

**Consultation
outcomes**

**Office for
Students**

The logo for the Office for Students, featuring a dark blue square with a yellow square in the top right corner containing the letters 'OfS' in white.

OfS

Reforms to OfS registration requirements

**Part 1: Analysis of consultation responses
and decisions for new initial condition C5
– Treating students fairly**

Reference OfS 2025.48

Enquiries to regulation@officeforstudents.org.uk

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Summary of decisions

1. In February 2025, the Office for Students (OfS) consulted on proposals for a new initial condition on treating students fairly as part of a wider consultation on reforms to OfS registration requirements (the February consultation).¹
2. We proposed to replace initial condition C1 with a new initial condition of registration. Where initial condition C1 requires a provider to demonstrate ‘due regard’ to relevant guidance about consumer protection law, the new initial condition would require a provider to treat students fairly in relation to its higher education provision and ancillary services. A provider would satisfy the requirements of the condition where there is no evidence that it treats students unfairly.
3. We also proposed that initial condition C5 would replace initial condition C3, which requires registered providers to have in force a student protection plan. This is because, under initial condition C5, we would instead assess a provider’s terms and conditions and other relevant student-facing policy and process documents which, taken together would constitute its student protection plan. As we proposed that providers registered under initial condition C5 would publish these documents once registered, we also proposed not to apply ongoing condition C3 for these providers.
4. We received 22 responses to the consultation on the proposed condition, 16 of which we received in response to our online survey and six of which we received separately. Some respondents provided a response to every question (whether through the online survey or otherwise) and others only responded to particular questions or provided a general narrative response without referring to particular questions. We also undertook online feedback events and have included views expressed in this document.
5. We have analysed the feedback that we received and after further policy thinking, we have decided to introduce initial condition C5 in broadly the form that we consulted on. We have made some minor changes to the requirements and scope of the condition from those set out in our consultation. The main components of our decision, including changes from the consultation, are summarised in the table below.
6. Initial condition C5 will apply to any new application for registration received by the OfS on or after **28 August 2025**, including any application from a registered university or college for registration in a different category of the OfS Register. Initial condition C5 will replace the existing initial conditions C1 and C3.
7. Our decision is intended to ensure that new entrants to higher education are treating students fairly. Our engagement with students shows that being treated fairly is very important to them and suggests that too often this does not happen. Providers seeking registration now are less likely to have a strong track record of providing higher education compared with those registered when our registration processes were first established and it is important that our tests are effective.

¹ See [Consultation on reforms to OfS registration requirements](#).

8. Our decision will require providers to treat students fairly at the point of registration, and this will be assumed to be the case where a provider is not displaying problematic behaviours. For example, where it is not publishing information that is unclear or misleading, or does not have contract terms that unfairly favour the rights of the provider over the rights and interests of students, or policies and processes that limit students' abilities to seek redress when things go wrong.
9. The new requirements set out in initial condition C5 provide a streamlined mechanism which means we can refuse registration to a provider exhibiting negative behaviours and efficiently process applications for providers that do not.
10. The main components of our decision are summarised in the table below.

Proposal	Decision
1. Introduce a new initial condition (C5: Treating students fairly) to replace initial condition C1	We have decided to implement the new initial condition of registration. We have amended the condition and guidance in some areas. These are further explained below (see 4. Requirements of the condition and 5. Scope of the condition).
2. Focus on fairness for students	We have decided that the new initial condition of registration will focus on fairness for students, as proposed.
3. Test fairness with reference to unfairness	We have decided that the new initial condition will test fairness with reference to unfairness, as proposed.
4. Requirements of the condition	We have decided to implement the proposed requirements of the new initial condition of registration but with a small number of clarificatory changes to the OfS prohibited behaviours list and the guidance.
5. Scope of the condition	We have decided to implement the proposed scope of the new initial condition of registration but with clarificatory changes to the definition of ancillary services and 'information for students' (including changing this to 'information about the provider'). We have also decided to make some clarificatory changes to the guidance.
6. Document submission requirements	We have decided to implement the proposed document submission requirements but with a clarificatory change regarding template employment contracts between students and their employers (where higher education delivered by a provider is employer-sponsored). We have also updated the template for the C5 declaration form.
7. Remove initial condition C3 (and replace with initial condition C5)	We have decided to remove initial condition C3 and replace it with initial condition C5, as proposed.
8. Publication of condition after registration	We have decided that a provider assessed under initial condition C5 will be expected to publish its student-facing documents within two weeks of its registration, as proposed.

9. Change the applicability of ongoing condition C3	We have decided to change the applicability of ongoing condition C3 so it will not apply to a provider that is registered on the basis of initial condition C5, as proposed.
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11. In this document, we set out a summary of our analysis of responses to the consultation and explain our decision, including the changes that we have made to initial condition C5 and associated guidance. Specifically, in Annex A we explain the changes we have made to specific provisions in the prohibited behaviours list.
12. The new initial condition C5 and associated guidance are set out in Annex B where we have highlighted the changes we have made compared to the versions that we consulted on. In Annex C we have highlighted changes we have made to the 'OfS prohibited behaviours list'.

Decision on Proposals 1, 2 and 3: New initial condition which focuses on fairness and tests with reference to unfairness

13. Our February consultation set out three proposals relating to the implementation of new initial condition C5:

- Proposal 1: A new initial condition of registration to replace initial condition C1. (initial condition C5: Treating students fairly).
- Proposal 2: The overarching requirement of initial condition C5 would be for a higher education provider seeking registration with the OfS to treat students fairly.
- Proposal 3: We would assess whether a provider treats students fairly through a requirement that identifies when a provider does not treat students fairly.

Consultation questions

1. Do you agree or disagree with our proposal to introduce a new initial condition to replace initial condition C1? If you disagree, please give reasons for your answer.

2. With reference to the concept of fairness:

a. Do you agree with our proposals to focus initial condition C5 on this concept? If you disagree, please give reasons for your answer.

b. Is there an alternative concept you think would be more appropriate?

3. Do you agree or disagree with our proposal to focus on negative indicators (or the absence of negative indicators)? (I.e., if there is evidence that a provider does not treat students fairly, it would not satisfy proposed initial condition C5. If there is no such evidence, the provider would satisfy the condition). If you disagree, please give reasons for your answer.

Decision

14. We have decided to implement proposals 1, 2 and 3, in broadly the form on which we consulted. This means we have decided to introduce a new initial condition of registration (initial condition C5) which focuses on fairness for students and tests fairness with reference to unfairness. We have made some minor changes to the condition, and the guidance that underpins it, and we have described these, and the reasons for them, in the rest of this document.

Summary of respondents views

Agreement and disagreement

15. Respondents were asked whether they agreed or disagreed with overarching aspects of our proposals. There was broad support for the proposal to introduce a new initial condition with 15 respondents expressing broad agreement, and four expressing broad disagreement. Most

respondents agreed that the condition should focus on the concept of fairness (12 respondents agreed and five disagreed in response to question 2a). Nine respondents agreed that fairness should be assessed through the absence of negative indicators (nine respondents agreed and five disagreed, in response to question 3). The remaining respondents did not express a specific view or were unsure.

16. Most respondents also provided detailed comments in their responses with some qualifying their responses to the 'agree/disagree' questions. For example, some respondents stated they agreed with the proposals but expressed caution in some areas; others stated they disagreed overall but expressed support for some aspects of the proposals; some who stated they were unsure provided narrative responses that expressed mixed views. We have set out below our qualitative analysis of the comments received on the proposals.
17. Most respondents who expressed support for the proposals agreed that students expect and deserve to be treated fairly. Some respondents considered that current requirements did not provide adequate protection and welcomed strengthened regulatory oversight.
18. Some respondents expressed concerns about one or more of the proposals or suggested alternative approaches. We have covered key themes below.

Key themes

Regulatory burden

19. Respondents expressed views about document submission requirements, including whether there was comparative burden for smaller or larger institutions. Some considered that it was important to understand the provider context when assessing compliance with the proposed condition. We consider the issue of document submission in more detail in Proposal 6 below. Some respondents suggested we should provide further guidance (including on best practice) to ensure consistency and provide support for new entrants to the sector. Some questioned the impact of the proposals on OfS resources, potential for delays in the registration process or higher OfS costs leading to higher registration fees. One respondent made an overarching comment across all three consultations, that it appreciated the proportionality of the regulatory requirements for smaller providers.

Adequacy of current requirements

20. Some respondents considered that Competition and Markets Authority (CMA) guidance is sufficient and already well understood in the sector with existing initial condition C1 providing a more streamlined and less burdensome approach than our proposals. Rather than introducing a new initial condition, some respondents suggested we could more simply amend initial condition C1 to require a provider to 'comply' with, rather than demonstrate 'due regard' to, guidance about consumer protection law.

Alignment with consumer protection law

21. Some respondents expressed views that the proposed condition might duplicate or overlap with other legal requirements, potentially creating an unnecessary burden on providers. Others questioned the need for the new requirements altogether given this potential duplication. Several respondents considered that introducing an approach similar to, but different from, consumer protection law could create confusion or increased complexity in contrast to the perceived clarity offered by existing initial condition C1. Respondents also

raised concerns about potential regulatory overreach or ‘scope creep’ by the OfS, with suggestions that our focus should be on quality and standards or aligning any fairness requirements with those that relate to student outcomes and success. Some argued that it would be inappropriate, unreasonable or beyond our remit to impose standards exceeding those required by consumer protection law or those required in other sectors. Conversely, other respondents suggested that the proposals did not go far enough, particularly when compared with provisions in the Digital Markets, Competition and Consumers Act 2024 (DMCCA).

Alignment with roles of (or guidance published by) other bodies

22. Respondents highlighted the Office of the Independent Adjudicator’s (OIA) Good Practice Framework (GPF) as an existing benchmark for fairness for student-related matters. Many suggested we should more explicitly acknowledge the role of the OIA in our documents and sought clarity on how OfS assessments about fairness would interact with those made by the OIA. Several respondents also mentioned the CMA, with some recommending closer collaboration between the OfS and the CMA or suggesting the OfS should defer to the CMA as the expert authority in this area. Some respondents suggested closer working and information sharing between the OfS and the OIA, CMA and Trading Standards.

Nature of ‘fairness’ as a concept

23. Some respondents considered that fairness was already embedded through consumer protection law and therefore did not require separate regulatory treatment. Some respondents disagreed with the way fairness was described in our proposals as they considered that this would require behaviours beyond existing legal requirements. Several respondents considered that the term ‘fairness’ was too broad, vague or open to interpretation. They suggested this could be addressed by introducing measurable criteria, establishing baseline standards or providing further guidance. Some respondents sought further consultation on our use of the term ‘fairness’ before the proposed requirements were implemented. One respondent suggested that it may be hard to assess fairness across all student groups (for example, they suggested that ‘part-time and distance-learning students may benefit from being treated differently to traditional full-time residential students’ and this difference in treatment should not be considered unfair).

Focus on negative indicators and provider documents

24. Some respondents considered the proposed focus on negative indicators would set too low a bar for providers in terms of the treatment of their students and that more positive measures of fairness may provide a higher level of assurance for students. One respondent suggested that focusing on negative indicators alone could disincentivise innovation and creativity. Another respondent suggested the negative framing of fairness with reference to the proposed OfS prohibited behaviours list (see Proposal 4) may, in some cases, lack clarity and this should be reviewed with providers seeking registration.

Two-tier system

25. Some respondents disagreed with our proposal to introduce a new condition as they considered it could result in a two-tier regulatory system. They were concerned that registered providers would be subject to different regulatory requirements depending on the regulatory requirements in place at the point they registered. A larger number of respondents suggested that the proposals should be applied to all registered providers to ensure parity of

regulation and of protection for all students. Several sought clarity on the timeline for applying similar requirements to registered providers and urged further consultation before we do so.

Our response

Regulatory burden

26. We recognise that replacing a single document (a provider self-assessment as required under initial condition C1) with a suite of student-facing documents, will require a provider to submit a larger volume of documents to us. This means that we are placing additional requirements on all providers seeking registration. We remain of the view previously set out in the consultation² that the suite of documents required for initial condition C5 are those that a well-prepared provider would need to operate. Where a provider is not yet in operation, we recognise they will need to do more work to meet our requirements but we consider this is justified. As the regulator, we need to be assured that students will have the necessary information to understand how their provider will interact with them (and that this interaction will be fair). We have responded below (under Proposal 6) to points about comparative burden for smaller or larger institutions and how providers may submit information about their context for our consideration. We have also considered specific requests for further guidance throughout this document and have updated our guidance and prohibited behaviours list (see Annexes B and C) in response.
27. We consider that the package of changes to the registration process that we proposed, and have decided to implement,³ will make the process more efficient overall, for the OfS and for providers seeking registration. In terms of resource cost to the OfS, we will be assessing a larger number of documents for initial condition C5 compared with initial conditions C1 and C3 but in our view this is balanced by the requirement for a complete application in order to proceed with the assessment.⁴ This requirement creates incentives for providers to submit complete, high quality applications first time which will reduce OfS time in checking, chasing and progressing incomplete and low quality submissions, allowing a greater focus on progressing well-prepared applications. This will allow for a more efficient process overall so will not lead to increased costs per registration application received.

Adequacy of current requirements

28. The requirement to demonstrate 'due regard' to relevant guidance, in our existing C conditions, does not expressly test if a provider follows this guidance, complies with the law or treats students fairly. Providers may wish to refer to CMA guidance to support their compliance with the law. While the OfS may refer to guidance published by another body, it is for that body to make a compliance judgement in relation to that guidance. Likewise, other bodies may refer to our conditions of registration but only the OfS can make a judgement about compliance with them.

Alignment with consumer protection law

29. We disagree that regulation in this area is unnecessary even where it overlaps with consumer protection law. We have seen instances of provider behaviour that is not in the interests of

² See [Proposal 6: Document submission requirements](#), paragraph 115 – 116.

³ OfS, '[Consultation outcomes: Reforms to OfS registration requirements](#)'.

⁴ See the 'application requirements notice' at [Supporting documents](#).

students and we consider it is appropriate to address this within our regulatory framework.⁵ Elements of initial condition C5, for example parts a, b and g of the OfS prohibited behaviours list, reflect consumer protection law and this is deliberate. We consider this helps reduce burden as a provider complying with the law is likely to be at least partially compliant with regulation.

30. Our view is that a condition informed by legislation (and CMA guidance) provides a useful base, although as we noted in the consultation document, a legally compliant provider will not automatically satisfy all our requirements or vice versa. We have explained below the reasons we have adapted (rather than copied) legislation in the proposed OfS prohibited behaviours list (see Proposal 4). We have clarified or made changes to address some provisions we think could cause confusion (see Annexes A and C).
31. We consider that students collectively have specific consumer characteristics that mean additional protections are justified. For example, in a significant proportion of cases the 'purchase' is more likely to be 'one-off' and the decision to study is a significant investment which is central to a student's future. We therefore consider it is appropriate and reasonable to provide additional protections for students. We have considered what is fair for students in this context which means our requirements, in some places, go beyond what is required in general consumer law. We have considered points in relation to alignment with the DMCCA under Proposal 4.
32. We disagree that our proposals represent regulatory overreach or go beyond our remit. The OfS has had consumer-focused conditions of registration since its inception in 2018 and an independent review undertaken by Sir David Behan in 2024⁶ supported a strengthened consumer protection role for OfS. We have seen provider behaviour which raises concerns about consumer protection, and we think it is important to implement preventative measures to protect students and reduce the need for them to seek legal redress. We do not consider our proposals conflict with or raise issues with regards to our quality and standards role. In the overarching introduction to our analysis, we explain that we have had regard to our general duties, including the duty to promote value for money in the provision of higher education.

Alignment with roles of (or guidance published by) other bodies

33. We recognise the CMA's expertise and will continue to work with them as we develop our regulatory role in consumer protection matters. We also recognise the role and expertise of the OIA as the designated operator of the student complaints scheme and its GPF as an important reference point for the sector. We support continued use of the GPF by providers in preparing their complaints processes and note that CMA guidance for higher education providers indicates that complaints procedures are more likely to comply with legal requirements where they follow the GPF.
34. Separately, all registered providers must comply with our ongoing condition C2 which requires cooperation with the OIA's complaints scheme, and we have highlighted this requirement in 'Regulatory advice 3: How to register with the Office for Students'. We have also highlighted to providers that 'fairness' is one of a number of principles in the GPF and that the OIA may

⁵ For examples, see paragraphs 15 – 18 of our consultation, [Proposal 1: Introduce a new initial condition to replace initial condition C1](#).

⁶ GOV.UK, ['Fit for the Future: Independent Review of the Office for Students'](#).

review a provider's documents against these principles. We have clarified that the OfS's judgement against initial condition C5 is separate from any view the OIA may independently take about a provider and its documents, including any view it may take in relation to its own fairness principle. The OIA complaints scheme provides important protection for students and we will continue to work with the OIA in performance of our respective roles.

Nature of 'fairness' as a concept

35. We have considered views that 'fairness' is a broad or vague concept and suggestions that it should be defined by measurable criteria. However, we consider that this was already covered by the proposed initial condition C5 which set out a test for fairness based on the absence of three specific elements (see Proposal 4 for further detail):
- behaviours listed in the OfS prohibited behaviours list
 - detriment to students
 - adverse findings by a court or other relevant body
36. The prohibited behaviours list is intended to capture most issues we expect to encounter at the point of registration. The detriment test is intended to futureproof the condition, allowing us to respond to emerging practices that could negatively affect students. If we see repeated instances of concerning behaviours not currently covered by the prohibited behaviours list, we may consider updating that list, subject to further consultation as appropriate.
37. Initial condition C5 does not require a provider to treat all students in the same way, but that students are treated fairly. In assessing the detriment test, we would consider whether a provider's actions are reasonable in all the relevant circumstances, including the needs and wishes of the providers' students which we recognise may differ. However, in our view, no student should be subject to behaviour by a provider that is included in our prohibited behaviours list (which is largely based on legal requirements).
38. Some respondents requested further consultation on the concept of fairness, in particular before similar requirements are applied to registered providers through ongoing conditions of registration. We would undertake a full consultation before making any such changes to ongoing conditions.

Focus on negative indicators and provider documents

39. In response to suggestions that negative indicators (assessed through provider documents rather than actual provider behaviour) set too low a bar for entry, we consider our approach is appropriate for an initial condition of registration. The assessment of an initial condition is at a point in time based on the available evidence and, for the most part, the evidence available to us at registration is paper-based. We do not consider, as suggested by respondents, that a focus on negative indicators in initial condition C5 disincentivises innovation or creativity. Requiring a provider not to take harmful actions does not preclude it from taking positive, innovative, actions, as long as the provider's behaviour is compliant with the condition.
40. We remain of the view that it is appropriate and pragmatic to focus our registration assessment relating to treating students fairly, on provider documents and any negative indicators that we observe within them. However, we may consider different approaches to a

definition of fairness when we consult on potential changes to our ongoing conditions of registration.

Two-tier system

41. Implementing initial condition C5, and associated changes to the applicability of ongoing condition C3, will mean that providers registered under that condition are subject to different requirements from providers that were registered under existing requirements. We are not persuaded that such differences are a reason not to implement initial condition C5 and associated changes, with the improved protections that they afford students. We are planning to consult on changes to ongoing conditions related to student and consumer protection.

Decision on Proposal 4: Requirements of the condition

42. In our February consultation, we proposed to determine whether a provider treats students fairly with reference to:

- its behaviours, as evidenced by the information it publishes on its website and the documents it would use in its relationships with students after it is registered. We would test a provider's behaviours against:
 - an OfS prohibited behaviours list: evidence of prohibited behaviours would lead to a judgement that a provider does not treat students fairly⁷
 - a 'detriment test': evidence of behaviours not already included in the prohibited behaviours list but otherwise detrimental to students would lead to a judgement that a provider does not treat students fairly (unless those behaviours were reasonable in all the relevant circumstances)⁸
- its track record, as in evidence (or the absence of evidence) from courts or other competent authorities. Where there is evidence of adverse findings, we would consider a provider did not treat students fairly unless it could demonstrate that it had addressed any related issues to our satisfaction.⁹

Consultation questions

4a. What are your views on the proposed OfS prohibited behaviours list (including the way we are proposing to use consumer protection legislation and CMA guidance to inform it)?

4b. What are your views on the way we propose to consider detriment to students (including the non-exhaustive factors we propose to consider to determine whether detriment is 'reasonable in all the relevant circumstances')?

4c. What are your views on the adverse findings we propose to consider and the way in which we propose to consider them?

4d. What are your views on the way we propose to consider undertakings by enforcement bodies and applications for enforcement orders?

4e. What are your views on the way we propose to consider a provider's removal of concerning terms or information from its documents?

Decision

43. We have decided to implement C5.3 to C5.7 of initial condition C5 in the form that we consulted on. We have made a minor drafting change to the condition, to better explain one of

⁷ See [Annex D: Proposed prohibited behaviours list](#). We have published the final version of the list at '[OfS prohibited behaviours list](#)'.

⁸ See [Proposal 4: Requirements of the condition](#), paragraph 51 – 54.

⁹ See [Proposal 4: Requirements of the condition](#), paragraph 55 – 71.

the requirements which we explain further under Proposal 5. We have made some minor changes to the framing of the behaviours in our 'prohibited behaviours list' to provide more clarity. These changes are explained in Annex A and highlighted in Annex C. We have also made some changes and added further information to the guidance on C5.3 to C5.7 of the condition. These changes are intended to provide clarification and improve readability and are highlighted in the document attached at Annex B.

Summary of respondents views

Key themes

44. We asked respondents for their views on the different requirements within proposed initial condition C5. We have summarised key themes of their responses below.

OfS definition of consumer protection law

45. One respondent disagreed with the inclusion of the Protection from Harassment Act 1997 in our definition of consumer protection law, highlighting that students have legal obligations to pay for services while accepting that 'aggressive pursuit' of payment is not appropriate.

Two-tier system

46. Some respondents queried whether the requirements of the condition, in particular the OfS prohibited behaviours list and the detriment test, would be applied to registered providers in future.

OfS prohibited behaviours list

47. Respondents expressed a range of views on our proposed list of prohibited behaviours. Key themes included:
- a. **General comments:** Some respondents considered the list to be too vague or too broad, or difficult to interpret. To address this, some provided alternative wording for some of the behaviours and we have summarised these, and set out our response, in Annex A.
 - b. **Value of the list and/or regulatory burden:** Some respondents considered that the application of the list would provide strong protection for students, including because of the breadth of the protections included. Conversely, some considered that consumer protection law and existing CMA guidance already afford sufficient protection.
 - c. **Alignment with consumer protection law and other bodies:** Some respondents disagreed that the OfS prohibited behaviours list should go beyond consumer protection law. Some respondents suggested that the OfS prohibited behaviours list should be aligned with the unfair commercial practices set out in the DMCCA, for example to include omissions of material information and misleading marketing. One respondent considered the list should be 'ratified' by the CMA because sector-specific guidance has not yet been updated to reflect the DMCCA. One respondent suggested that, in relation to relevant provisions on the list, we should work closely with UK Visas and Immigration (UKVI) 'to agree a position on non-repayment of deposits for visa-sponsored students'.
 - d. **Interface between the OfS prohibited behaviours list and the detriment test:** One respondent suggested that any practices banned under the DMCCA should be presumed unfair by the OfS with no proof of detriment required.

- e. **Approach to assessment:** Some respondents considered that evidence of prohibited behaviour should not lead to an automatic failure to satisfy the condition and there should be an opportunity to rectify, clarify or provide mitigating circumstances.
- f. **Provider context (partnerships, professional bodies and employer-sponsored provision):** Some respondents highlighted the influence of power dynamics where a provider relies on relationships with external bodies in its provision of higher education and suggested that this context may be relevant where a provider is acting under instruction from (or bound by the terms of a contract with) another body. One respondent gave two examples where they were concerned about particular provisions in the OfS prohibited behaviours list in this regard:
 - i. Terms allowing a provider to withdraw offers to students where this action is required by a professional body. There was concern that this would be considered 'wide discretion to withdraw offers' (OfS prohibited behaviours list, part a. provision ii).
 - ii. Terms allowing a provider to terminate a student contract where there are provisions requiring this in a provider's contract with a student's employer (where the student is an apprentice or their course is otherwise sponsored by their employer). There was concern that this would be considered termination of a contract 'on a discretionary basis' (OfS prohibited behaviours list, part a. provision ii).
- g. **On paper and/or in practice:** One respondent suggested the prohibited behaviours list did not sufficiently tackle how unfair practices might manifest in practice. For example, it could test whether a provider's documents contained fair provisions but not whether the provider would enact the provisions as written.

Detriment test

- 48. Some respondents considered that the detriment test would provide good protection for students. One respondent suggested it allowed too much discretion due to its flexible design which allows the OfS to act on issues not already accounted for in the OfS prohibited behaviours list.
- 49. Respondents requested further information about elements of the test including 'likelihood of detriment', whether detriment is 'reasonable in all the relevant circumstances', what constitutes a 'reasonable opinion' and what information would be used by the OfS to make that judgement. Some respondents requested an exhaustive list of factors.
- 50. In the draft guidance to the condition, we proposed a provider should do 'everything possible to limit the extent of the detriment'. One respondent proposed using the word 'reasonable' instead of 'possible'.
- 51. Some respondents considered that students may use 'situations to their advantage', suggested there are circumstances where detriment is unavoidable and wanted to understand how the OfS would determine whether a provider's actions had caused or contributed to these issues. For example, one stakeholder expressed reservations about whether detriment to mental health should be in scope and what evidence would be considered in this respect.

Adverse findings

52. Some respondents supported our proposal to consider adverse findings from courts or other relevant bodies when assessing whether a provider is treating students fairly. One respondent disagreed with the inclusion of findings in relation to non-higher education services. One respondent suggested adverse findings should carry more weight with less emphasis on mitigating circumstances, highlighting that this would be particularly important if the OfS had a more direct consumer enforcement role in future. There was also a suggestion that the requirement should include findings from other bodies (such as the OIA, CMA and Trading Standards). In relation to the proposed consideration of misuse of university title, one respondent requested special consideration for providers that were granted university title in another country but may have been unaware of the requirement to seek permission for the use of such a title in the UK.

Undertakings and applications for enforcement orders

53. There was some support for our proposed approach to considering undertakings accepted by other bodies and applications for enforcement orders made by such bodies to the courts. One respondent suggested undertakings should carry more weight as a 'de facto admission' of wrongdoing by a provider. Two respondents commented that only undertakings and applications in relation to higher education should be considered. One respondent requested clarification about instances where a provider fails to comply with an enforcement order.

Removal of concerning terms

54. One respondent proposed a distinction between proactive updates to documents and updates after being 'caught by the OfS', suggesting the original proposal appeared to treat all removals positively. One respondent suggested steps taken to address issues should always be viewed positively and another proposed a neutral starting position. One respondent suggested the level of risk posed by the term based on the number of students affected (or likely to be affected) before removal, should be considered alongside other factors proposed. One respondent considered that any action taken by the OfS should only follow engagement with the provider. Another respondent requested further guidance or examples of whether a provider has 'addressed underlying issues'.

Our response

OfS definition of consumer protection law

55. We have included the Protection from Harassment Act 1997 in our definition of consumer protection law as this may be relevant to the aggressive pursuit of academic sanctions for non-payment of non-tuition fee debt. We gave this example in the condition guidance on which we consulted, and remain of the view that it is relevant.

Two-tier system

56. We have responded to comments about a 'two-tier system' under proposals 1, 2 and 3 above.

OfS prohibited behaviours list

57. **General comments:** We have summarised comments we received relating to the specific behaviours set out in our proposed list in Annex A and provided our response. We have

added additional details to some of the provisions in the prohibited behaviours list to clarify our expectations (see also Annex C).

58. **Value of the list and/or regulatory burden:** In response to suggestions that consumer protection law and CMA guidance already afford sufficient protection, we have set out our response under proposals 1, 2 and 3 .
59. **Alignment with consumer protection law and other bodies:** We have also set out under proposals 1, 2 and 3, the reasons why we consider it appropriate to introduce requirements that go beyond consumer protection law. In response to the more specific suggestions that the OfS prohibited behaviour list should be aligned with the DMCCA, we highlight that many of the actions and omissions covered by Schedule 20 of the DMCCA are, in fact, included in part b. of our 'prohibited behaviours list'. 'Fake reviews' provisions similar to those in the DMCCA are included in part g. We considered 'drip pricing' and 'subscriptions' provisions but our view is that relevant evidence of such matters is unlikely to be available at registration. As explained in Annex B of the consultation document,¹⁰ we excluded other provisions deliberately for reasons of brevity to focus on issues most relevant to the higher education sector and we have used sector-relevant language to make compliance easier and to improve accessibility for students. We remain of the view that such an approach is appropriate. However, in considering specific feedback on the OfS prohibited behaviours list, we have reflected on how closely the language we have used is aligned with that used in the DMCCA and whether, in some circumstances, closer alignment would be desirable.
60. Our regulation is independent and, while we will continue to engage with the CMA, there is no requirement for our prohibited behaviours list to be 'ratified', as proposed by one respondent.
61. In response to the suggestion that we work with UKVI regarding non-repayment of deposits for visa-sponsored students, we note that the prohibited behaviours referred to (set out in iii, iv, v, and vii in Part a. 'key documents') quite closely reflect existing legal requirements with which traders in any sector are required to comply.
62. **Interface between the OfS prohibited behaviours list and the detriment test:** In response to the suggestion that practices banned under the DMCCA should also be considered unfair by the OfS without additional proof of detriment, the detriment test (which we discuss further below) is separate to the prohibited behaviours list which does not require proof of detriment. Behaviours in the list are prohibited in all cases, regardless of detriment. As set out above, banned practices under the DMCCA are also, in most cases, included in the prohibited behaviours list.
63. **Approach to assessment:** We remain of the view that it is appropriate to set out a list of behaviours that are prohibited to set out clear expectations of our requirements and expectations. Providers will have an opportunity to submit representations¹¹ where our judgement results in a provisional decision that the condition is not satisfied.

¹⁰ See [Annex B: Alternative options considered](#), paragraph 11.

¹¹ All providers receiving a provisional decision to refuse registration have a 28-day period to submit representations. See '[Securing student success: Regulatory framework for higher education in England](#)', paragraph 110.

64. **Provider context (partnerships and employer-sponsored provision):** We note general comments about power dynamics between partners and have considered this further under Proposal 5. In response to examples raised where a provider is acting under instruction from (or bound by the terms of a contract with) another body, the following worked examples illustrate our likely approach:
- a. We are unlikely to consider that it gives ‘wide discretion to withdraw offers’ if a provider’s contract with a student allows it to withdraw an offer to a student because a professional body has withdrawn accreditation for their course (where this accreditation is essential to the course). These circumstances would be specific and outside the provider’s control.
 - b. Where a student’s employer withdraws funding for their study and the contract(s) between the parties stipulate(s) that the provider will terminate the student contract in these circumstances, we are unlikely to consider that this constitutes termination on a ‘discretionary basis’.
65. In both examples, we would expect students to be provided with clear and consistent information, and alternative options where they are available. For example, if a professional body has withdrawn a course’s accreditation and a provider consequently withdraws offers, whether affected students could be offered a non-accredited course at the same provider or supported to find an accredited course at a different provider instead. Or if an employer has withdrawn funding for a course and a provider consequently terminates student contracts, whether affected students could be offered a self-funded course instead. We recognise the complexities in tripartite arrangements involving providers, students and employers.
66. **On paper and/or in practice:** In response to suggestions that the prohibited behaviours list does not sufficiently tackle fairness ‘in practice’ and focuses too much on compliance ‘on paper’, we acknowledge the inherent limitations of The assessment of an initial condition is at a ‘point in time’ assessment that takes place at registration, based on the available evidence at that time. We highlight that part b. of the prohibited behaviours list (descriptions relating to conduct and omissions) does include ‘in practice’ behaviours but these are necessarily more heavily focused on areas where evidence is more likely to be available at registration (for example, inaccurate or false statements made on a provider’s website).

Detriment test

67. The OfS prohibited behaviours list is intended to capture a broad range of issues that we may expect to encounter at registration. But it is still our view that it is important to have a broader detriment test which would allow us to address issues we have not foreseen in the list (for example, if new consumer protection law is enacted or if new concerning practices emerge).
68. Respondents requested further information about our approach to considering whether detriment is ‘reasonable in all the relevant circumstances’. The OfS, as a public body, is required to act reasonably in accordance with the requirements of public law, in making its decisions. In assessing the condition, including the detriment test, we will use evidence from the documents a provider submits or that are otherwise published on its website, to inform our judgement. We will also consider other information, for example from third-party notifications or other bodies such as the OIA, Trading Standards, CMA or the courts. Where necessary, we may seek further information from the provider to verify this information or to establish the facts. We have included additional clarification on this point in the condition guidance.

69. The detriment test is framed around the reasonable opinion of the OfS. The test requires the OfS to make judgements on matters such as whether there is a ‘likelihood’ of detriment and whether any detriment would be reasonable in all the circumstances. We set out, in our draft guidance, the factors we would consider in applying this test. This is a non-exhaustive list of factors and we remain of the view that this is an appropriate approach as it allows us to consider each matter on a case-by-case basis, considering all the relevant circumstances.
70. Following consideration of stakeholder views, we have decided to amend the third factor in the guidance on the test as follows (deletion and addition is in bold text):
- ‘whether the provider is doing, or has done, everything ~~possible~~ **reasonable** to limit the extent of the detriment’.
71. We would not expect a provider to take action that is not reasonable although we do expect providers to take substantive action where needed.
72. Some respondents queried circumstances where detriment may not be wholly attributable to a provider’s actions, including where a student is experiencing an adverse effect on their mental health. In all cases we will consider the facts of the case, whether the provider’s actions were reasonable in the circumstances, and the non-exhaustive factors set out in the guidance to the condition. It is important that we can assess detriment from a broad perspective without unduly narrowing the scope of the test.
73. The investment of money, time and effort and the importance and value to students of education and the broader higher education experience means that it can be particularly stressful when things go wrong. We consider it is important to acknowledge this and we do not intend to limit the scope of the test, for example, by excluding detriment to mental health or emotional distress. We acknowledge the complexities in this area and recognise there may be several contributing factors influencing an individual’s life at any moment, including underlying issues or existing conditions that a provider may or may not be aware of.

Adverse findings

74. We have considered stakeholders’ views that court findings in relation to non-education services (and services ancillary to education) should not be included within our tests. We consider that such findings could still be relevant to our assessment as they could give rise to concerns that could be relevant to the provider’s activities in higher education. We also remain of the view that it is fair and appropriate to give a provider an opportunity to demonstrate that it has addressed issues relating to adverse findings to our satisfaction. We have set out some non-exhaustive factors that we will consider in making our judgements, in the guidance on the condition. In our view, this framing would not be incompatible with any direct enforcement role on consumer protection that the OfS may have in future.
75. The test considers non-compliance with consumer protection law as found by a court of England and Wales or a ‘competent authority’ (being the CMA or any other body with jurisdiction to make decisions under section 182 of the DMCCA). We have considered the views expressed by some respondents that this test should extend to other bodies. Although findings of other bodies may inform our judgements about compliance with the condition (and we have updated our guidance to make this clear), more broadly we think it is appropriate that the ‘adverse findings’ element of the condition (C5.5) is limited to courts or other ‘competent

authorities'. Providers will have an opportunity to submit representations in response to a provisional decision that the condition is not satisfied.

Undertakings and applications for enforcement orders

76. While relevant to our assessment, we would not consider an undertaking as a de facto admission, as proposed by one respondent, as that is not the legal status of an undertaking. We remain of the view that undertakings and applications for enforcement orders for other education (and ancillary) services may be relevant as similar consumer issues may arise in those other settings. As we noted in the consultation document (paragraph 79), where an enforcement order is issued, a court will also make a finding of non-compliance with consumer protection law which would be captured under C5.5a ('non-compliance with consumer protection law, as found by a court of England and Wales or competent authority'). Failure to comply with an enforcement order would therefore similarly be captured under the same requirement.
77. Our original definition of 'enforcement body' was 'an Enforcement Body as defined in schedule 6 of the Consumer Rights Act 2015, or defined in Part 8 of the Enterprise Act 2002, or an Enforcer as defined in section 164 of the Digital Markets, Competition and Consumers Act 2024.' We have reviewed this definition and used the following legislative references for clarity:
- a. The Consumer Rights Act 2015 refers to an 'Enforcer' in schedule 5.
 - b. Part 8 of the Enterprise Act 2002 is no longer in force.
 - c. The definition of an 'Enforcer' is contained in section 151 of the DMCCA.

Removal of concerning terms

78. The provision in the condition (C5.7) covers circumstances where a provider removes a term or provision during its application for registration. The removal may have occurred following discussions with the OfS about that term or provision, or otherwise. In each case, our starting position is that mere removal is insufficient. In our engagement with the provider, it would need to demonstrate that it has addressed any underlying issues associated with the terms. . We have already provided an example in the condition guidance which illustrates the requirement to address underlying issues (see Annex B).

Decision on Proposal 5: Scope of the condition

79. We proposed to determine the scope of the condition with reference to a provider's relationships with students (current, prospective and former) and its provision of higher education and ancillary services, including offering and marketing higher education and associated services. We proposed that the condition would apply to all providers seeking registration.

Consultation questions

5a. What are your views on the definition of students in the proposed condition (to include current, prospective and former students)?

5b. What are your views on the inclusion and definition of ancillary services?

5c. What are your views on the definition of 'information for students'?

5d. What are your views on our proposed approach to providers delivering higher education through partnerships

Decision

80. We have decided to implement C5.1 and C5.2 of initial condition C5 in broadly the form that we consulted on. However, we have decided to:

- a. amend the definition of 'ancillary services' in the condition at C5.8a (and make consequential amendments to the associated guidance)
- b. change 'information for students' to 'information about the provider' at C5.1e (with consequential amendments at C5.2e, C5.7 and C5.8f)
- c. replace references to 'students' with references to 'individuals' (and other related changes to improve clarity) in the description of 'information about the provider' at C5.1e.

81. We have made some changes and added further information to the guidance to provide clarification and improve readability. These amendments are highlighted in the condition and guidance set out in Annex B.

Summary of respondents views

Key themes

82. Many respondents expressed broad support for the proposed scope of the condition, in some cases expressly noting that it extended to the whole student body, a broad range of services and a wide spectrum of information. Others were less supportive. In their narrative comments, some respondents, even those who had expressed broad support, queried some elements of the condition or suggested alternatives. We have summarised below the key themes arising in respondents' comments.

Definition of students (including prospective and former students)

83. Many respondents supported the inclusion and proposed definition of prospective and former students. One respondent suggested including individuals who interact with providers through agents or application portals or who pay a deposit even if they do not enrol. One respondent considered prospective students should not be included to protect against 'vexatious and criminal exploitation'. Two respondents highlighted that the OIA's complaints scheme is more limited in scope than our condition as the OIA's scheme only includes registered students and not prospective students. These respondents did not suggest there should be any amendment to the scope of our condition (indeed one suggested this made the OfS's role even more important) but rather sought reassurance that any difference in scope would not cause confusion for providers.
84. One respondent commented on our proposal that the requirements in initial condition C5 should apply to 'former' students. We proposed that the requirements would apply in respect of 'former' students where, for example, that student has an ongoing complaint against the provider in relation to issues that occurred while they were a student. The respondent suggested there should be time limits on these requirements in respect of former students because a student may think they have an ongoing complaint but the provider may disagree (for example, if it was not raised in line with the provider's process, including time limits).

Employer-sponsored provision

85. One respondent suggested that the definition of students should mirror CMA guidance on when students are likely to be treated as consumers from a legal perspective (but also suggested CMA guidance should be amended to include apprentices rather than suggesting amendments to our proposals). Some suggested we should consider context in our assessment, and we have considered that issue in more detail under Proposal 6.

Ancillary services

86. Many respondents supported the inclusion of ancillary services. Some respondents were unclear about whether an ancillary service would be in scope if there was no contract for that service. For example, one respondent highlighted that C5.8 of the proposed condition defined ancillary services as those 'for which a student **may enter into** a contract' (emphasis added) whereas the consultation document and draft guidance refer to services where a contract exists. One respondent suggested that only services essential or integral to a student's course should be included. One respondent commented that the inclusion of ancillary services was 'strange' in the context of the increasing use of shared services models by providers. One respondent suggested ancillary services should be included where there is no contract between the provider and the student, but the services are required to complete the course or receive professional accreditation (for example counselling required for professional accreditation as a therapist or counsellor). One respondent suggested that the exclusion of third-party ancillary services may limit a provider's accountability for any information it publishes about those services.

Information for students (information about the provider)

87. Some respondents sought clarification on the policies and documents that would fall within the condition and the level of detail required, for example in describing 'ancillary services'. One respondent suggested including all information material to students' decisions, including information provided on an informal basis (for example, brochures, videos, comments at open

days). Another respondent suggested limiting the definition to information explicitly provided to applicants to support decision-making. One respondent considered that the condition focused on 'what' is provided to students rather than 'how', referring to timeliness and accessibility of information.

Subcontractual (franchise) partnerships

88. Some respondents queried whether (or to what extent) the initial condition would apply to a registered provider where it is the lead in a subcontractual partnership with a provider seeking registration. Some referred to power dynamics between partners and were concerned the OfS may hold a delivery provider accountable for materials belonging to its lead provider. Given that, in some circumstances, delivery providers may need to submit documents belonging to the lead provider, some respondents suggested lead providers may not be sufficiently aware of this requirement or of their indirect responsibilities in this regard.
89. Some respondents highlighted the Lifelong Learning Entitlement (LLE) and Department for Education consultation proposing that some delivery providers may be required to register with the OfS if their students are to continue to have access to public funding in the shape of tuition fee and maintenance loans. One respondent considered that, in this context, the proposed approach to partnerships in initial condition C5 would be inconsistent with our current approach to regulating quality and standards (though the respondent agreed that responsibility for partnerships should apply to both parties). One respondent suggested delivery providers would be better assessed through a bespoke new category of registration. Another disagreed with our proposed approach in relation to partnerships as, in their view, the combination of proposals in the OfS and the Department for Education consultations risked stifling partnerships which they considered may affect access and participation in higher education more broadly.

Our response

Definition of students (including prospective and former students)

90. In response to suggestions that enrolment should not be the decisive factor in determining the scope of prospective students in the condition, we agree and our proposals instead defined prospective students from the point of offer (including offers via a third party such as an agent). This would require the individual to have taken time and effort to go through the application process which, we think, is not likely to be appealing to those seeking to exploit the system, as one respondent suggested may be a risk. While the scope of prospective students is from the point of offer, we clarify that marketing information which is published or otherwise available to any individual (including actual or potential applicants at a pre-offer stage) is separately included within the scope of the condition. This was defined as 'information for students' in the condition and was broadly drafted to encompass a wide range of information which could be assessed against the provisions of the OfS prohibited behaviours list separately to testing likely or actual detriment to prospective students. To make it clearer that the 'information' within scope is not tied to the defined term 'students' at C5.8j, we have:
 - a. Changed 'information for students' to 'information about the provider' (C5.1e with consequential changes at C5.2e, C5.7 and C5.8f).

- b. Made clarificatory changes to the description of ‘information about the provider’ (C5.1e). For example, changing ‘students’ to ‘individuals’ or ‘students or anyone with an interest in studying at the provider’.
 - c. Provided additional clarificatory text in the condition guidance to describe the difference between the prohibited behaviours test and the detriment test.
91. We are aware that the scope of our condition is different to the scope of the OIA’s complaints scheme. We have reviewed wording in our prohibited behaviours list and made amendments to ensure that this is clear to providers (see Annexes A and C).
92. We consider the definition of ‘former students’ to be sufficiently clear and do not propose to include specific time limits. In practice, when considering ‘ongoing complaints’ in relation to former students, we are likely to consider whether they raised their complaint within the time limit set by the provider and whether the time limit was reasonable. We have clarified this in the guidance to the condition.
93. For consistency and clarity, wherever we have referred to ‘students’ in the condition and in the OfS prohibited behaviours list, we have edited the formatting to use bold text which therefore refers to the defined term at C5.8. In parts b. and c. of the OfS prohibited behaviours list we have also made changes in some instances where we use the word ‘student(s)’ to clarify our original intention that some of the provisions also relate to ‘anyone with an interest in studying at the provider’ (see Annex A and relevant markups in Annex C).

Employer-sponsored provision

94. Although one respondent thought the definition of students should mirror CMA guidance on when students are likely to be treated as consumers from a legal perspective, the same respondent suggested CMA guidance should be amended to include apprentices. This suggested broad agreement with this aspect of the proposed scope because the suggestion was to amend CMA guidance rather than the proposed OfS condition. We have considered that issue of context in more detail under Proposal 6.

Ancillary services

95. We have decided to make changes to paragraph C5.8 of the condition from the version consulted on. These revisions clarify that ancillary services are in scope where a contract exists between a student and the provider. This is consistent with the proposed guidance shared during consultation.
96. We have also made changes to the relevant guidance to clarify that this includes situations where a contract exists but is not yet active, for example, where a provider offers services but students have not yet signed the contract for these services. This reflects provision C5.2d. of the proposed condition, which stated that the provision of ancillary services includes offering those services and C5.2e, which explained that reference to key documents (including contracts) includes draft or proposed versions.

97. The definition of ‘ancillary services’ proposed in the consultation is almost identical to the definition of ‘student contracts’ in existing condition C1.¹² Our view remains that a broad definition of ancillary services (including non-academic services) is appropriate. The proposed condition refers to circumstances where there is a contract for ancillary services between the student and the provider and therefore shared ancillary services would be included in the scope of the condition for whichever provider (or providers) holds this contract (where that provider is seeking registration).
98. Our proposals did not include ancillary services where the contract is between a student and a third party. However, we proposed that a provider should undertake due diligence on third parties (and a provider is responsible for any contracts it entered into with third parties). We confirm the same principle would apply in instances where ancillary services are shared between providers. We have included additional guidance in the condition to clarify these points. We recognise that in some circumstances, ancillary services may be essential to the course or to professional accreditation but there is no contract with the student. This is something we may wish to explore as part of our proposed work with the sector to develop a model student contract, or where we develop new ongoing conditions of registration on consumer protection.
99. A provider is responsible for any information it publishes or makes available within the definition of ‘information about the provider’, including where this relates to third-party ancillary services. Part c. of the proposed OfS prohibited behaviours list sets out our expectations for key documents and information about the provider, including that they must not contain substantive inconsistencies with information made available to students by a third party with which the provider has a contract.

Information for students (information about the provider)

100. Proposal 6 below considers document submission requirements. Students may use a range of information, from different sources, to inform their decision-making. Providers should be accountable for any information they provide and our proposed definition of ‘information for students’ was purposefully broad to include any arrangements to attract students or encourage applications. As explained above (‘Definition of students (including prospective and former students’), we have decided to change references to ‘information for students’ to ‘information about the provider’ in the condition. We have also removed references to ‘students’ and replaced these with ‘individuals’ in the definition of ‘information about the provider’). We have made these changes to make the scope of C5.1e clearer but this does not change the type of information that is in scope.
101. The assessment of an initial condition is an assessment at a point in time, based on the available evidence. This does not lend itself to testing the timeliness and accessibility of information in practice.

Subcontractual (franchise) partnerships

¹² “‘Student contracts’ include the contract for academic services and other contracts into which a student may enter as part of the higher education experience, including but not limited to contracts governing the provision of accommodation, disability support packages, scholarships, sports facilities and additional course costs’. See [Condition C1: Guidance on consumer protection law](#), paragraph 366. To note, the definition for initial condition C5 adds library services and no respondents suggested this should be excluded.

102. We expect both partners involved in subcontractual arrangements to undertake due diligence into their partners, and this is made clear in the guidance underpinning initial condition C5 (and was in the version on which we consulted). Students studying at a subcontracting delivery provider seeking registration should not have a lower level of consumer protection than students at other providers seeking registration.
103. Providers that are already registered with the OfS will not be assessed directly against initial condition C5. However, it is relevant to providers that have subcontracted provision to a provider that is seeking registration, and which will be assessed against initial condition C5. We have clarified our approach below (and have included this in the guidance that accompanies the condition):
- a. A provider intending, if registered, to deliver higher education through a subcontractual arrangement will need to submit some documents belonging to the lead provider in that relationship. These include template student contracts (including terms related to tuition fees and additional costs) and refund and compensation policies. The provider seeking registration will be responsible for submitting these documents and we would expect the relevant lead provider to co-operate with its delivery provider.
 - b. Where the delivery provider considers that the lead provider's documents contain provisions that may be contrary to the OfS prohibited behaviours list,¹³ we would expect the delivery provider to work with the lead provider to address this directly before submitting its application.
 - c. Where the delivery provider has submitted its application and the OfS considers the lead provider's documents contain provisions that may be contrary to the OfS prohibited behaviours list, we would raise this with the delivery provider. We may also consider whether those issues raised concerns about the lead provider's compliance with consumer protection law or our conditions of registration. We may decide to engage with the lead provider on those matters as we consider appropriate. We may decide to take regulatory action against the lead provider in relation to compliance with conditions of registration or by making a referral to National Trading Standards.¹⁴
 - d. Where the delivery provider has submitted its application and the OfS identifies potential inconsistencies between documents or published information of the delivery provider and those of the lead provider, we would raise our concerns initially with the delivery provider.
104. When we published our consultation, we highlighted that we particularly welcomed views from registered providers that had, or were considering, subcontractual arrangements, as well as delivery providers in these arrangements. We received written responses from some registered provider and from key sector bodies that represent them, and we have taken these views into account in reaching our final decisions. We also ran information and feedback sessions that were attended by a range of registered and unregistered providers.

¹³ OfS, 'OfS prohibited behaviours list'.

¹⁴ See [Referrals to National Trading Standards](#).

105. In July 2025, the Department for Education published a policy paper on how the LLE would work.¹⁵ The paper indicated that the Department was no longer asking the OfS to introduce a third category of registration for LLE providers. The paper also noted that the OfS proposes to consult in autumn 2025 on proposals to disapply some conditions of registration for providers in the further education statutory sector. We consider our proposed approach to partnerships in initial condition C5 is consistent with our approaches to quality and standards and access and participation.

¹⁵ GOV.UK, [‘Lifelong learning entitlement: what it is and how it will work’](#).

Decision on Proposal 6: Document submission requirements

106. We proposed that a provider seeking registration would be required to submit its student-facing documents, including terms and conditions, policies for making changes to courses, complaints processes and refund and compensation policies.

Consultation questions

6. What are your views on:

- a. our proposed document submission requirements?
- b. our proposed approach to providers that do not intend to charge fees or register students?

Decision

107. We have decided to implement the proposed document submission requirements in broadly the form that we consulted on. Alongside this document we are publishing the outcomes of our consultation on changes to registration application requirements, including our decision to determine the document submission requirements via a section 3(5) Notice. We are implementing the s3(5) Notice with some minor amendments to the version on which we consulted in relation to initial condition C5; to clarify that the requirement to submit relevant extracts of template contracts between apprentices and their employer also applies to other employer-sponsored students.

108. For clarity, we have also decided to make the following changes to the declaration form to be submitted for initial condition C5:

- a. To include further descriptions of the offences to be reported. We consider that this allows the user to more clearly and easily identify the nature of the offence about which they are being asked to make a declaration.
- b. To include declarations related to undertakings accepted by enforcement bodies and outstanding applications for enforcement orders made by enforcement bodies. In the consultation we proposed that these declarations would be required.¹⁶ However, we omitted the relevant declarations from the template declaration form provided with the consultation.

109. Alongside this document, we are publishing updated 'Regulatory advice 3: How to register with the Office for Students'. In that document we provide further information about the documents that providers, including those in subcontractual partnerships and those delivering apprenticeships or other employer-sponsored provision, are required to submit. The advice also explains how (and within what parameters) providers may submit supporting information with their application.

¹⁶ See paragraph 78 at [Proposal 4: Requirements of the condition](#) and paragraph 142 at [Proposal 6: Document submission requirements](#).

Summary of respondents views

Key themes

110. There was some support for the proposals with respondents agreeing that a provider self-assessment should not be required and commenting, for example, that the list of student-facing documents was comprehensive. Some also suggested that the requirements would facilitate equal and consistent assessment across different provider types.
111. Some respondents were less supportive or expressed reservations. Some asked us to list all the documents that we expected providers to submit. Overarching comments included that the requirements were too vague, or too narrow (for example, providers should also be required to submit prospectuses and open-day materials) or too focused on paper-based compliance at the expense of 'in practice' compliance. Some respondents suggested that a provider's policy and process documents may not be written for a student audience and use legalistic language.
112. We have summarised below the other key themes arising in respondents' comments.

Regulatory burden

113. It was suggested that small or specialist providers may face significant regulatory burden in relation to the submission requirements given the number of documents required. Conversely, it was also suggested that larger providers may have lengthier and more time-consuming internal document-approval processes and so face burden.

Provider context (including removal of provider self-assessments)

114. Some disagreed with, or expressed views about, the proposal not to require submission of a self-assessment about how a provider has given due regard to relevant guidance about how to comply with consumer protection law (as is currently required under initial condition C1). Respondents suggested, for example, that it would remove the need for provider self-reflection and the ability for providers to provide relevant contextual information without which, it was suggested, the OfS may make 'inaccurate assumptions'. In the absence of a self-assessment, respondents suggested including a narrative submission for the provider to set out key information about its provision and partnerships.
115. Some respondents disagreed with focusing on a provider's intentions in determining submission requirements and considered we should look at its current position instead. Some respondents considered that providers should be subject to the same submission requirements regardless of their intention to charge fees or register students. Reasons cited were the student interest, concerns about a 'lighter touch' approach for delivery providers in subcontractual partnerships and a need to avoid loopholes. Conversely, a respondent expressed views about the replication or standardisation of documents across the sector which it was suggested would not give assurance that a provider understood its responsibilities in practice.

Our response

116. In our consultation, we proposed a checklist of documents that we expect to receive in relation to initial condition C5. We consider that this sets out our expectations clearly, while allowing a

degree of flexibility to account for the diversity of providers seeking registration, including those working in partnership with other providers or organisations.

117. Our proposals defined 'Information for students' (now 'information about the provider') broadly to include any written material used to inform communications with students (for example, scripts for recruitment phone calls). We did not propose submission of this material at the point of registration. Instead, we noted that we may require later submission if, for example, we were prompted to undertake further enquiries following a third-party notification. We remain of the view that this approach strikes an appropriate balance between mitigating regulatory risk and regulatory burden.
118. The assessment of an initial condition is an assessment at a point in time, based on the available evidence. We may sometimes consider a provider's behaviour in practice (including with reference to part b. of the prohibited behaviour list, 'Descriptions relating to conduct and omissions'), for example, where a third-party notification raises concerns about how the provider is operating its student-facing documents in practice. We may then use our powers under section 62 of the Higher Education and Research Act (HERA) 2017 to compel the unregistered provider to submit further information to inform our assessment of compliance with initial condition C5. However, we do not receive third-party notifications for unregistered providers as frequently as we do for registered providers.
119. To comply with the requirements of part c. of the prohibited behaviours list in initial condition C5, a provider's documents must be written in clear and understandable language. A provider may decide to produce simple summaries of its documents specifically for students.

Regulatory burden

120. We recognise that smaller providers may have fewer staff to prepare and compile documents. A larger provider may have more staff resource to draft documents but may have more complex oversight and approval processes. In our view, our proposed document submission requirements include documents that all providers, small or large, should have to manage their relationships with students. It is for providers to manage their resources and ensure there are efficient and effective structures in place to satisfy our regulatory requirements. Registration with the OfS confers substantial benefits on providers, not least access to public funding. We consider that our regulatory requirements provide appropriate protections for students and for public money.

Removal of provider self-assessment

121. We do not consider the removal of a self-assessment itself removes the need for a provider to reflect on its practices, as suggested by one respondent. We would still expect a provider to reflect on, review and revise its arrangements, separately to the OfS assessment process, not least when reviewing its compliance with consumer protection law. Our proposed checklist for initial condition C5 includes multiple free-text areas where a provider may 'include any additional information [it] consider[s] to be relevant (or otherwise leave blank)'.¹⁷ We have also consulted on new initial conditions relating to management and governance and we are publishing final decisions on that consultation alongside this document. The documents to be

¹⁷ See Appendix 2 at [Annex A: Proposed notice under Section 3\(5\) of HERA](#).

submitted in relation to those conditions will by their nature provide us with detailed information about the context of the provider.

122. Many respondents referred specifically to employer-sponsored courses or apprenticeships. We recognise the complexities of arrangements between providers, students and employers. Our proposals on new initial condition C5 recognised that a provider's policies may refer to the role of the employer according to the terms set out in the contract between the provider and the employer (and between the employer and student).

Provider context

123. We remain of the view that considering a provider's intentions is consistent with our current practices. We recognise that some providers may not charge tuition fees to students, including, for example, where students are liable to pay tuition fees to a lead provider under a subcontractual arrangement. We proposed that, in circumstances where the provider applying to register does not intend, if registered, to charge tuition fees to students, to satisfy our submission requirements it may submit a combination of its own documents and those of other providers or organisations.
124. We remain of the view that this is an appropriate approach. In our view, requiring a provider to prepare and submit documents it would not use (for example those relating to the payment or refund of tuition fees), would create unreasonable burden. In other respects, providers delivering under a subcontractual arrangement will be required to submit the same documents as other providers. This includes any other student contract, other than relating to fees, and any refund and compensation policy related to the delivery of other services. As we set out in the consultation, where a provider indicates that it only intends to deliver via subcontractual arrangements, we may require it to report to us should that position change after it is registered.
125. Each provider must ensure that its documents are appropriate to its own circumstances and that it understands its own responsibilities. There may nevertheless be provisions that would be appropriate in the majority of, if not all, providers' documents. Indeed, we have previously indicated that we may wish to work with the sector to develop a model student contract recognising that there may be a basic level of protection which should be afforded to all students.

Decision on Proposals 7, 8, 9: Initial condition C3, publication of documents and ongoing condition C3

126. Our February consultation set out three proposals relating to existing initial and ongoing condition C3 and the publication of documents by providers assessed under initial condition C5:

- Proposal 7: We proposed that initial condition C5 would replace initial condition C3 (Student protection plan).
- Proposal 8: We proposed that a provider assessed under initial condition C5 would publish its student-facing documents within two weeks of its registration.
- Proposal 9: We proposed that the OfS would not apply ongoing condition C3 for a provider assessed under initial condition C5.

Consultation questions

7. Do you agree or disagree with our proposal to remove initial condition C3 (student protection plan) and replace it with the requirements of proposed initial condition C5? If you disagree, please give reasons for your answer.

8. Do you agree or disagree with our proposal that, following successful registration, a provider should be expected to publish the student-facing documents it submits as part of its application to register? If you disagree, please give reasons for your answer.

9. Do you agree or disagree with our proposal to change the applicability of ongoing condition C3 such that it would not apply to a provider registered under proposed initial condition C5? If you disagree, please give reasons for your answer.

Decision

127. We have decided to implement proposals 7, 8 and 9 in the form that we consulted on. This means we have decided to remove initial condition C3 (and replace it with initial condition C5) and change the application of ongoing condition C3 such that we will not apply it for a provider assessed and registered under initial condition C5. We will also expect a provider assessed under initial condition C5 to publish its student-facing documents within two weeks of its registration, using template text provided by the OfS.

128. We will update the template letter we send to successfully registered providers to clarify our expectations for document publication following successful registration:

- a. Documents should be written sufficiently clearly for a student audience to satisfy the requirements of the condition, including part b. of the OfS prohibited behaviours list.
- b. A provider may decide to publish frequently asked questions or summaries of key documents alongside (but not instead of) the documents themselves.

- c. For a teaching provider delivering higher education through a subcontractual partnership, where they have submitted a document belonging to another higher education provider, they may publish this directly or they may provide a link to the relevant page on the lead provider's website (this should be agreed in consultation with the lead provider).
- d. Where a provider delivering apprenticeships or other employer-sponsored provision submits extracts from template contracts between an employer and a student (employee) as contextual information, these extracts do not need to be published.

Summary of respondents views

Agreement and disagreement

129. Respondents were asked expressly whether they agreed or disagreed with each of proposals 7, 8 and 9. There were mixed views on Proposal 7, to remove initial condition C3 and replace it with the requirements of proposed initial condition C5, with 11 respondents broadly agreeing, five broadly disagreeing and six who did not express an opinion or were unsure. There was a similar mix of responses to Proposal 9 to change the applicability of ongoing condition C3 (11 respondents expressed broad agreement, four broad disagreement and seven no opinion or were unsure). There was stronger support for Proposal 8 that, following successful registration, a provider should publish its student-facing documents: 14 respondents broadly agreed, one disagreed and seven were unsure or did not express an opinion.

130. Most respondents also provided detailed comments in their responses with many qualifying their responses to the 'agree/disagree' questions. For example, some respondents stated they agreed with the proposals but expressed caution in some areas; others stated they disagreed overall but expressed support for some aspects of the proposals; some who stated they were unsure provided narrative responses that expressed mixed views. We have set out below our qualitative analysis of the comments received on the proposals.

Key themes

131. The respondents who were broadly supportive of the proposals about condition C3, highlighted some limitations of current student protection plans. They noted that these plans can quickly become outdated and may not give students a reliable picture of what to expect. Some considered that the proposed approach would be clearer, more comprehensive and useful for students while also reducing regulatory burden for providers. Many of these respondents supported a similar approach for all registered providers in future.

132. Some respondents raised views on one or more of the proposals or suggested alternative approaches. Key themes are set out below.

Two-tier system

133. Respondents reiterated views about the risk of a two-tier regulatory system where different ongoing conditions apply depending on when a provider was registered. Some suggested our proposals should be delayed to avoid potential confusion and inconsistency for students while a wider review of student protection plans took place. Others considered we should extend the proposals to registered providers, subject to further consultation.

Adequacy of current requirements

134. There was broad (but not unanimous) agreement about the perceived limitations of current student protection plans but some disagreement that our proposals represented the best way of improving this. Some respondents suggested improving the quality of providers' C3 student protection plans (including through the provision of additional OfS guidance) instead of, or alongside, the introduction of initial condition C5. One respondent suggested the proposals risked replacing specific and visible requirements with a broad principle (and that this was a regressive approach). They highlighted that initial condition C3 requires providers to plan for adverse scenarios and set out measures for redress. One respondent commented that providers are only required to produce market exit plans when student protection directions are issued under ongoing condition C4.

Publication of documents

135. Some respondents suggested that, to provide more digestible information, providers could publish frequently asked questions or summaries instead of (or as well as) the required documents. One respondent disagreed with the publication of documents due to plagiarism risks. Some respondents requested clarification about responsibilities for publishing student-facing documents in subcontractual partnerships and the impact on a delivery provider's application where its partner did not publish relevant documents. One respondent suggested publication of student-facing documents should be 'upon registration' rather than within the two weeks following.

Our response

Two-tier system

136. We have responded to comments on a 'two-tier' system under Proposal 1 above.

Adequacy of current requirements

137. We have considered ways to improve the quality of existing student protection plans, including through the provision of additional OfS guidance to help providers write them in clearer, more student-focused language and to make them more transparent around the risks to students' ability to continue their studies at a particular time. However, as we noted in the consultation, even a well-written and transparent plan can quickly become outdated and may not give students a reliable picture.

138. Under initial condition C5, we are introducing an overarching principle of fairness, supported by specific tests. While a provider would no longer need to submit a student protection plan under initial condition C3, it would instead be required to publish a set of student-facing documents and these would constitute its student protection plan. These must show how it plans for adverse circumstances (such as course changes), explain what students can do if they are unhappy (through complaints processes) and set out how students can seek redress (refund and compensation policies).

139. The OfS will continue, where appropriate, to require providers to undertake market exit planning through student protection directions under ongoing condition C4. Ongoing condition C4 will continue to apply to all registered providers, including those that were assessed against initial condition C5 at registration. This ensures that we can deploy additional robust

protections for students where a provider is facing a material risk. In such circumstances, far more detailed planning is needed than a forward-looking student protection plan can provide.

Publication of documents

140. A provider's policies and processes should be easily accessible and written sufficiently clearly for a student audience. Providers may decide to publish frequently asked questions or summaries of their policies and processes alongside their documents. We are not persuaded that summaries are an adequate substitute for the documents themselves.
141. As we note above (see Proposal 6), each provider must ensure that its documents are appropriate to its own circumstances and that it understands its own responsibilities. There may nevertheless be provisions that would be appropriate in the majority of, if not all, providers' documents. Indeed, we have previously indicated that we may wish to work with the sector to develop a model student contract recognising that there may be a basic level of protection which should be afforded to all students.
142. We hope that registered lead providers in partnership with providers seeking registration under these requirements, would want to provide transparent information for students and applicants. The delivery provider may publish the lead provider's documents itself or provide clear links to the lead provider's website. Publication would be expected within two weeks after successful registration and so would not affect the registration itself. Two weeks was the maximum time proposed for publication of documents following registration in our consultation, and this is aligned with our current practice in relation to student protection plans. We consider it to be a fair and reasonable timescale within which to require publication of documents.

Other questions about the consultation

143. We asked the following general questions to seek feedback about the clarity of the draft conditions, guidance and the proposals in general. We also asked for comments on unintended consequences, including for individuals with protected characteristics.

Consultation questions

10. How clear are the requirements of proposed initial condition C5 as drafted at Annex C? If any elements of the proposed initial condition are unclear, please specify which elements and provide reasons.

11. How clear and helpful is the guidance as drafted at Annex C? If any elements of the draft guidance are unclear or could be more helpful, please specify which elements and provide reasons.

12. Do you foresee any unintended consequences resulting from the proposals in this consultation? If so, please indicate what you think these are and the reasons for your view.

13. Are there any aspects of these proposals you found unclear? If so, please specify which, and tell us why.

14. In your view, are there ways in which the policy objectives discussed in this consultation could be delivered more efficiently or effectively than proposed here?

15. Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

Summary of respondents views

Key themes

144. Where responses repeated themes covered elsewhere, we have not repeated them here. Therefore, the following sets out new issues raised in response to questions 10 to 15.

145. Themes arising in responses to these questions included:

- a. One respondent suggested that a provider found not to have complied with ongoing condition C1 should have the opportunity to provide mitigating circumstances. This was in response to a statement in the proposed draft guidance for initial condition C5 which states that, where a provider (or another legal entity previously operating substantially the same higher education business) has previously been registered and there is a previous history of non-compliance with ongoing condition C1, this is 'likely to result in a judgement that initial condition C5 is not satisfied'.
- b. Some respondents requested better information and support for students to help them understand what fairness looks like, what the OfS's requirements are and how students can seek redress when things go wrong. One respondent asked how we will seek students' views to inform our assessment and one suggested there should be

mechanisms for students to propose additions to the prohibited behaviours list based on emerging harms. One respondent highlighted that compensation may not always be what students most need or want. One respondent considered the condition could require providers to do more to account for how their practices might affect students with protected characteristics or those who are otherwise vulnerable. Another respondent considered providers may benefit from more guidance in this area.

- c. One respondent considered the tone of the guidance to be too cautious and provider-centric with too much emphasis on proportionality and provider context. Other respondents suggested the assessment should focus on supporting providers to improve rather than taking punitive action where they fall short of expectations. One respondent suggested the OfS is making registration harder for providers that recruit students who are typically underrepresented in higher education (with a consequential effect on these students).
- d. One respondent suggested confirming in guidance that higher education provision delivered on behalf of the provider may not be in scope (or may only be partially in scope) where it is subject to different legal requirements (for example, students in Scotland on a course validated by an OfS-registered provider).

146. Some respondents sought clarification including on the following points:

- a. Which elements of the proposed condition are based on existing legal frameworks and which go beyond this.
- b. Whether a single piece of evidence would lead to a registration refusal.
- c. How 'track record' would be considered where providers regularly change and update their websites without archiving previous versions of text or documents.
- d. Guidance for providers on tuition fee increases for continuing students (referencing Ofcom's position on banning in-contract price increases).¹⁸

Our response

147. We have responded to the points above in the same order.

- a. We clarify that a provider will have a statutory 28-day period to submit representations in response to any provisional decision taken by the OfS to refuse registration on any grounds, including a judgement that initial condition C5 is not satisfied because of a history of non-compliance with ongoing condition C1.
- b. Providers are likely to be the first point of contact for students seeking information and support. Our proposals included an expectation that providers would publish their key documents once registered and we provided draft template text for providers to use on their websites.¹⁹ We agree that receiving a refund or compensation may not always represent the best or only possible outcome and other forms of redress may be

¹⁸ See [Ofcom bans mid-contract price rises linked to inflation](#).

¹⁹ See [Annex E: Proposed template text for publication of student protection plan on provider's website following successful registration](#).

appropriate when things go wrong. However, we remain of the view that a provider should have refund and compensation policies in place (as these provide an important form of redress) and it is important for us to review these at registration. As we continue to develop our consumer protection role, we are keen to understand students' understanding of consumer rights and are thinking about how best to do this, including in relation to particularly vulnerable students. Where students inform us of issues at a provider that is seeking registration, we may make further enquiries to inform our assessment of the provider's registration application.

- c. We consider our proposals to be reasonable and to provide important protections for students. If a provider cannot meet our requirements, we consider that students, including those from underrepresented groups, would be better served by a refusal to register that provider. Our requirements explain our regulatory expectations clearly and afford providers plenty of opportunity to provide information that explains their context.
- d. Transnational education is not excluded from the scope of our new requirements, and we consider that all students should be treated fairly no matter where they are studying. We recognise there are jurisdictional complexities in relation to consumer protection law and where the contract with a student is formed. While initial condition C5 is informed by consumer protection law, it is separate from legal requirements. We have previously set out that courses are subject to the same regulation whether students are resident in England or elsewhere and this applies across our conditions.²⁰

148. Respondents sought further clarity on some points, and we have provided this below:

- a. The consultation document (including the proposed guidance within the condition) made clear where elements of our proposals went beyond legal requirements, in particular in Proposal 4. For example, we noted that contract terms that may be regarded as unfair according to the Consumer Rights Act 2015 (the 'grey list') would always be unfair under initial condition C5 (part a. of the OfS prohibited behaviours list). We also noted that the 'key documents' referred to in the OfS prohibited behaviours list would include a provider's policies relating to the circumstances in which it may make changes to its courses, its refund and compensation policies and its compliance processes, as well as its contract terms and conditions. As we proposed, we will consider documents beyond those that may ordinarily have contractual effect, and the condition therefore has a wider scope than consumer protection law. Initial condition C5 refers to consumer protection law in places. Where we have adapted existing legal provisions, this is to use language that is relevant to the higher education sector. Where a provision is closely aligned with legislation, we have used the same or very similar language.
- b. A single piece of evidence of unfairness (as defined by the condition) may, in principle, lead to a provisional decision that the condition is not satisfied and therefore that registration should be refused. In these circumstances, all providers would have a 28-day period to submit representations against a provisional decision to refuse registration.
- c. Where our proposals refer to 'track record' (see Proposal 4), this means any findings of non-compliance with consumer protection law or other relevant offences. Our

²⁰ OfS, '[Transnational education: Protecting the interests of students taught abroad](#)' (Insight 18).

requirements do not require providers to submit evidence of historical documents that are no longer in use by the provider.

- d. For providers registered in the Approved (fee cap) category, the OfS publishes guidance about how to prepare access and participation plans, including an ‘inflation statement’.²¹ This statement must set out whether a provider will increase fees, specifying the objective verifiable index that would be used (for example, the Retail Price Index or the Consumer Price Index). In all cases this amount must not exceed the maximum amount prescribed by the Secretary of State for Education. All providers (regardless of the category of registration) must ensure they comply with consumer protection law, specifically the Consumer Rights Act 2015, schedule 2, paragraphs 14²² and 15²³ (which we have used to inform provisions xi. and xii. in part a. of the OfS prohibited behaviours list). Under provision xii, a student must have a right to cancel a contract in the event of a price increase, even where that price increase is provided for in the contract. We note that Ofcom has banned in-contract price increases linked to inflation.²⁴

²¹ See [Annex D: Guidance on completing the FIT document](#).

²² ‘A term which has the object or effect of giving the trader the discretion to decide the price payable under the contract after the consumer has become bound by it, where no price or method of determining the price is agreed when the consumer becomes bound’, [Consumer Rights Act 2015](#).

²³ ‘A term which has the object or effect of permitting a trader to increase the price of goods, digital content or services without giving the consumer the right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded’, [Consumer Rights Act 2015](#).

²⁴ See [Ofcom bans mid-contract price rises linked to inflation](#).

Annex A: Analysis of responses to the OfS prohibited behaviours list

1. We have summarised below, respondents' comments on specific provisions in our prohibited behaviours' list, together with our response. Where we have made changes to provisions in the list, we have explained that in our response. The 'prohibited behaviours' list showing the changes we have made is attached at Annex C. We have highlighted in that document, the changes that we have made to the version that we consulted on. For consistency and clarity, wherever we have referred to 'students' in the OfS prohibited behaviours list, we have edited the formatting to use bold text which therefore refers to the defined term at C5.8.

Part a. Key documents

Summary of respondents' views and our response

2. **OfS prohibited behaviour list, part a, provision 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.'

Respondents' comments: Respondents suggested removing the second sentence about offsetting money because they considered it could give rise to increased numbers of vexatious claims with the aim of delaying payments. It was also suggested that providers should be able to use 'force majeure' clauses.

Our response: Our provision is closely aligned with the provision at paragraph 2, Schedule 2 of the Consumer Rights Act (CRA): 'A term which has the object or effect of inappropriately excluding or limiting the legal rights of the consumer in relation to the trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any of the contractual obligations, including the option of offsetting a debt owed to the trader against any claim which the consumer may have against the trader'. Where a provision is closely aligned with legislation, we consider it appropriate to use the same or very similar language.

'Force majeure' is often used as a catch-all term to describe events outside a provider's control. We consider this to be too broad and providers should be more specific. Providers may also wish to refer to paragraphs 5.34 to 5.41 of the CMA's 2023 consumer law advice for higher education providers to understand their legal obligations in relation to paragraph 2, Schedule 2 of the CRA.²⁵

3. **OfS prohibited behaviour list, part a, provisions iv. and v:** 'requiring a student to pay a disproportionately high sum of money as penalty.'

Respondents' comments: It was suggested that we should review the framing of 'a disproportionately high sum of money' as it was considered to be subjective.

Our response: Paragraphs 5 and 6 of Schedule 2 of the CRA use the same language of 'a disproportionately high sum'. A provider will have the opportunity to submit representations

²⁵ GOV.UK, '[Higher education: consumer law advice for providers](#)'.

against any provisional decision taken by the OfS to refuse registration on the grounds of non-compliance with initial condition C5.

4. **OfS prohibited behaviour list, part a, provision ix:** ‘binding a student to terms with which they have not had a real opportunity to familiarise themselves before signing the contract.’

Respondents’ comments: Additional clarity was sought in respect of ‘a real opportunity’, specifically to confirm that the student must have access to a full copy of the contract and be made aware of their right to a 15-day cooling off period.

Our response: This provision is closely aligned with the provision at paragraph 10, Schedule 2 of the CRA: ‘A term which has the object or effect of irrevocably binding the consumer to terms with which the consumer has had no real opportunity of becoming acquainted before the conclusion of the contract’. However, we agree that it may be helpful to provide the examples the respondent has highlighted. We have therefore amended the provision as follows (addition is in bold text):

Provision 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.**’

5. **OfS prohibited behaviour list, part a, provision 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;
 - d. after the student has signed the contract, and without valid reason which is specified in the contract.’

Respondents’ comments: It was suggested that we should add ‘and without providing a suitable alternative’ after ‘unilaterally’.

Our response: Where a provision is closely aligned with legislation, we consider it appropriate to use the same or very similar language. This provision is closely aligned with the provisions at paragraphs 11 and 13 of Schedule 2 of the CRA:

11. ‘A term which has the object or effect of enabling the trader to alter the terms of the contract unilaterally without a valid reason which is specified in the contract’

13. ‘A term which has the object or effect of enabling the trader to alter unilaterally without a valid reason any characteristics of the goods, digital content or services to be provided.’

6. **OfS prohibited behaviour list, part a, provision xii:** ‘allowing a provider to increase the price payable without giving the student the right to cancel the contract.’

Respondents’ comments: It was suggested that we should amend this provision to: ‘allowing a provider to increase the price payable, where not allowable under the contractual agreement, without giving the student the right to cancel the contract. This could include statutory tuition or UKVI and Home Office fees’.

Our response: The purpose of the provision is that a student can cancel a contract in the event of a price increase. We agree that increases should only be made where these are allowable under the contract. However, we consider that a student should have the right to cancel regardless.

7. **OfS prohibited behaviour list, part a, provision xiii:** ‘allowing the provider to determine whether the services supplied conform with the contract.’

Respondents’ comments: It was suggested that we should remove the provision on the grounds that it moves the expertise that determines whether the services conform to the contract and legal requirements to the non-expert view.

Our response: This provision is closely aligned with the provision at paragraph 10, Schedule 2 of the CRA: ‘A term which has the object or effect of giving the trader the right to determine whether the goods, digital content or services supplied are in conformity with the contract....’

Part b. Descriptions related to conduct and omissions

Summary of respondents’ views and our response

8. **OfS prohibited behaviour list, part b, provision i.B.** ‘claiming that the provider is a “university” without permission to use this term.’

Respondents’ comments: Clarity was sought on whether this provision includes use of ‘university centre’ (or similar).

Our response: Use of the term ‘University’ alongside other words such as ‘campus’ or ‘centre’ requires a letter of non-objection from the Department for Education.²⁶ Use of these terms without permission would be considered misuse of the term ‘university’. We have therefore amended this provision as follows (addition is in bold text):

‘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.’

9. **OfS prohibited behaviour list, part b, provision 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.’

Respondents’ comments: It was suggested that this should be clarified as ‘it is open to interpretation.’

Our response: Part b. of the proposed OfS prohibited behaviours list was informed by the Consumer Protection from Unfair Trading Regulations (CPUTRs) 2008, schedule 1,

²⁶ GOV.UK, ‘[Use of university, polytechnic and higher education in business and company names \(other than for university and university college title\)](#)’.

‘Commercial practices which are in all circumstances considered unfair’.²⁷ Since publishing our consultation, the provisions of schedule 1 of the CPUTRs have been incorporated (with minor amendments) into the Digital Markets, Competition and Consumer Act (DMCCA) 2024, schedule 20. This came into force on 6 April 2025 and we have therefore compared provision ii. of part b. of the OfS prohibited behaviours list with the updated legal requirements set out in the DMCCA.

Our comparison shows that the provision broadly combines the provisions of paragraphs 5 and 6 in schedule 20 of the DMCCA, adapted to be more relevant and specific to the higher education sector (for example, with reference to ‘courses’ rather than ‘products’). Paragraphs 5 and 6 of schedule 20 of the DMCCA are as follows:

5. ‘(1) Making an invitation to purchase products at a specified price where:

- a) the trader has reasonable grounds for believing that it will not be possible for the trader to offer those products, or equivalent products, for supply at that price, in reasonable quantities, for a reasonable period of time (or to procure another trader to do so), and
- b) the trader does not disclose that fact.

.....

6. ‘Making an invitation to purchase products at a specified price and then:

- a) refusing to show the advertised item to consumers,
- b) refusing to take orders for it or deliver it within a reasonable time, or
- c) demonstrating a defective sample of it,

with the intention of promoting a different product.’

Given the alignment with requirements in the DMCCA, we have therefore decided to retain provision ii. as drafted. In the CPUTRs, the behaviours were previously described as ‘bait advertising’ or ‘bait and switch’ and we consider these are concepts that should be broadly understood.

A provider will have the opportunity to submit representations against any provisional decision taken by the OfS to refuse registration on the grounds that its behaviour is contrary to the specified provision.

10. **OfS prohibited behaviour list, part b, provision xi.** ‘Making persistent and unwanted contact with applicants or students by telephone, email, social media, or other means.’

Respondents’ comments: Some respondents suggested that we should remove or clarify the term ‘persistent and unwanted contact’ as it was considered to be too subjective and some respondents considered that this may stop providers making legitimate contact with students who are not attending classes and where there are welfare concerns.

²⁷ See [The Consumer Protection from Unfair Trading Regulations 2008](#).

Our response: This provision broadly combines the provisions or paragraphs 27 and 28 in Schedule 20 of the DMCCA but has been adapted to use language more relevant and specific to the higher education sector (for example, by referring to ‘applicants’ and ‘students’):

27. ‘Ignoring a request from a consumer to leave or not return to the consumer’s home except in circumstances and to the extent justified to enforce a contractual obligation’.

28. ‘Making persistent and unwanted solicitations by any means, other than by attending at the consumer’s home, except in circumstances and to the extent justified to enforce a contractual obligation’.

Noting that ‘persistent’ contact is used in the DMCCA, we consider it to be appropriate and consistent to use this word. However, we accept that ‘contact’ could be interpreted broadly to include welfare checks on students which was not our intention (and which we would not want to deter or discourage). Our intention in the original drafting was to address aggressive marketing practices and excessive or unreasonable actions to enforce contractual obligations (for example, pursuing student debts). To clarify the intent behind our original proposal, we have amended this provision as follows (addition is in bold text):

Provision xi. ‘Making persistent and unwanted contact with applicants or students 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.**’

11. We have made some clarificatory changes in some instances where we use the word ‘student(s)’ in part b. This is to ensure the wording reflects our original intention that particular provisions also relate to ‘anyone with an interest in studying at the provider’. These changes are to provisions iv, vi, vii and xi.

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

Summary of respondents’ views and our response

12. **OfS prohibited behaviour list, part c, provision 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 by another body with which the provider has a contract for the provision of higher education or ancillary services.’

Respondents’ comments: Some respondents suggested that ancillary services should not be included due to variations between a lead provider and a delivery provider.

Our response: As set out under Proposal 5, we have decided that ancillary services remain in scope of the condition. As set out in the consultation (paragraph 97), where information provided about ancillary services is unclear or inaccurate, this may affect a student’s choice of provider or course. The provision of third-party ancillary services is not in scope of the condition and a provider is not responsible for the information published by a third party about such services. However, a provider is accountable for all the information it publishes itself or otherwise makes available. The provider is therefore responsible for ensuring its own

information is accurate and consistent with any information published or made available by a third party with which it has a contract for the provision of ancillary services.

We have made a change to provision iii. to clarify our original intention that, where this provision refers to 'students', this also relates to 'anyone with an interest in studying at the provider'. We have amended the provision as follows (addition is in bold text):

Provision 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.'

13. **OfS prohibited behaviour list, part c, provision 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).'

Respondents' comments: It was suggested that 'expressly clear' is too subjective and should be removed.

Our response: Part c. is broadly informed by principles for information provision set out by the CMA in their publication, 'Higher education: consumer law advice for providers'.²⁸ 'Expressly clear' means setting out the stated information explicitly and unambiguously (rather than by omission or implication). We have amended the provision to clarify this, as follows (addition is in bold text):

Provision 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.**'

Part d. The providers policies relating to the circumstances in which it may make changes to its courses.

Summary of respondents' views and our response

14. **OfS prohibited behaviour list, part d, provision i.D:** 'do not provide information about circumstances in which it may make changes to all of the following....

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).'

Respondents' comments: It was suggested that provisions should include 'without a suitable alternative being made available' to allow providers flexibility to adjust delivery locations.

Our response: The behaviour that would be prohibited under this provision is the non-inclusion of information about the circumstances in which a provider may make changes to teaching location and facilities (which may include the provider's consideration of alternatives).

²⁸ GOV.UK, 'Higher education: consumer law advice for providers'.

The provision does not exclude a provider from adjusting delivery location but requires it to set out clearly the circumstances in which this might happen and how it would manage the situation.

Part e. The provider's complaints processes

Summary of respondents' views and our response

15. **OfS prohibited behaviour list, part e, provision ii:** 'does not include a clear point of contact for making a complaint (including where this contact point is external to the provider as may be the case in some types of academic partnership).'

We did not receive specific feedback about this provision but have reflected that 'a clear point of contact' may suggest we require a provider's policy to have a named point of contact which was not our intention. We have therefore amended the provision as follows:

Provision 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).'**'

16. **OfS prohibited behaviour list, part e, provision v:** 'does not make students aware of their ability to use the complaints scheme run by the Office of the Independent Adjudicator of Higher Education.'

Respondents' comments: It was suggested that this provision may lead to confusion about the scope of the OIA's complaints scheme and lead to an increase in enquiries to the OIA from individuals who are ineligible to access their services.

Our response: We have decided to amend this provision to provide greater clarity about the OIA's process. The provision has been amended as follows (addition is in bold text):

Provision 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.'**

17. We have identified some minor grammatical inaccuracies in part e. and have amended the provisions to correct these (for example, 'the provider's complaints processes...does not' will be changed to 'the provider's complaints processes...do not').

Part f. The provider's refund and compensation policies

Summary of respondents' views and our response

18. **OfS prohibited behaviour list, part f, provisions iii / iv:** 'do not clearly set out the provider's approach to calculating refunds / compensation.'

Respondents' comments: It was suggested that these provisions should be removed as they prohibit the ability of providers to make suitable arrangements on a case-by-case basis, including accounting for the level of detriment experienced by a student.

Our response: We disagree that the provisions have the effect described: they require a clear approach but do not prescribe what this approach should be.

Part g. Fake reviews

Summary of respondents' views and our response

19. **OfS prohibited behaviour list, part g, provision i:** 'The provider (or another entity working on its behalf):

i. publishes a fake review for the provision of higher education or ancillary services...'

Respondents' comments: It was suggested that ancillary services should not be included as these may be outside the direct control of the provider.

OfS response: As set out under Proposal 5, we have decided that ancillary services remain in scope of the condition and therefore it is appropriate that this provision also includes ancillary services. Under provision i. the provider is responsible for fake reviews for ancillary services 'for which there is a contract between a student and the provider' (defined at C5.8a, as amended – see Annex C). Where a contract for ancillary services is between the student and a third party, these services are outside the scope of the condition and therefore fake reviews about these services are also not in scope of provision i.

Where a provider works with recruitment agents or other entities that similarly operate on its behalf, we consider it is reasonable to expect it to have oversight of (and exert control over) these entities in relation to the 'fake reviews' provisions in the OfS prohibited behaviours list. For clarity, we have decided to amend this provision to include the example of a recruitment agent as an entity that may be working on behalf of a provider in relation to this provision (addition is in bold text):

Provision i: '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 or ancillary services...'

We have also added clarification to our guidance (see Annex B) in relation to recruitment agents and other entities similarly working on behalf of a provider.

20. **OfS prohibited behaviour list, part g, provision i:** '... A review will be considered fake if:

- A. it falsely claims to have been written by a student;
- B. it is written by a student but the provider conceals that the student received a financial or other incentive, inducement or reward in return for their review.'

We have considered the alignment of provisions in the OfS prohibited behaviours list with similar provisions in consumer protection law in line with a general view expressed by some respondents that this alignment is important. In doing so we identified a difference in coverage between our proposed drafting and the DMCCA in relation to fake reviews. Our original drafting (as above) referred specifically to fake reviews written by students to focus on circumstances that are most relevant to the higher education sector. However, we have reflected that reviews by other individuals may also be relevant (for example, a specialist college that publishes a

review falsely claiming to have been written by an industry expert). For this reason, we consider our original drafting would limit our ability to consider all fake reviews that may be relevant. The DMCCA defines a 'fake consumer review' more broadly as 'a consumer review that purports to be, but is not, based on a person's genuine experience'.²⁹ We have decided to amend provision i.A. to more closely align with the DMCCA. We have also amended provision i.B. as a result of revisions to provision i.A.

Provision i: '... 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.'**

21. **OfS prohibited behaviour list, part g, provision iii:** 'Does not take reasonable and proportionate steps to:

- A. prevent the publication of fake reviews; or
- B. remove from publication any fake reviews.'

Respondents' comments: It was suggested that we should review 'reasonable and proportionate steps' as it is subjective.

OfS response: 'Reasonable and proportionate steps' is used in the DMCCA (schedule 20, paragraph 13(3)) and we therefore consider it to be appropriate and consistent to use this formulation. A provider will have the opportunity to submit representations against any provisional decision taken by the OfS to refuse registration on the grounds that the requirements of initial condition C5 are not met.

22. We have also identified some minor grammatical inaccuracies in part g. and have amended the provisions to correct these.

²⁹ See [Digital Markets, Competition and Consumers Act 2024](#).

Annex B: Initial condition of registration to be implemented

Amendments to the version on which we consulted are highlighted, with text to be removed struck through, and text to be added in red font. Where we have changed the formatting of a word (or words), we have also highlighted this in red (for example student / **student**).

This includes some corrections to grammar and punctuation and for clarity and consistency.

Condition C5: Treating students fairly

Scope

C5.1 The scope of this condition includes:

- a. a provider's relationships with **students**;
- b. the provision of higher education;
- c. the provision of **ancillary services**;
- d. higher education provided (or to be provided) in any manner or form by, or on behalf of, a provider (regardless of which provider holds or will hold the contractual relationship with the **student**);
- e. any arrangements the provider has made or plans to make to attract ~~students~~ **individuals to study at the provider**, encourage **individuals to submit** applications **to study at the provider** ~~to become students~~, 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) ("**information about the provider for students**");

C5.2 For the purposes of this condition:

- a. the provider's relationship with a **student** is treated as being within the scope of this condition:
 - i. regardless of the arrangements for the payment of tuition or other related fees;
 - ii. whether or not the **student** is obtaining higher education services for the purposes of business, trade or profession;
- b. the provision of higher education and **ancillary services** are treated as services;
- c. references to the provision of higher education includes offering the provision of higher education;
- d. references to the provision of **ancillary services** includes offering the provision of **ancillary services**;
- e. references to **key documents** and **information about the provider for students** includes any draft or proposed versions of the relevant information.

Requirement

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 ~~paragraph~~ 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).

C5.5 The provider will be deemed not to satisfy ~~paragraph~~ C5.3 if it has been subject to adverse findings under one or more of the following forms of wrongdoing in a context that directly or indirectly relates to the provision of education and/or **ancillary services**, unless it can demonstrate that it has addressed any issues related to any such adverse findings to the satisfaction of the OfS:

- a. non-compliance with **consumer protection law**, as found by a court of England and Wales or **competent authority**;
- b. the offence provided for in section 214(1) of the Education Reform Act 1988 (unrecognised degrees);
- c. the offence provided for in section 76(6) of the Companies Act 2006 (failure to comply with a Secretary of State direction to change a company name); or
- d. the offence provided for in section 1198 of the Companies Act 2006 (name giving misleading indication of activities).

C5.6 The OfS will take the following non-exhaustive matters into account when determining whether a provider satisfies ~~paragraph~~ C5.3 (where any of these matters apply):

- a. an undertaking by the provider has been accepted by an **enforcement body**, and the undertaking is in connection with behaviour that relates to the provision of education **and/or ancillary services**;
- b. there is an outstanding application for an enforcement order against the provider made by an **enforcement body**, and the application relates to the provision of education **and/or ancillary services**.

C5.7 In the course of the provider's application for registration with the OfS (and the OfS's consideration of that application), the mere removal of a term, provision or any form of information from **key documents** or from any **information about the provider for students** will be insufficient to demonstrate that the provider, if registered, will treat its **students** fairly in accordance with ~~paragraph~~ C5.3, unless it can demonstrate that it has addressed any underlying issues related to that term, provision or form of information to the satisfaction of the OfS.

Definitions

C5.8 For the purposes of this condition C5:

- a. **“ancillary services”** means services for which ~~there is a student~~ **there is a student** may enter into a contract **between a student** and ~~with~~ 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.
- b. **“consumer protection law”** is to be interpreted broadly and includes, but is not limited to, the following legislation (as may be amended from time to time):
 - i. ~~The~~ Consumer Rights Act 2015;
 - ii. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013;
 - iii. The Provision of Services Regulations 2009;
 - iv. The Consumer Protection from Unfair Trading Regulations 2008;
 - v. Digital Markets, Competition and Consumers Act 2024;
 - vi. ~~The~~ Protection from Harassment Act 1997.
- c. **“competent authority”** means the Competition and Markets Authority, or any other body with jurisdiction to make decisions under section 182 of the Digital Markets, Competition and Consumers Act 2024.
- d. **“enforcement body”** means an ~~Enforcement Body~~ **Enforcer** as defined in schedule ~~5 6~~ of the Consumer Rights Act 2015, or ~~defined in Part 8 of the Enterprise Act 2002, or an~~ Enforcer as defined in section ~~464~~ **151** of the Digital Markets, Competition and Consumers Act 2024.
- e. **“former student”** means a person who was a student of the provider in the past, irrespective of the reason for that person no longer being a student of that provider, where there still exists a current relationship based on the former student having been a student of the provider (for example, where a former student has an ongoing complaint against the provider in relation to issues that occurred while they were a student).
- f. **“information about the provider for students”** has the meaning given in C5.1(~~e~~).
- g. **“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.
- h. **“OfS prohibited behaviours list”** means a separate document published by the OfS from time to time that sets out the descriptions pursuant to the test in C5.4a. For the avoidance of doubt, the OfS prohibited behaviours list forms part of this initial condition of registration C5.

- i. **“prospective student”** means, in respect of a student, that a person has already received any form of offer for or on behalf of the provider to commence a course of study, including research courses, at the provider, irrespective of whether that offer is legally binding or is subject to conditions or formalities.
- j. **“student”** includes current students of the provider, **prospective students**, and **former students**.

Draft Summary

Applies to: all providers seeking registration

Initial or general ongoing condition: initial condition

Legal basis: section 5 of HERA

Guidance

Condition C5.1

1. Where this condition refers to a ‘former student’ who has an ongoing complaint against the provider, the OfS would consider whether the student raised their complaint within time limits specified by the provider and whether the time limit set was reasonable.
2. ‘Ancillary services’ includes (but is not limited to) library services, disability support packages, scholarships, accommodation and sports facilities, ~~wherever~~ **where** there is a contract between a higher education provider and a student. **This applies even where a contract or draft contract exists but is not yet in use. For example, this may be the case where services are newly introduced and not yet being delivered, or where students have not yet signed the relevant contract. This is because C5.2d. states that the provision of ancillary services includes the offering of those services and C5.2e states that reference to key documents (including contracts) includes any draft or proposed versions.**
3. ~~Where Ancillary~~ **ancillary services are offered by a third party and the contract for services is between a student and that third party, this ~~do not fall~~ falls within** outside the scope of the condition. **Where a provider works with recruitment agents or other entities similarly working on its behalf, it will be held accountable for their behaviour in relation to the ‘fake reviews’ provision in the OfS prohibited behaviours list. The OfS expects a provider to undertake appropriate due diligence on all third parties and on all third parties’ arrangements, and remains responsible for any contracts it enters into with any third parties.**
4. In cases where two (or more) providers share ancillary services (for example, where one provider delivers services to another provider’s students), these fall within the scope of the condition for whichever provider holds a contract with the student for these services. The same expectations in relation to appropriate due diligence apply in these shared arrangements.
5. Higher education provided ‘in any manner or form’ includes any higher education course. This includes courses at any level and with any volume of learning, and it applies whether or not a course is recognised for OfS funding purposes, or any other purpose. This means, for example, that postgraduate research courses, the study of modules or courses leading to

microcredentials, and apprenticeships, all fall within the scope of this condition. It also includes courses provided face-to-face, by distance learning, or a combination of delivery approaches.

6. Higher education provided 'by, or on behalf of, a provider' includes courses where students are, or will be, in any of the following categories:
 - taught by the provider seeking registration
 - registered with the provider seeking registration
 - studying for an award of the provider seeking registration (including where these services are provided on that provider's behalf).
7. The condition applies to all higher education provided through all forms of partnership arrangements. This includes instances where there is shared contractual responsibility for a student; this may be the case in a subcontractual partnership. In practice, this may result in more than one provider being responsible for compliance with this condition in relation to the same student. The OfS will ~~base its assessment~~ **assess a provider based** on the **arrangements it intends to have in place** ~~provider's stated intentions for~~ if it is registered. This includes whether it intends only to teach students registered by another provider (for example, through a subcontractual arrangement) or to teach students who it will also register (for example, through a validation arrangement).
8. 'Information **about the provider** ~~for students~~' includes anything ~~students~~ **individuals** may rely on in their decision making **about whether (or what) to study at the provider**: for example, emails or other forms of communication; presentations delivered at open days; any written material used to inform communications ~~with students~~ (such as scripts for recruitment phone calls).
9. Arrangements the provider 'plans to make' and 'proposed information' include the situation where a provider applying to register is not yet operating or not yet delivering higher education.

Condition C5.2

10. The condition applies to relationships between a provider and its students, whether the latter pay for higher education or ancillary services directly or indirectly (for example, through Student Loans Company funding). This includes circumstances where a third party pays (for example, an employer or other sponsor).
11. This condition applies to a provider's relationships with students studying for the purpose of their business, trade or profession. This includes, for example, apprentices or other students who are studying as part of employer-sponsored programmes.
12. Higher education and ancillary services are considered 'services' regardless of whether fees are charged and whether it is provided on a 'for profit' or a 'not for profit' basis.
13. The condition applies wherever higher education and ancillary services are offered. This therefore relates to the provider's arrangements to attract, encourage and communicate with students, and includes instances where a provider is not yet delivering such services.

Condition C5.3

14. The overarching obligation of the condition is that a provider must treat its students fairly. Unfair treatment is defined in the condition and is separate from the protections offered by consumer protection law. The OfS expects any higher education provider seeking registration to ensure it understands and complies with its legal obligations.
15. The OfS will consider any of the provider's activities that are connected with providing higher education or ancillary services.

Condition C5.4

16. The OfS will deem that a provider does not treat students fairly where its actions (or its failure to act):
 - fall within the descriptions in a specified list of behaviours (the OfS prohibited behaviours list) (C5.4a); or
 - give rise to actual or likely detriment to students (C5.4b).
17. The OfS will assess the provider's actual 'actions or omissions' and those that are 'proposed or likely' as follows:
 - a. 'Proposed' actions may include, for example, unfair terms and conditions in a contract that is not currently in use, for instance if the provider is not yet delivering higher education.
 - a. 'Likely' relates to circumstances where the provider has not expressly proposed acting or not acting in a specific way but there is evidence to indicate it may do so nevertheless. For example, a provider's contract with its students may be ambiguous, unclear or silent on a particular matter, but its website may contain evidence of unfair treatment of students in relation to that matter.
18. The tests at C5.4a and C5.4b are separate and distinct. If there is evidence of prohibited behaviour, the provider will not meet the test at C5.4a, regardless of whether there is evidence of actual or likely detriment to current, prospective or former students, as defined at C5.8. For example, where the provider displays or presents inaccurate or false information, this is prohibited in all cases according to provisions set out in part b. of the OfS prohibited behaviours list.
19. The OfS prohibited behaviours list is published separately. It forms part of initial condition C5. Some of its provisions are informed by consumer protection law but, in some cases, they may have a different effect in this context. For example, section a. of the OfS prohibited behaviours list specifies some contract terms similar to those that may be regarded as unfair according to the Consumer Rights Act 2015 (the 'grey list'), but which will be treated as always unfair for the purpose of this condition. A provider may satisfy its legal obligations without satisfying the requirements of this condition, and vice versa.
20. 'Detriment' means any harm, damage or loss experienced (or more likely than not to be experienced) by a student. 'Student' in the detriment test has the meaning at C5.8 and therefore includes current, prospective and former students as defined in this condition. The

OfS will consider whether the likely or actual detriment identified, and the action or lack of action leading to it, would be reasonable in all the relevant circumstances.

21. Depending on whether the OfS is considering likely or actual detriment, it expects to take the following non-exhaustive factors into account:
- whether it is reasonable to argue that the course of action proposed or taken is, or was, necessary in the circumstances
 - whether these circumstances are, or were, in the control of the provider
 - whether the provider is doing, or has done, everything ~~possible~~ **reasonable** to limit the extent of the detriment.

Necessary in the circumstances (illustrative examples)

22. In an emergency, a detriment to students may be necessary to avoid a more serious detriment to students, staff or the wider community: for example, a rapid move from face-to-face to online learning may be necessary to avoid risks to public health or health and safety in a pandemic or other localised outbreaks of contagious illness or infection. The provider's actions may give rise to detriment but still be in the interests of all, or the vast majority of, students in the short term.

In the provider's control (illustrative examples)

23. An emergency may be out of ~~the~~ a provider's control, or it may be due in part to ~~the~~ a provider's actions or inaction. For example, a failure to maintain buildings or equipment, or carry out and act on necessary safety checks, may mean a provider has to take action to safeguard students, but these circumstances may ~~well~~ **still be assessed to** have been within the provider's control. A provider seeking registration should consider how broadly its terms and conditions and other documents are drafted, and the circumstances over which it could reasonably be expected to have control.

Steps taken to limit detriment (illustrative examples)

24. Circumstances relating to staffing and resource allocation (including, for example, industrial action) could be within a provider's control, and it may be able to take measures to limit detriment to students. Such steps, however, may not be sufficient to fully address detriment to students and ensure that they are treated fairly.

Condition C5.5

25. The OfS's starting presumption is that a provider does not treat students fairly if it has been subject to findings of non-compliance with consumer protection law, or other wrongdoing as specified in C5.5. The OfS will consider findings made by UK courts or other competent authorities as defined in the condition.
26. The Protection from Harassment Act 1997 may be relevant to cases where a provider aggressively pursues academic sanctions imposed for non-payment of non-tuition fee debts, as this may amount to harassment.
27. Section 214(1) of the Education Reform Act 1988 relates to offering unrecognised degrees. The Companies Act 2006 contains provisions relating to company names that give a

misleading indication of the nature of a company's activities. This includes a provider claiming to be a 'university' without the relevant permission to do so.

28. The OfS will consider relevant any finding that directly or indirectly relates to the provision of any form of education, including further education, not just to higher education. **The OfS will also consider findings in relation to ancillary services.**
29. Where there are findings of wrongdoing, the OfS will consider evidence submitted by the provider to reach a judgement. The OfS will consider the following non-exhaustive factors:
 - the recency of the findings
 - whether the findings relate to matters that were repeated or sustained
 - whether the findings include a view about the deliberateness of the provider's actions or inaction
 - how the provider has engaged with the issue since the finding was made
 - the steps it has taken to address the issue and ensure it does not happen again in future.
30. Where the provider has not engaged with the issue and has not described satisfactory steps to address it, the OfS is more likely to consider that the provider does not treat students fairly.

Condition C5.6

31. The existence of undertakings or applications for enforcement orders **that relate to the provision of education and/or ancillary services** will not automatically lead to a conclusion that the provider does not treat students fairly, as there is no presumption of wrongdoing. The OfS will consider information submitted by the provider, alongside other reasonably available evidence (for example, the provider's documents or information published on its website) to reach a judgement. The OfS will consider whether the information provides reassurance that any issues that led to the undertaking or the application for enforcement order are not – or are no longer – of concern.
32. The context that will be considered relevant to this provision extends beyond higher education and includes, for instance, the provision of further education.
33. **For the purpose of this condition, an 'enforcement body' is defined at C5.8d. Enforcement bodies include the Competition and Markets Authority (CMA) and Trading Standards.**
34. For the avoidance of doubt, C5.6 relates specifically to applications for enforcement orders by enforcement bodies and not to enforcement orders issued by a court. Where ~~this has happened,~~ **a court makes an enforcement order** ~~it the court~~ will also make a finding of non-compliance with consumer protection law. This will be considered under C5.5, with a starting presumption that the provider does not treat students fairly. The provider will have the opportunity to overturn this presumption, as set out in C5.5.

Condition C5.7

35. During the application process, if there are terms or information of concern to the OfS in any of the provider's documents, simply removing these will not be sufficient, unless the provider can

demonstrate that it has addressed any underlying issues associated with these terms. This would be relevant, for example, where a provider removes a term after the OfS has provisionally determined that it is unfair. The OfS will consider:

- the consequences of the removal
- whether the removal addresses the issues
- whether other related issues remain
- whether the removal itself leads to other concerns.

36. An example ~~would be the case~~ **is a situation** where a provider's student contract includes a clause specifying that it will not consider making refunds under any circumstances, but it subsequently removes this term, and submits a refund and compensation policy that the OfS considers fair. In these circumstances, the removal of the original term is likely to be acceptable, as the provider has taken steps to remedy the issue beyond mere removal of the term.

37. The OfS will also consider the following non-exhaustive factors:

- the extent to which the provider has demonstrated it understands why the term or information that it has removed was of concern
- other actions beyond removal that the provider has taken, and the extent to which these address the concern
- whether the provider has replaced the terms with more suitable terms.

38. The OfS will consider the nature and range of the provider's actions relevant to the nature and extent of the original concerns. The OfS will take more assurance where the provider demonstrates it has understood the concern and taken actions to fully address the issue. For example, where a provider has removed an unfair term from a student contract but continues to make similar statements elsewhere on its website, the OfS is unlikely to conclude that the concerns have been addressed. In all circumstances, the test the OfS will apply is whether the provider will, if registered, treat students fairly.

Assessing compliance with the condition

39. The OfS will assess the documents the provider submits with its application. The OfS will also consider any information published by the provider on its website, such as information about:

- courses, including fees
- ancillary services such as library services, accommodation and sports facilities
- affiliation with other bodies, which may include other awarding bodies, professional, statutory or regulatory bodies and other regulatory agencies
- materials to attract **individuals to study at the provider** ~~students~~, encourage **individuals to submit** applications **to study at the provider** or otherwise communicate with students **or**

anyone with an interest in studying at the provider (including, but not limited to, advertising and marketing material).

40. The OfS's assessment may be informed by other information. This may include (but is not limited to) notifications from third parties submitted to the OfS, or information from other relevant bodies, such as the Office of the Independent Adjudicator for Higher Education (OIA), CMA or Trading Standards. The OfS may seek further information from a provider to verify the information it holds and establish the facts.
41. The OfS considers that providers in partnerships share a responsibility to treat students fairly, including ensuring through their own due diligence processes that the other partner also treats them fairly. The OfS expects any provider applying for registration to ensure that any information it publishes or otherwise shares with students is clear, accurate and consistent with that shared or published by its partner. The OfS will pay particular attention to information outlining each partner's duties and responsibilities.
 - a. A provider intending, if registered, to deliver higher education through a subcontractual arrangement will need to submit some documents belonging to the lead provider in that relationship. These include template student contracts (including terms related to tuition fees and additional costs) and refund and compensation policies. The provider seeking registration is responsible for submitting these documents to the OfS and the OfS expects the relevant lead provider to cooperate with its delivery provider.
 - b. Where the delivery provider considers that the lead provider's documents contain provisions that may be contrary to the OfS prohibited behaviours list, the OfS expects the delivery provider to work with the lead provider to address this directly before submitting its application.
 - c. Where the delivery provider has submitted its application and the OfS identifies potential inconsistencies between documents or published information of the delivery provider and those of the lead provider, the OfS will raise its concerns with the delivery provider.
42. Where a provider (or another legal entity that the OfS considers to be operating substantially the same higher education business) has previously been registered, a history of non-compliance with ongoing condition C1 is likely to result in a judgement that initial condition C5 is not satisfied. Similarly, for a provider in these circumstances, any regulatory interventions the OfS has previously made in relation to consumer protection law or treating students fairly, such as a referral to National Trading Standards, will be relevant to the OfS's assessment of compliance with initial condition C5.
43. Where the OfS considers this initial condition satisfied, but identifies an increased risk of not treating students fairly, it may impose one or more specific ongoing conditions of registration, and will also consider whether additional monitoring requirements are appropriate. For example, where a provider does not intend to register any students when it seeks registration (because students will register with a lead provider in a subcontractual partnership), the OfS may require the provider to submit a reportable event if this position changes once it is registered. This may include requiring the provider to submit the contractual and other documents it intends to use in its relationships with students.

44. Any assessment that the OfS makes about whether a provider has satisfied this condition is not a judgement about whether the provider is complying with consumer protection law, and should not be seen as such. Providers will still need to seek their own legal advice to ensure compliance with the law. **The OfS's assessment is also separate from the assessment of any other body (for example the OIA) and any judgement such a body may independently take about a provider and its documents.**

Annex C: OfS prohibited behaviours list to be implemented

Amendments to the version on which we consulted are highlighted, with text to be removed struck through, and text to be added in red font. Where we have changed the formatting of a word (or words), we have also highlighted this in red (for example student / **student**).

This includes some corrections to grammar and punctuation and for clarity and consistency.

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 ~~paragraph~~ 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 student may enter into~~ a contract **between a student** and ~~with~~ 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 for students**” means any arrangements the provider has made or plans to make to attract ~~students~~ **individuals to study at the provider**, encourage **individuals to submit** applications to **study at the provider** ~~become students~~, 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). (C5.1~~e~~) and C5.8~~f~~)

“**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. (C5.8~~g~~)

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. ~~or~~ 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 ~~prospective~~ **student (or anyone with an interest in studying at the provider)** in a language which is not English without clearly disclosing to ~~the student~~ **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 ~~applicants or~~ **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 for students**
- Any of the provider's **key documents** and other **information about the provider for students**:
- 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. ~~does~~ do not include a clear point of contact for making **information about how a student should make** a complaint (including where this ~~contact point is external to the provider~~ **involves contacting another provider or organisation** as may be the case in some types of academic partnership);
- iii. ~~does~~ 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. ~~does~~ **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. ~~does~~ **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:
 - C. ~~it falsely claims to have been written by a student~~ **be based on a person's genuine experience;**
 - D. ~~it is written by a student but~~ the provider conceals that the ~~student~~ **reviewer** received a financial or other incentive, inducement or reward in return for their review;
- ii. ~~Published~~ **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~~ **does** not take reasonable and proportionate steps to:
 - A. prevent the publication of fake reviews; or
 - B. remove from publication any fake reviews.



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