints systems that are compatible with the OIA scheme and guidance.

Condition C3: Student protection plans

63. All registered providers are subject to ongoing condition of registration C3:

Condition C3: Student protection plan.

The provider must:

- i. Have in force and publish a student protection plan which has been approved by the OfS as appropriate for its assessment of the regulatory risk presented by the provider and for the risk to continuation of study of all of its students.
- ii. Take all reasonable steps to implement the provisions of the plan if the events set out in the plan take place.
- iii. Inform the OfS of events, except for the closure of an individual course, that require the implementation of the provisions of the plan.

64. Guidance on the purpose, structure and content of student protection plans was published in February 2018.¹² The guidance says that plans should be written with students as the key audience. They should set out a provider's approach to protecting its students' interests transparently and clearly. They should be tailored to the provider's specific circumstances and be based on its own assessment of the extent of the risks to the continuation of study for its students. They must also include the actions a provider would take to ensure continuation of study.
65. The guidance requires a student protection plan to cover the following main areas:
- a. An assessment of the risks to continuation of study for students.
 - b. The actions a provider will take to preserve the continuation of study for students for any risks identified that are reasonably likely to crystallise.
 - c. Refunds and compensation arrangements for students.

¹¹ See <https://www.oiahe.org.uk/resources-and-publications/latest-news-and-updates/oia-briefing-note-complaints-arising-from-coronavirus-covid-19-disruption/>.

¹² For current providers, see www.officeforstudents.org.uk/publications/regulatory-advice-2-registration-of-current-providers-for-2019-20/; for new providers, see www.officeforstudents.org.uk/publications/regulatory-advice-3-registration-of-new-providers-in-2019-20/.

- d. Communication with students about the provisions of the plan and the implementation of these provisions.
- e. Involvement of students in the review of the plan.

66. A registered provider is required to notify the OfS when events take place that require the implementation of its student protection plan.
67. We highlighted in our analysis of the key themes from the initial registration process¹³ a number of weaknesses with existing student protection plans. Issues have also arisen as the OfS has assessed compliance with the requirement for a provider to implement its plan when certain student protection events take place – plans are often not sufficiently detailed to be implemented effectively.
68. We do not intend to require changes to be made to approved student protection plans as a matter of course. If a provider wants to make changes to its plans it can request to do this but in revising its plan it must ensure it has conducted a proper risk assessment in relation to continuation of study for its students in the current circumstances.
69. We consulted in July 2019¹⁴ about proposals to introduce a new condition which would strengthen the OfS's ability to ensure students have the necessary protections where a higher education provider is at material risk of exiting the market. We will publish the outcomes of that consultation in March 2021. Separately, we intended to consult on revised guidance for student protection plans in due course to propose amended requirements in relation to course, subject and campus closure.

¹³ See www.officeforstudents.org.uk/publications/registration-key-themes-and-analysis/.

¹⁴ See www.officeforstudents.org.uk/publications/consultation-on-student-protection-directions/.

Annex A: Examples of behaviours that during the coronavirus pandemic may cause the OfS concern in relation to compliance with condition C1: guidance on consumer protection law

1. During the coronavirus pandemic, we do not intend to take regulatory action in relation to condition C1 unless we become aware of practices that appear to us to constitute a significant disregard for the CMA guidance or a significant breach of consumer protection law which is not as a result of actions that were necessary to implement public health advice – the following sections set out examples of behaviour that would be likely to cause us concerns about compliance.

Prospective students

2. The OfS is less likely to have concerns where providers:
 - a. set out upfront their plans for the delivery of the course after a contract is entered into and before the course starts, so that they clearly and properly explain to prospective students the differences in delivery that will apply in different circumstances.
 - b. have set out how the key components of the course, such as content, delivery, assessment and location, will be delivered in response to changing circumstances and changes in government public health advice and the implications of this. For example by saying that teaching will be online until government restrictions on social distancing are lifted (which might mean this is online for the entire academic year), or by describing that face-to-face teaching will be delivered following guidelines on social distancing. This needs to be done in a way that would allow a prospective student to make an informed choice about what and where they study and to allow them to change their mind if they are not satisfied with the revised offer.
 - c. explain to prospective students how they would continue the delivery of the course in the circumstances of a further lockdown.
 - d. let prospective students know how they will communicate with them as planned changes to the delivery of their course are implemented.
3. The OfS is more likely to have concerns where providers take the following (non-exhaustive) approaches in relation to their prospective students:
 - a. The provider does not give information to prospective students in time to inform their decision making, or only vague information is provided.
 - b. Providers supply prospective students all the information set out in paragraph 40 but include a provision in their offered contract which allows them broad powers to change (in broad circumstances beyond the current pandemic) all the information once the contract has been accepted and the course has begun.
 - c. Providers that purposely publish information or provide information to students that they will deliver courses in ways that they are aware at the time of publishing/communicating to prospective students that they will be unable to do so.

- d. The provider offers unfair terms and conditions.
 - e. Providers do not make prospective students aware of any unusual or wide-ranging terms in the proposed contract.
4. In these circumstances the OfS is likely to investigate whether there have been any potential breaches of condition C1 and this may lead to the OfS taking regulatory action.

Current students

5. The OfS is less likely to have regulatory concerns where providers take the following approach in relation to their current students:
- a. The alternative teaching and assessment being offered (and the methods of accessing them) caters for all students.
 - b. Clear and easy to understand information is directly communicated to students. For example by email to tell them:
 - i. changes to the course and its delivery as set out in paragraph 40
 - ii. the reasons for making the changes to courses and why the provider believes this is consistent with the existing terms of the student contract
 - iii. options available to students if they do not wish to continue studying at the provider, including where they wish to transfer to another provider or postpone their studies
 - iv. their complaint handling and redress policies and procedures.
 - c. They only seek to rely on existing contract terms for the purposes of changing the way tuition and other education services are provided, such as being provided online and through other forms of remote services and do insert new clauses that allow for amendments to the entire course that are not necessary as a result of the pandemic.
6. Providers should note that while following this approach may be appropriate for regulatory purposes it does not imply that providers will be compliant with the law and, as noted in paragraph 9, does not prevent action being taken by students or other authorities.
7. In contrast to the above, the OfS is likely to have regulatory concerns with the following (non-exhaustive) type of behaviour:
- a. Providers seek to rely on existing contractual terms as a basis for providing no educational services (including the termination of contracts without liability) or to severely limit the range and availability of alternative services.
 - b. Providers claim to be able to introduce new contractual terms to exclude or limit their liability as a result of the coronavirus pandemic or otherwise seek to force students to agree to such contractual changes.
 - c. Providers make no attempts to communicate directly with students or communicate unclear or misleading information.

- d. Providers seek to introduce a blanket policy to refuse refunds without having due regard for guidance on consumer protection law.
- e. Providers withdraw complaint handing arrangements and other student support services, including where those support services are delivered by other organisations such as student unions.
- f. Providers claim that students have no alternative options or avenues of redress, e.g. via the OIA or the courts.



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