

OfS prohibited behaviours list

This document forms part of (and should be read in conjunction with) initial condition of registration C5, which states:

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).

This document contains the descriptions for the test in condition C.5.4a.

C5.8 sets out the definitions for terms used in the condition. For ease of reference, we have extracted below the definitions for terms used in the OfS prohibited behaviours list.

“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. (C5.8a)

“information about the provider” means 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). (C5.1e and C5.8f)

“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. (C5.8g)

PB.1 For the purposes of condition C.5.4a, the following descriptions apply:

a. Key documents

Key documents that contain provisions which have the purpose or effect of:

- i. excluding or limiting the legal rights of the **student** in the event of the provider's total or partial non-performance (or inadequate performance) of any of its contractual obligations. This includes the **student's** right to offset money they owe to the provider against any claim;
- ii. allowing the provider to exercise wide discretion to withdraw offers, including in the case of over-subscription;
- iii. creating a disparity between the rights of the provider and the rights of the **student** by allowing the provider to retain money already paid by the **student** where the **student** decides not to sign the contract or withdraws from the contract after signing it, without also allowing for equivalent compensation to be paid to the **student** as where the provider cancels the contract;
- iv. requiring a **student** to pay a disproportionately high sum of money as penalty to the provider or for services which have not yet been supplied, where the **student** decides not to sign the contract or withdraws from the contract after signing it;
- v. requiring a **student** to pay a disproportionately high sum of money as a penalty to the provider where the **student** fails to fulfil any of their obligations under the contract;
- vi. allowing the provider to terminate the contract on a discretionary basis;
- vii. allowing the provider to retain money paid by the **student** for services not yet supplied, where the provider cancels the contract;
- viii. automatically extending a fixed-term contract where the **student** does not indicate otherwise, when the deadline for the **student** to express a desire not to extend is unreasonably early;
- ix. binding a **student** to terms with which they have not had a real opportunity to familiarise themselves before signing the contract. For example, a **student** must have access to all relevant terms and conditions and be made aware of their right to any applicable cooling off period required by law;
- x. allowing the provider to unilaterally:
 - A. alter the terms of the contract;
 - B. define the characteristics of the services to be provided; or
 - C. alter the characteristics of the services to be provided;after the **student** has signed the contract, and without valid reason which is specified in the contract;

- xi. allowing the provider to decide the price payable after the **student** has signed the contract (where no price or method of determining the price has previously been agreed);
- xii. allowing a provider to increase the price payable without giving the **student** the right to cancel the contract;
- xiii. allowing the provider to determine whether the services supplied conform with the contract;
- xiv. allowing the provider the exclusive right to interpret any term of the contract;
- xv. limiting the provider's obligation to respect commitments undertaken by any agents working on its behalf;
- xvi. obliging the **student** to fulfil all their obligations where the provider does not perform its own obligations;
- xvii. allowing the provider to transfer its rights and obligations to another provider or organisation, where this may reduce the guarantees for the **student**, without the **student's** agreement; or
- xviii. excluding or hindering the **student's** right to take legal action or exercise any other legal remedy, in particular by:
 - A. requiring the **student** to take disputes exclusively to arbitration not covered by legal provisions;
 - B. unduly restricting the evidence available to the **student**; or
 - C. imposing on the **student** a burden of proof which, according to the applicable law, should lie with another party to the contract.

b. Descriptions relating to conduct and omissions

Actions or omissions (including those that are proposed or likely) that provide evidence of any of the following behaviours:

- i. displaying or otherwise presenting inaccurate or false information, including:
 - A. claiming that the provider is registered with the OfS when it is not;
 - B. claiming that the provider is a 'university', or otherwise using the term 'university' (including 'university centre', 'university campus' or similar), without permission to use this term;
 - C. claiming to offer 'degrees' when the provider has neither its own degree awarding powers nor a contract for degrees to be awarded by a provider with degree awarding powers;
 - D. claiming that the provider (including any of its courses or other services or activities) is validated, accredited, approved, endorsed or authorised by any other body when it

- is not (or making such a claim without complying with the terms of the validation accreditation, approval, endorsement or authorisation);
- E. displaying logo, trust mark, quality mark or equivalent without having obtained the necessary authorisation from the relevant body;
 - F. claiming with certainty that the provider will, in the future, be:
 - I. registered with the OfS;
 - II. able to use the term 'university';
 - III. able to offer degrees;
 - IV. validated, accredited, approved, endorsed or authorised by any other body;
 - V. otherwise displaying or presenting information which pre-empts or appears to pre-empt any decision of the OfS or any other body; or
 - G. claiming that the provider is a signatory to a code of conduct when it is not (or that a code of conduct has an endorsement from a public or other body which it does not have).
- ii. Advertising, promoting or otherwise offering courses, course content, material components, features or elements of a course, other services or facilities, without disclosing the existence of any reasonable grounds the provider may have for believing it may be unable to provide these; or with the intention of not delivering what has been advertised, promoted or offered; or with the intention of delivering an alternative;
 - iii. Applying pressure to elicit an immediate decision and deprive **students** of sufficient opportunity or time to make an informed choice. This includes falsely stating that an offer for services will only be available for a very limited time, or that it will only be available for particular terms for a very limited time;
 - iv. Communicating (or allowing an agent working on the provider's behalf to communicate) with a **student** (or anyone with an interest in studying at the provider) in a language which is not English without clearly disclosing to them that the provision of services will be conducted in English, where this is the case;
 - v. Presenting as a distinctive feature of the provider's offering, rights which a **student** would automatically have, in any case, in law;
 - vi. Using editorial content in the media (including social media) to promote the provider's services where the provider has paid for the promotion without making this clear to the **student** (or anyone with an interest in studying at the provider) (through the content itself or by images or sounds which are clearly identifiable) (advertorial);
 - vii. Displaying or otherwise presenting information about the provider or its activities which is likely to have the effect of misleading a **student** (or anyone with an interest in studying at the provider) into believing something about the provider or its activities which is inaccurate or untrue;

- viii. Publishing or otherwise sharing materially false or inaccurate information about market conditions (or about other specific providers) with the intention of inducing the **student** to sign a contract with the provider;
- ix. Offering a prize, reward or other promotional benefit without awarding the prizes, rewards or benefits described (or a reasonable equivalent), or where the **student** is required to pay money or incur a cost to receive the prize, reward or other benefit (unless otherwise clearly explained);
- x. Describing a service as 'gratis', 'free', 'without charge' or similar if the **student** has to pay any associated costs that have not otherwise been explained (including the repayment of student loans at a later date); or
- xi. Making persistent and unwanted contact with **students** (or anyone with an interest in studying at the provider) by telephone, email, social media, or other means. For the avoidance of doubt, this provision is not intended to deter or discourage genuine contact with **students** where this is necessary, for example, for welfare checks where they have a prolonged period of absence.

c. Clarity and legibility of key documents and other information about the provider

Any of the provider's **key documents** and other **information about the provider**:

- i. are not legible (clear enough to read);
- ii. are not drafted in clear and understandable language;
- iii. contain substantive inconsistencies, including inconsistencies within or between the provider's own documents, and between the provider's documents and those published or otherwise made available to **students** (or anyone with an interest in studying at the provider) by another body with which the provider has a contract for the provision of higher education or **ancillary services**;
- iv. are otherwise confusing or unclear; or
- v. are not expressly clear how they apply to different periods of time and different categories of **students** (for example, **students** that commenced a course of study on a particular date). "Expressly clear" means explicitly stated and unambiguous rather than by omission or implication.

d. The provider's policies relating to the circumstances in which it may make changes to its courses.

The provider's policies:

- i. do not provide information about circumstances in which it may make changes to all of the following:
 - A. Courses (including changes to material components or content of a course, changes to subjects offered and course closure);

- B. Qualifications to be awarded (including circumstances where a validating partner has withdrawn validation);
 - C. Mode of study (including full-time, part-time, online and hybrid provision, and including measures to address the needs of specific **student** groups, including accessibility needs);
 - D. Teaching location and facilities (including closure of a campus, building or other facilities and including measures to address the needs of specific **student** groups, including accessibility needs);
 - E. Course fees and other related fees or charges (for example, additional fees to resit exams); or
- ii. do not contain provisions that would ensure all **students** are treated fairly in practice if any of the changes to courses set out in i. above take place.

e. The provider's complaints processes

The provider's complaints processes:

- i. contains unreasonable barriers to making a complaint (including unreasonable time limits within which a complaint may be made);
- ii. do not include information about how a **student** should make a complaint (including where this involves contacting another provider or organisation as may be the case in some types of academic partnership);
- iii. do not set out clear and reasonable timescales for processing the complaint (including clear and reasonable timescales for **students** to respond to requests for further information);
- iv. do not provide a route for escalation and appeal where the **student** is dissatisfied with the outcome of the complaint, or the way in which the complaint is being (or has been) handled; or
- v. do not make **students** aware of their ability to use the complaints scheme run by the Office of the Independent Adjudicator of Higher Education (OIA) where this is applicable to the **students** covered by the provider's complaints process. A provider should refer to information published by the OIA that explains who can use its complaints scheme.

f. The provider's refund and compensation policies

The provider's refund and compensation policies:

- i. are not clear about the circumstances in which a **student** would be entitled to a refund;
- ii. are not clear about the circumstances in which a **student** would be entitled to compensation;
- iii. do not clearly set out the provider's approach to calculating refunds; or

- iv. do not clearly set out the provider's approach to calculating compensation.

g. Fake reviews

The provider (or another entity working on its behalf, for example a recruitment agent):

- i. publishes a fake review for the provision of higher education and/or **ancillary services**. A review will be considered fake if:
 - A. it falsely claims to be based on a person's genuine experience;
 - B. the provider conceals that the reviewer received a financial or other incentive, inducement or reward in return for their review;
- ii. publishes reviews in a misleading way, including failing to publish negative reviews, removing negative reviews from publication, giving greater prominence to positive reviews; or
- iii. does not take reasonable and proportionate steps to:
 - A. prevent the publication of fake reviews; or
 - B. remove from publication any fake reviews.