

Annex S: Guidance for providers on ‘fit and proper’ checks

1. This annex explains the information that a higher education provider must submit to allow us to assess part 2 of initial condition E9.
2. This document should be read in conjunction with the OfS’s regulatory framework, including condition E9 and associated guidance.¹ If there are any inconsistencies between the regulatory framework and this document, then the regulatory framework will prevail.
3. This guidance document explains:
 - a. The information a provider must submit, and when.
 - b. How we may use the information submitted in conducting ‘fit and proper’ checks.
 - c. How we will collect and store relevant information.

Part 2 of initial condition E9 (Fit and proper)

4. Part 2 of condition E9 sets out that each relevant individual at the provider must, in the OfS’s judgement, be a fit and proper person for the purposes of ensuring that:
 - a. The provider is suitable to access and receive public funds.
 - b. Public trust and confidence in the higher education sector is maintained.
 - c. The provider is suitable to protect the interests of students.
5. Part 2 of the condition also sets out that a provider must have robust policies and processes in place to check that each relevant individual (as defined in condition E9) is fit and proper; that it must conduct checks for each relevant individual in accordance with these processes and policies; and that it must also have policies and processes to ensure that relevant individuals can properly perform the tasks of the position (e.g. to provide reasonable adjustments).
6. As part of a provider’s application, it must submit information that allows the OfS to complete checks where appropriate, including details relating to each relevant individual and a declaration stating whether the nominated accountable officer is aware of any indicative matters for any of the relevant individuals Annex Q: Fit and proper person declaration form. The OfS may draw on this information in making our judgements about part 2 of condition E9.

¹ Available at OfS, [Regulatory framework for higher education in England](#).

Information to be submitted

7. Throughout this guidance we will refer to our key contact at the provider, who we are communicating with about the application, as the 'registration contact'.
8. At the point of application, the registration contact must submit:
 - a. Copies of the policies and processes that the provider operates to check that each relevant individual is fit and proper.
 - b. Copies of the policies and processes that the provider operates to ensure that relevant individuals can properly perform the tasks of the position (e.g. to provide reasonable adjustments).
 - c. A declaration by the nominated Accountable Officer stating whether they are aware of any indicative matters for any relevant individuals (please see the 'Useful references' section below), Annex Q: 'Fit and proper person declaration form'.
 - d. Details relating to each relevant individual, to allow the OfS to undertake its own checks, Annex F: 'Registration application form 2'.

Declaration

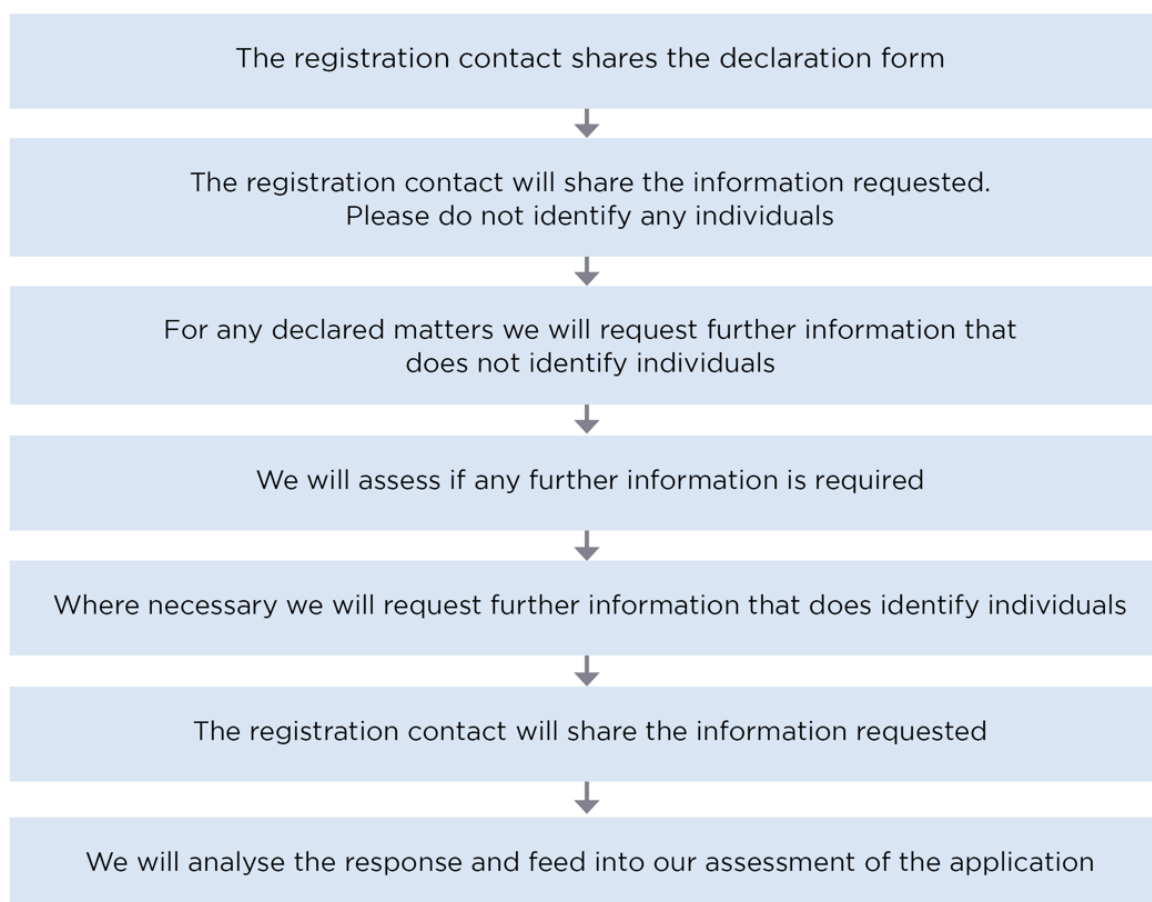
9. The declaration required at point of application is included as a template in Annex Q: Fit and proper person declaration form. It includes a list of the indicative matters with respect to individuals' fitness and propriety. Please note when completing this declaration that it should not **identify** these individuals.
10. A provider should declare any indicative matters found, even if it considers them irrelevant to the individual's fitness and propriety. When we follow up with further questions the registration contact will be able to share any relevant information. Further guidance on what we mean by 'relevant information' is set out in the Guidance to condition E9. To support this, the OfS will normally initially request relevant follow-up information that does not require the identification of any individual.

Example: A provider declares an indicative matter and, when we follow up the registration contact, confirms that it relates to a historical planning dispute with a neighbour. The OfS is not likely to need identifying information about the individual to determine whether it is relevant to fitness and propriety.

11. Once we have reviewed this initial follow-up, we may determine that to complete the assessment of part 2 of condition E9, it is necessary to obtain information that identifies one or more individuals. If such information is required to carry out our assessment, we will request this from the registration contact directly. We recognise that this may include disclosure of sensitive personal data. Where this is the case, the OfS will ensure full

compliance with all relevant legal obligations under UK data protection legislation. More details on this are set out in our Privacy notice.²

Declaration follow-up process



Relevant individual data

12. We require data on each relevant individual to complete our own 'fit and proper' checks. The required data is set out in Annex F: Registration application form 2.
13. As part of these fit and proper checks, we may review information held by the OfS, and in some cases, undertake further fit and proper checks of external databases and information sources. These external fit and proper checks are checks completed by OfS staff or contracted to a third party, for the purpose of assessing the indicative matters set out in E9.5 and E9.7.
14. We recognise that this information may contain sensitive personal data, and that we are subject to legal obligations under UK data protection legislation. Our document management and storage will be in line with these. More information on how this information will be stored and used is available in our Privacy notice.³

² See 'Registration of providers' at [Privacy notice - Office for Students](#).

³ See 'Registration of providers' at [Privacy notice - Office for Students](#).

OfS ‘fit and proper’ checks

15. We may consider any regulatory information we already hold about each relevant individual. We may choose to undertake further checks of external databases and information sources for every relevant individual or a sample of individuals.
16. The extent to which we conduct these external checks will normally be informed by information included in a provider’s application and any regulatory information held about any relevant individual.
17. For the avoidance of doubt, whether we choose to undertake these external checks should not be considered indicative of the likely outcome of an application.
18. We will normally complete our external checks later in the application assessment process, after reviewing the documents submitted with the registration application. This allows time to review a provider’s policies and processes, and to conclude any recruitment processes that are not complete at the point of application (see below). More details on the order of the wider application process is available in Regulatory advice 3.⁴
19. We recognise that the relevant individuals identified at point of application may change during the course of the application process. For example, an individual may decide to leave the organisation and need to be replaced, or a new relevant individual may be appointed. If this happens, the registration contact should notify us as soon as possible and in any event within 28 working days. We will then request the individual’s details and any declarations, and assess whether to undertake our external checks on the new individuals as set out above.

Assessment

20. We will assess whether each relevant individual is fit and proper for the purposes of part 2 of condition E9, whether a provider’s policies and processes are robust, and whether all checks have been undertaken in accordance with those policies and processes. We will also assess whether the policies and processes shared by the provider ensure that relevant individuals are able to properly perform the tasks of the position.
21. It is a provider’s responsibility to determine the policies, processes and specific checks it will undertake, and it must ensure that each relevant individual is fit and proper. Our guidance on part 2 of initial condition E9 provides a non-exhaustive list of examples outlining the type of checks that a provider may conduct, the policies and processes it may develop, and the declaration it should request from each relevant individual.
22. We have set out detailed information on the factors we will normally consider when assessing whether an individual is fit and proper in the guidance to part 2 of condition E9. For example, this includes whether any issues identified are recent, serious, repeated or sustained.
23. In considering these factors, we will consider any declaration and supporting relevant information the provider shares, as well as the results of our own ‘fit and proper’ checks,

⁴ See OfS, [Regulatory advice 3: How to register with the Office for Students](#).

which may include checks of external information sources or databases for the purposes of assessing the indicative matters set out in E9.5 and E9.7.

24. In a situation where a provider declares an indicative matter about a relevant individual, but judges that the relevant individual would nevertheless meet the threshold in E9.4, the provider will have the opportunity to explain its reasoning when we make our follow-up request for further information. We will take this reasoning into account when determining whether we need to request further information that identifies the individual, and whether we consider them fit and proper.
25. If any of the matters listed in E9.7 apply to an individual, that individual will be deemed not to be a fit and proper person, unless exceptional circumstances apply.
26. We will not normally provide separate feedback on the results of our assessment of each individual's fitness and propriety. The information collected through this assessment will feed into the assessment of the wider registration application, and the outcome of this will be communicated via the registration contact in line with Regulatory advice 3.⁵ We will not normally offer the opportunity for a relevant individual to engage in informal or formal dialogue with us with respect to their fitness and propriety. However, where we consider it appropriate, we may decide to share information with a relevant individual for the limited purpose of fact-checking.
27. As set out in Regulatory advice 3,⁶ if a provider's application is successful, we may impose specific conditions of registration, or put in place enhanced monitoring requirements, to manage any particular risks identified during our assessment. These may include requirements for mitigations or controls in relation to a relevant individual, or expectations for improvements to a provider's 'fit and proper' checking processes, where we see concerns about several individuals' fitness and propriety.

Useful references

28. 'Indicative matters' means the matters listed in condition E9.⁷
29. 'Relevant individuals' are defined in condition E9.⁸

⁵ See OfS, [How to register, 5. Outcomes](#).

⁶ See OfS, [How to register, 5. Outcomes](#).

⁷ See OfS, [Regulatory framework for higher education in England](#).

⁸ See OfS, [Regulatory framework for higher education in England](#).