

Annex F: Matters to which we have had regard

General duties

1. In formulating these proposals, the OfS has had regard to its general duties as set out in section 2 of HERA. These are:
 - the need to protect the institutional autonomy of English higher education providers
 - the need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers
 - the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers
 - the need to promote value for money in the provision of higher education by English higher education providers
 - the need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers
 - the need to use the OfS's resources in an efficient, effective and economic way, and
 - so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be –
 - i. transparent, accountable, proportionate and consistent, and
 - ii. targeted only at cases in which action is needed.
2. In formulating these proposals, we have given weight to (a) to (g).

Institutional autonomy

3. We have given careful consideration to the need to protect the institutional autonomy of English higher education providers. We recognise that we are proposing to impose requirements on some providers that could lead to interference with their institutional autonomy. However, we consider that these requirements (provision of information to students and prohibited behaviours) are consistent with existing legal requirements, which ultimately provide a baseline of consumer protection for students across a diverse sector. The proposed overarching fairness obligation and positive principles are designed to allow providers autonomy to determine how to ensure fair treatment of students.

Quality, greater choice and opportunities

4. We have given careful consideration to the need to promote quality, greater choice and opportunities for students. To have a positive overall experience of higher education, students must be treated fairly, including as consumers. These proposals set out clear expectations to providers to ensure a high standard of consumer protection for students.

5. By adhering to these expectations, providers should help ensure choice, high quality educational experience and opportunities for students. For example, our requirements make clear that:
 - all information provided to students must be clear and accurate
 - certain defined information must be provided to students
 - a provider must promote understanding of a students' rights.
6. These requirements will mean that students can make informed decisions about the provider which they choose to deliver their higher education experience, and the course they select. Fair terms and conditions that do not disadvantage students, courses that are delivered with reasonable care and skill and fair complaints handling and redress if things go wrong also advance quality and opportunities for students. By embedding these expectations and positive principles through an ongoing condition, these proposals strengthen transparency and accountability of providers to students for consumer protection throughout their higher education experience. We consider that this will increase quality, choice and opportunities for students.

Encouraging competition

7. We have given careful consideration to the need to encourage competition between English higher education providers. Our proposed positive requirement for providers to provide clear, accurate and specific information to students and publish a set of specified documents will make it easier for students to compare what each institution offers, reducing information gaps, preventing hidden fees, and unexpected course changes. When obligations and costs are transparent to students, providers must compete more on the quality and value of their teaching, facilities, and support. This increases trust, strengthens student decision making, and encourages providers to improve their overall offer in order to attract students.

Value for money

8. Value for money in the provision of higher education is important for both students and the taxpayer. Students normally pay significant sums for their higher education and incur debt for tuition fees and maintenance costs, and student loans are taxpayer-backed. The investment of students and taxpayers in higher education is less likely to represent value for money where a provider does not deliver the higher education experience that it has committed to provide to students or treat students fairly. Our proposals are designed to ensure providers observe a high standard of consumer protection for students and deliver on the commitments made, to a standard of reasonable care and skill and in a way that proactively plans for and mitigates against risks that could affect delivery. Our proposals also ensure that, should problems arise, students are sufficiently informed to be able to exercise their consumer rights and engage in provider's complaints handling and refunds processes.

Equality of opportunity

9. The OfS's overall approach to regulation is designed to promote equality of opportunity in connection with access to, and participation in, higher education. This means that we are concerned with ensuring that students from disadvantaged or underrepresented backgrounds can access higher education, and succeed on and beyond their courses.

10. Our proposed ongoing condition seeks to ensure that students from all backgrounds can choose to study at a range of registered providers that deliver high quality higher education and that they will be treated fairly.
11. The OfS's equality of opportunity risk register¹ identifies the risk that students may not have equal opportunity to access a sufficiently wide variety of higher education course types. This may result in restricted choice for students with certain characteristics, and subsequently to lower rates of progression to higher education, as well as lower continuation rates and lower course attainment for these students. Our proposals seek to ensure that all students (including those whose higher education is delivered by subcontracted partners) have an equal opportunity to receive comprehensive information (and guidance) that will enable them to make informed choices about their higher education options.
12. We think it is particularly important to champion the consumer rights of students from disadvantaged and underrepresented backgrounds. For example, we propose that a provider must promote student's understanding of their consumer rights by communicating clear, accurate and comprehensive information in a way that all students can understand.
13. Students from some backgrounds may have fewer choices available to them and may not have access to the information, advice and guidance needed to make the right choice for them. They may also be targeted by unscrupulous agents seeking to recruit students for financial gain rather than because it is in the students' best interests. The cost to a student in financial and personal terms of choosing a course or provider or being recruited to a provider or course which is unsuitable for them is significant. It may particularly affect students from disadvantaged or underrepresented backgrounds who may stand to lose more and experience a greater opportunity cost by making the wrong choice of higher education course.
14. To address this, our proposals hold a provider accountable for the actions of any agent that works on its behalf and require publication of a list of authorised agents to allow students to verify whether an agent is authorised to represent a provider before engaging with them.
15. We have deliberately set a high bar in our proposed requirements for providers to treat students fairly and in some cases our proposals go further than the requirements of consumer law to attempt to better balance the consumer dynamic between students and providers. Consequently, we consider that our proposals are designed to promote equality of opportunity in connection with access to, and participation in, higher education

Efficient, effective and economic use of the OfS's resources

16. We have considered the need to use the OfS's resources in an efficient, effective and economic way. Our approach to consumer protection means our proposals are aimed at providers getting things right from the outset and preventing harm in the first place, which should mean less reactive enforcement and fewer resource-intensive interventions.

¹ See Risk 5 at OfS, '[Equality of Opportunity Risk Register](#)'.

17. Requiring providers to provide, collate and publish clear, accurate and comprehensive information for students, supports more targeted use of OfS resources, as the proposals will make it easier for the OfS to identify risks.
18. Creating sector-wide clarity about our expectations strengthens the ability of the OfS to intervene when necessary, because the regulatory baseline is clearer. We are not proposing to approve a provider's documents prior to publication. Having set out our proposed expectations clearly, we consider that it is better to give providers the autonomy to determine how they can best meet our requirements, without implementing an approval process, which can be burdensome for both providers and the OfS. We consider that these proposals would enable the OfS to use its resources more efficiently effectively and economically, to intervene where necessary and to incentivise all providers to treat students fairly, reducing the need for intervention.

The principle that regulatory activities should be transparent

19. We have considered the need for our requirements and approach to be transparent, another principle of best regulatory practice. The proposals in the current consultation seek to be transparent by including definitions of key terms and expectations in the proposed condition and setting out detailed guidance for how our expectations will be assessed. This includes, where relevant, the particular circumstances we propose to consider or the factors we propose to place weight on in our assessment. We also consider this will ensure consistency in the approaches taken by providers and decisions made by the OfS.

The principle that regulatory activities should be proportionate

20. We have considered the principles of best regulatory practice, in particular of proportionality. Our proposals are intended to pursue a legitimate and important regulatory objective: ensuring that the OfS can effectively protect the interests of students, while balancing these against the legitimate interests of providers.
21. The proposed overarching requirement to treat students fairly, underpinned by the fairness principles, information requirements and prohibited behaviours are rationally connected to that objective. They largely reflect existing consumer protection law and relevant elements of CMA guidance for higher education providers. Our initial assessment is that providers already complying with consumer protection law and ongoing condition C1 would find these requirements relatively straightforward to implement.
22. We consider it necessary to introduce regulatory requirements that mirror existing consumer protection obligations – and in some cases extend beyond this – to address the power imbalance between students and providers and because consumer protection concerns continue to arise across the sector. It is also necessary and appropriate for the OfS to have the capability to intervene directly in students' interests, rather than relying on individual students – who may lack resources or expertise – to enforce their own rights. This approach incentivises sector-wide improvement and mitigates harm more effectively.
23. We considered several less intrusive approaches set out below (also reflected in Annex B), but in our view, none would provide adequate protection for students or address the specific risks inherent in higher education.

24. **Relying only on consumer protection law** alone would narrow the focus to prohibited behaviours and minimum legal standards. We consider this would miss broader fairness issues that arise in higher education, where students make a single high-stakes purchase, rely on providers over several years, and often face significant information imbalances. While providers must comply with all legal obligations, mirroring consumer law in full would not offer the tailored protections students require.
25. **Our initial view is that using only principles and requirements, without an overarching obligation to treat students fairly,** would weaken the proposed condition. This is because the overarching obligation provides a clear benchmark for assessing behaviour, especially in situations not directly covered by the principles and requirements. This in turn will support senior leadership teams to make any necessary cultural changes, ensuring that student interests meaningfully inform their decisions and that providers take a proactive role in helping students understand their consumer rights. In our view, a broader duty to treat students fairly – combined with these positive principles – is more likely to drive meaningful cultural change.
26. **We have also considered the less intrusive option of using principles alone. Although this** would offer flexibility it would not guarantee a consistent baseline of protection across a diverse sector.
27. **Conversely, we consider using requirements alone** would create a narrower, compliance-focused approach and would not promote the proactive, student-centred culture we want providers to adopt.
28. In considering the necessity and proportionality of our proposals, we have assessed the potential impact on smaller providers or those with small student populations. We recognise that such providers may have fewer staff and resources to implement regulatory requirements, which may create a relatively greater burden compared with larger providers. However, our current view is that it remains necessary and proportionate to apply the proposals to all providers, regardless of size.
29. Having had regard to the above and the impact of the proposals on providers, we consider that a fair balance has been struck. Our proposals will ensure that every student receives an appropriate level of regulatory protection and that all providers place fairness at the centre of the processes and decisions that affect students, thereby reducing the risk of harm before it occurs.

The principle that regulatory activities should be consistent

30. We recently introduced initial condition C5, which sets requirements for providers at the point of registration to treat students fairly. Our proposals for the negative and positive requirements largely mirror the requirements of initial condition C5.
31. We consider that introducing an ongoing condition to treat students fairly for registered providers would support consistency across the regulatory framework. It would ensure that the expectations established through the initial condition would continue to apply once a provider has been registered and throughout the period that it remains on the OfS Register. This will support the OfS to take a consistent approach to its regulatory activities, by requiring

providers to meet these requirements on an ongoing basis, rather than just at the point of registration.

The public sector equality duty

32. We have had due regard to the public sector equality duty set out in section 149 of the Equality Act 2010.² This requires the OfS to have due regard to the need to eliminate unlawful discrimination, foster good relations between groups and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
33. Our proposals aim to ensure that all students, whatever their background and characteristics, are treated fairly.
34. We consider that this will have positive effects for some groups of students with protected characteristics because we know that, at a national level, many of these students may not have equal access to information about the English higher education system to support them in making an informed choice.
35. We consider our proposals to treat students fairly will advance equality of opportunity by ensuring that all students – whether or not they have protected characteristics – receive clear, accurate and comprehensive information about a provider’s offering, the costs and implications of entering into a contract and the rights available to them, prior to selecting a course or provider.
36. Similarly, our proposal for providers to act by the proposed principles, will ensure that students, regardless of their protected characteristics, will be treated fairly. This will help create a consistent baseline of fair treatment that reduces the risk of disadvantage arising from inconsistent information or practices. This supports a more inclusive higher education experience where every student can make informed decisions and be treated fairly. This in turn may foster good relations between students who share protected characteristics and those who do not, by ensuring fair treatment of all students, through the clear expectations we have proposed. This is likely to reduce tension or misunderstanding between groups and reduce discrimination. We do not consider that our proposals will lead to discrimination of those students with protected characteristics.
37. This consultation gives stakeholders an opportunity to inform the development of our proposals. Through this consultation we are seeking views on any unintended consequences of our proposals, for example for particular types of provider or student, or for individuals on the basis of their protected characteristics. Responses to this consultation will inform our assessment of the impact of our proposals on different groups.

² See [Equality Act 2010](#), section 149.

Guidance issued by the Secretary of State

38. We have had regard to guidance issued to the OfS by the Secretary of State³ under section 2(3) of HERA, including the following guidance:
- Guidance to the OfS on strategic priorities for FY22-23 (31 March 2022).
 - Guidance to the OfS on the future of access and participation (23 November 2021).
39. In the March 2022 guidance, the Secretary of State sets out the need to ‘ensure that the LLE [Lifelong Learning Entitlement] is supported by an appropriate regulatory regime, fully equipped to support radically different, flexible arrangements’. By introducing this ongoing condition now, we aim to ensure that future expansion is supported by a regulatory regime which remains rigorous, while being designed to test arrangements and conduct for registered providers on an ongoing basis. This will also ensure a consistently high standard of consumer protection required for those seeking registration, newly registered providers (from August 2025) at the point of registration and registered providers. Our regulatory requirements are designed so that providers with different governance structures and models can meet them.
40. From the same guidance, we continue to have regard to the need to reduce regulatory burden, including the comments from the Secretary of State and the Minister of State to consider what more can be done to ‘reduce the burden on providers of responding to the OfS’s requirements. In particular... ways [the OfS] can work with the sector to communicate more clearly its expectations’.
41. The section on proportionality above sets out how we have sought to reduce burden for providers through these proposals. We have also proposed where possible to reduce ongoing regulatory requirements on providers (such as proposing to remove ongoing condition C3) where these are effectively replaced by compliance with the new proposed ongoing condition.
42. Our proposals seek to align with existing consumer protection law requirements where possible to reduce duplication and therefore regulatory burden for providers. However, we acknowledge that some of our proposals go beyond the scope of consumer protection legislation and therefore may increase regulatory burden for providers. We have explained why we consider this necessary despite the potentially increased regulatory burden.
43. We have included guidance on the proposed condition and how it would be assessed to try and give providers as much clarity as possible about how to comply with our proposed requirements, to reduce the potential for misunderstanding or wasted work. From the guidance on ‘the future of access and participation’ issued on 23 November 2021, we have given regard to the Secretary of State’s view that ‘there should be a shift away from marketing activities which serve to benefit the institutions and not students’. Our focus on setting a higher bar for protecting students as consumers includes ensuring that, in marketing their higher education courses, providers supply clear and accurate information and do not mislead students about the benefits of studying with that provider.

³ All statutory guidance cited is available at OfS, [Guidance from government](#).

The Regulators' Code

44. We have had regard to the Regulators' Code.⁴ Section 3 of the code is particularly relevant and discusses the need to base regulatory activities on risk.
45. Paragraph 3.1 provides for regulators to use an evidence-based approach to determine priority risks and allocate resources where most effective. In developing our proposals, we have considered the outcomes of our referrals to National Trading Standards which provide evidence that issues persist in relation to unfair contract terms and a lack of clarity in some of the information students receive from their providers. We have also considered research the OfS has previously commissioned on students' perceptions of:
- themselves as consumers, including the importance of the investments of time and effort and the longer terms implications for students of their higher education experience
 - whether their higher education experience is meeting their expectations and delivering what they consider was promised.
46. Paragraph 3.5 provides for regulators to review the effectiveness of their activities and make necessary adjustments accordingly. We have reflected on the effectiveness of our arrangements for assessing a provider's ability to deliver a high quality higher education experience for students underpinned by an approach that treats students fairly. We have proposed the changes in this consultation in light of our experiences, and the changes in consumer protection legislation.
47. Sections 5 and 6 of the code are also relevant. Section 5 discusses the need for regulators to ensure that clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply. Section 6 requires regulators to ensure that their approach is transparent. Our general approach in this consultation is to set out in detail what providers would need to do to meet the requirements of the new proposed ongoing conditions. For example, this includes a draft of the mandatory standard wording that we propose a provider would need to publish with its documents as part of Proposal 5. We have also included the draft guidance that we propose would accompany the condition and would be published as part of the OfS's regulatory framework. Paragraph 5.2 provides for regulators to publish guidance, and information in a clear, accessible and concise format. We have developed a quick reference guide to this consultation to facilitate understanding of our proposals.

⁴ See Gov.UK, '[Regulators' Code](#)', 2014.