

Initial condition of registration E7: A set of governing documents and business plans

Part 1: A set of governing documents

Requirements relating to a set of governing documents

E7.1 The provider must have a set of documents which will enable the effective governance of the provider in practice.

E7.2 The set of documents referred to in E7.1 must include:

- a. documents which establish the provider as an institution, including (where applicable to the provider's legal form) its Royal Charter, memorandum and articles of association or trust deed;
- b. **governing body documents**;
- c. **risk and audit documents**;
- d. **decision making documents**;
- e. a **conflicts of interest policy**; and
- f. any other documents (including **shareholder agreements**) which contain rules which govern the operation of the provider's **governing body**.

E7.3 The requirement in E7.1 will be assessed by reference to factors such as the provider's size, complexity, context and **business plan**, and includes that the set of documents must:

- a. provide clear and appropriate arrangements for the constitution and operation of the provider's **governing body** including by providing for mechanisms to ensure that:
 - i. the **governing body** is of an appropriate size;
 - ii. the members of the **governing body** have appropriate expertise and skills;
 - iii. where the provider is applying for registration in the Approved (fee cap) category, the provider's **governing body** has at least one **independent member**;
 - iv. (where appropriate) the **governing body** has access to advice from persons who are external to the provider;
 - v. the effectiveness or performance of the **governing body** is subject to appropriate review;

- vi. meetings of the **governing body** take place at appropriate intervals;
- b. provide clear and appropriate arrangements for decision making within the provider, including by:
 - i. clearly identifying any persons (including committees) with decision making responsibilities that have been delegated by the provider's **governing body**, and the nature of those responsibilities;
 - ii. imposing delegated decision making responsibilities on persons suitable to hold those responsibilities;
 - iii. providing for appropriate **governing body** oversight in relation to delegated decision making;
- c. provide clear and appropriate arrangements for discharging **risk and audit functions**, including by:
 - i. clearly identifying any persons (including the **governing body** and committees) with responsibilities in relation to any **risk and audit functions**, the nature of those responsibilities, and how the person intends to discharge those responsibilities in practice;
 - ii. imposing responsibilities in relation to **risk and audit functions** on persons suitable to hold those responsibilities;
 - iii. where responsibility in relation to **risk and audit functions** has been delegated by the provider's **governing body**, providing for appropriate **governing body** oversight in relation to those functions;
- d. provide clear and appropriate arrangements for the constitution and operation of any committee with responsibility for any **risk and audit functions** (where the provider has one or more such committees), including by:
 - i. articulating clear and appropriate roles and responsibilities of the committee, including in relation to commissioning or overseeing internal or external audits of the provider;
 - ii. providing for mechanisms to ensure that:
 - A. its members have appropriate expertise and skills;
 - B. meetings of the committee take place at appropriate intervals;
 - C. the provider's **governing body** has appropriate oversight of the committee's activities;
 - D. the committee operates with appropriate input from independent persons;
- e. provide clear and appropriate arrangements for managing any actual or potential conflicts of interests in relation to individuals responsible for management and governance of the provider, where they are making decisions on behalf of the provider;

- f. be clearly drafted, including in respect of English language, spelling, grammar and formatting, such that the contents of the documents are properly understandable;
- g. be coherent both within documents and between documents, with no material inconsistencies, contradictions or discrepancies either within or between documents.

Part 2: Business plans

Scope of Part 2

E7.4 Part 2 of this condition applies to higher education provided (or to be provided) in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider).

Requirements relating to business plans

E7.5 The provider must have:

- a. a business plan which:
 - i. meets **relevant requirements**; and
 - ii. covers the provider's planned activities over a five-year period, including the provider's current financial year and the four years which follow; and
- b. in the OfS's judgement, the ability to deliver the business plan in practice.

E7.6 In assessing whether a provider has the ability to deliver the business plan in practice, the OfS will consider:

- a. whether the provider has the **capacity and resources** to deliver the business plan in practice;
- b. where relevant, evidence of the provider's past performance providing higher education;
- c. any other matters which the OfS considers relevant to the provider's ability to deliver the business plan in practice.

E7.7 The provider's business plan must demonstrate that the provider has given significant consideration to the interests of students in the formation of its business plan, including by:

- a. identifying any **business objectives and targets** that may conflict with the interests of students;
- b. considering how that conflict will be managed, which may include placing less weight on **business objectives and targets** where such objectives and targets conflict with the interests of students.

E7.8 The provider's business plan must include a description of all of the following:

- a. where the provider has previously provided, but is not currently providing, higher education, the nature of any **higher education courses** that the provider has previously provided (including a summary of the subject matter and level of those courses, the modes of study, modes of course delivery, and the numbers and characteristics of the cohorts of students the provider has recruited);
- b. where the provider is currently providing higher education, the nature of any **higher education courses** that the provider is currently providing (including a summary of the subject matter and level of those courses, the modes of study, modes of course delivery, and the numbers and characteristics of the cohorts of students the provider has recruited);
- c. the geographic location of any previous or current higher education provision;
- d. where the provider has previously provided, or is currently providing, higher education, the provider's previous or current business competitors;
- e. the nature of the provider's planned higher education provision, including:
 - i. any **higher education courses** it intends to provide;
 - ii. the subject matter and level of those courses;
 - iii. the modes of study and of course delivery;
 - iv. the numbers and characteristics of the cohorts of students the provider has recruited and/or intends to recruit for those courses and the academic needs of those students;
 - v. the geographic location of any planned higher education provision;
 - vi. the provider's likely business competitors;
- f. the provider's **business objectives and targets**;
- g. the provider's strategy for achieving the **business objectives and targets**, including how the provider intends to approach:
 - i. how it will use any surplus generated (if applicable);
 - ii. marketing to, and recruitment of, students, and whether it intends to use recruitment agents;
- h. any **relevant risks** and how the provider plans to manage those risks; and
- i. the provider's plans for how, if registered, it would comply with all ongoing conditions of registration applicable to it from the date of registration.

Definitions

E7.9 For the purposes of this condition E7:

- a. **“business objectives and targets”** means measurable objectives and targets that the provider plans to use to monitor its overall performance, including (but not limited to):
 - i. the provider’s financial targets;
 - ii. the numbers of students it aims to recruit to its **higher education courses**;
 - iii. where the provider is currently providing **higher education courses**, any aims to expand the provider’s current provision (including to new subject areas, levels of study or modes of course delivery);
 - iv. any aims to obtain authorisations, accreditations or licences from other persons or organisations, including the Office for Students, the Secretary of State, and professional statutory and regulatory bodies;
 - v. any aims to form partnerships with other persons or organisations, including other higher education providers (whether or not registered with the Office for Students) and/or awarding bodies;
- b. **“business plan”** means a business plan as required under Part 2 of this condition E7;
- c. **“capacity and resources”** includes, but is not limited to:
 - i. the financial resources of the provider;
 - ii. the number, expertise, and experience of the staff employed or contracted by the provider (or to be employed or contracted by the provider); and
 - iii. the provider’s management and governance arrangements;
- d. **“conflicts of interest policy”** means a policy which governs how the provider will manage any actual or potential conflicts of interests in relation to individuals responsible for management and governance of the provider where they are making decisions on behalf of the provider and which, at a minimum:
 - i. contains a definition or guidance of what would constitute a conflict of interests, that would enable users to identify whether a conflict existed;
 - ii. contains an explanation of how and when conflicts of interests should be declared to the provider;
 - iii. contains mitigations to address conflicts of interests declared;
- e. **“decision making documents”** means documents which set out the following:

- i. any persons (including committees) with decision making responsibilities that have been delegated by the provider's **governing body**, and information setting out those delegations (in a scheme of delegation or equivalent);
 - ii. arrangements for **governing body** oversight in relation to this delegated decision making, including arrangements for reporting to the **governing body**;
- f. "**governing body**" has the meaning given by section 85 of the Higher Education and Research Act 2017;
- g. "**governing body documents**" means documents which set out the following information in relation to the provider's **governing body**:
 - i. its purposes or objectives;
 - ii. the number of **governing body** members and the roles of each of its members;
 - iii. processes for appointing members;
 - iv. roles and responsibilities of the body;
 - v. procedures for its decision making;
 - vi. arrangements for meetings of the body (including meeting frequency);
 - vii. arrangements for reviewing the body's effectiveness or performance;
- h. "**higher education course**" is to be interpreted:
 - i. in accordance with the Higher Education and Research Act 2017; and
 - ii. so as to include, for the avoidance of doubt:
 - A. a course of study;
 - B. a programme of research;
 - C. any further education course that forms an integrated part of a higher education course; and
 - D. any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course;
- i. "**independent member**" means an external member of the provider's **governing body** who is independent of the provider;
- j. "**relevant requirements**", in respect of a provider's business plan, includes (but is not limited to) that, in the OfS's judgement:
 - i. the plan is comprehensive;

- ii. the plan is clearly drafted, including in respect of English language, spelling, grammar and formatting, such that the contents of the plan are properly understandable;
 - iii. the plan is coherent both internally and alongside other documents in the provider's registration application, with no material inconsistencies, contradictions or discrepancies either within the plan itself or between the plan and other documents in the provider's application;
 - iv. the plan demonstrates that the provider has a sound understanding of:
 - A. the higher education sector and the context in which the provider plans to operate;
 - B. **relevant risks**;
 - C. the requirements imposed under the ongoing conditions of registration which would apply to the provider from the date of registration (if registered);
 - v. the plan contains appropriate strategies to manage **relevant risks**;
- k. "**relevant risks**" means:
- i. any risks of non-compliance with ongoing conditions of registration which, if registered, would apply to the provider from the date of registration;
 - ii. any risks to public funds;
 - iii. any risks to the interests of students that may arise as a result of the provider's **business objectives and targets**;
 - iv. any risks arising from assumptions made by the provider in the formation of its business plan, including any which could impact:
 - A. the provider's ability to achieve its **business objectives and targets**;
 - B. the provider's compliance with ongoing conditions of registration which, if registered, would apply to it from the date of registration; and
 - C. the interests of students;
- l. "**risk and audit documents**" means documents which set out the following:
- i. any persons (including the **governing body** and committees) with responsibilities in relation to any **risk and audit functions**, the nature of those responsibilities, and how the person intends to discharge those responsibilities in practice;
 - ii. where responsibility in relation to **risk and audit functions** has been delegated by the provider's **governing body**, arrangements for **governing body** oversight in relation to those functions, including arrangements for reporting to the **governing body**;

iii. where the provider has one or more committees with responsibility for any **risk and audit functions**, the following additional information in relation to each committee:

- A. its purposes or objectives;
- B. the number of committee members and the roles of each of its members;
- C. processes for appointing members;
- D. roles and responsibilities of the committee, including any role of the committee in relation to commissioning or overseeing internal or external audits of the provider;
- E. procedures for its decision making;
- F. arrangements for meetings of the committee (including meeting frequency);
- G. arrangements for **governing body** oversight of the committee, including arrangements for reporting to the governing body;

m. “**risk and audit functions**” means functions which relate to:

- i. identifying and managing risks;
- ii. overseeing internal or external auditing of the provider, as well as the provider’s financial reporting and disclosures;

n. “**shareholder agreement**” means an agreement between the shareholders of a company governing the relationship between the shareholders.

Summary

Applies to: all providers seeking registration

Initial or general ongoing condition: initial condition

Legal basis: section 5 of HERA

Part 1: Set of governing documents

Conditions E7.1 and E7.2

1. The range of documents a provider will need to submit to satisfy E7.1 will depend on the provider's management and governance structures. This will depend on factors, including the provider's size, complexity and legal form. The form, structure and number of these documents may be different for different providers. Some providers may, for example, include the various elements within a single document, whereas others may submit separate documents. A provider must have a 'conflicts of interest' policy to satisfy the condition. Where a provider expects that its governing documents will change as a result of registration with the OfS, it should submit the versions of the documents it intends to adopt once registered. This will ensure that the assessment is based on the most relevant information.
2. 'Governing body documents' will normally mean the terms of reference, or equivalent, for the governing body, and any other documents needed to demonstrate the information set out in E7.9.g. This may include additional policies that set out governing body procedures in more detail, such as a separate 'appointments policy' or 'code of conduct' for members of the governing body. It may also include or overlap with other documents submitted in relation to this condition, such as a provider's articles of association and shareholder agreements that include provisions that influence governing-body decision making.
3. 'Risk and audit documents' may mean the terms of reference for a provider's risk and audit committee, or similar, where a provider has such a committee. It may be, or include, a provider's governing body documents. The OfS expects that risk and audit functions will be different for different providers and be based on a provider's own context and circumstances. A provider may have different individuals or committees to discharge risk and audit functions (e.g. an audit committee and a separate risk committee, or risk dealt with by the governing body and audit dealt with by a separate finance committee). Whatever a provider's arrangements, they should be clearly explained in its documents.
4. 'Decision making documents' will normally mean any scheme of delegation that the provider has in place but may also include any descriptions or diagrams of a provider's committee structure, where necessary to explain the interactions between the governing body and any committees or individuals to which it has delegated authority. The information required may be contained in a broader document which sets out a provider's overarching governance framework. The OfS will, however, only assess information about decisions delegated by the governing body, rather than wider information about a provider's committees and their operation. A provider does not need to provide documents which govern the detailed operation of committees of the governing body, except any committee or committees which have delegated authority related to a provider's risk and audit functions.
5. A 'conflicts of interest policy' may be a standalone document or covered by content of a 'code of conduct' for members of the governing body, senior executive or similar. To satisfy the requirement, the document must cover all the content described in E7.9.d.

Condition E7.3

6. E7.3 provides further information about the set of documents that a provider must have at registration to enable the effective governance of the provider in practice. The arrangements set out in those documents must be both clear and appropriate. Clear documentation will be

easily understandable and written in plain English. It will not contain contradictions or inconsistencies with other documentation submitted in relation to this condition.

7. 'Appropriate arrangements' are those which reflect the size, complexity, context and business plan of the provider, and the OfS expects governing documents will vary accordingly. It is more likely that a small provider with a simple business model would have simpler governance arrangements than a large, more complex provider. E7.3.a sets out requirements relating to the constitution, operation and mechanisms of the governing body and the mechanisms by which it would discharge its duties. These include the following provisions:
- a. Appropriate size – the appropriate size is one that will enable the effective governance of the provider in practice. Small providers which deliver a smaller range of courses may require fewer members on the governing body whereas large providers with multiple faculties may benefit from additional oversight and expertise. A provider with an inappropriately sized governing body will not meet this requirement. A provider of any size is unlikely to meet this requirement if it has an exceptionally small or large governing body.
 - b. Appropriate expertise and skills – the governing body needs to include a range of suitable knowledge and experience so that it can manage the provider effectively. The required expertise and skills will vary between providers. It may include risk management, knowledge of regulatory and legal requirements, financial management, academic experience specific to the needs of the provider, and the ability to represent the perspectives and interests of students.
 - c. Independent member – where the provider is seeking registration in the Approved (fee cap) category the OfS requires its governing documents to provide for its governing body to have at least one independent member. An independent member should have no 'material relationship' with the provider before they are appointed that could create a conflict of interest in performing their duties independently. 'Material relationships' will include, but not be limited to, being an employee, customer or supplier of the provider, or having any other affiliations (for example, familial or business affiliations) that could influence, or be perceived to influence, their decisions. As set out in the guidance to condition E7, the OfS expects the provider seeking registration in the Approved (fee cap) category to have appointed the independent member before the completion of the application period (in the event that the independent member is not appointed in this period, we would normally pause the application).
 - d. External advice – it may be appropriate for a governing body to have in place arrangements to access external advice in circumstances where it has identified gaps in its knowledge or expertise in specific areas, or on high-risk issues. It may achieve this, for example, by establishing an advisory board to provide expert advice on particular issues as an interim measure, or seeking external, independent advice to provide additional scrutiny on particular issues. In such circumstances, the provider's governing body documents should clearly set out how these arrangements will work.
 - e. Review of governing body – governing body documents should clearly set out the arrangements for reviews, including the frequency, responsibilities and mechanisms for undertaking reviews. These reviews should enable the effective governance of the provider in practice.

- f. Meetings – an appropriate interval for meetings of the governing body will be that that ensures the governing body receives timely information, scrutinises relevant reports on activity that it oversees, and makes timely decisions. The frequency should not impede efficient operation or conflict with reasonable competing commitments of members.
8. E7.3.a.ii. requires that the relevant governing documents include clear and appropriate mechanisms that make sure the members of the governing body have appropriate expertise and skills. When the OfS assesses the mechanisms in the relevant governing documents, it will consider:
- a. Whether the governing body incorporates a sufficiently diverse mix of expertise, skills and perspectives, for the size and complexity of its operations.
 - b. The role of effectiveness reviews of the governing body and its members in ensuring sufficient skills and expertise.
 - c. The role of governing body appointment procedures in ensuring sufficient skills and expertise.
 - d. Any senior management roles which are defined as members of the governing body, and their areas of responsibility and the expertise that they bring.
9. E7.3.b requires the provider's governing documents to provide clear and appropriate arrangements for decision making within the provider (in order to enable the effective governance of the provider in practice (per E7.1)), including by imposing delegated decision making responsibilities on persons suitable to hold those responsibilities and providing for appropriate governing body oversight in relation to delegated decision making, When the OfS assesses whether the provider has delegated decision making responsibilities to suitable persons, it will consider:
- a. The level of authority and seniority necessary to take the decisions which have been delegated, and whether the governing body retains ultimate responsibility for major decisions.
 - b. Whether individuals, committees, and members of those committees to which decision making responsibilities have been delegated, have the skills, knowledge and experience to discharge decision making duties in areas requiring specific expertise.
10. In assessing whether arrangements for governing body oversight of delegated decision making are appropriate the OfS will consider:
- a. Whether the documents provide clear information about the individuals or committees responsible for taking delegated decisions, and the terms on which those delegations have been made, including any conditions or limitations.
 - b. How frequently and when delegated decisions are reported to the governing body and the mechanisms it has to scrutinise delegated decisions.
 - c. Processes the governing body follows to review whether delegated decision making is effective.

- d. Whether the governing body has chosen to delegate matters which are appropriate to indirectly oversee rather than deal with directly. Matters which are likely to be appropriate to delegate include matters which need detailed or expert scrutiny or those which are operational rather than strategic.
11. E7.3.c sets out requirements for documents which describe how a provider will discharge its risk and audit functions. E7.3.d sets out requirements for documents which govern the constitution and operation of any committee with responsibility for any risk and audit functions.
12. A provider must clearly set out in its documents:
- a. which individuals or committees have responsibility for risk and audit functions.
 - b. what those responsibilities are and how the individuals or committees will discharge them in practice.
 - c. how the provider will ensure that these functions are undertaken by suitable persons.
 - d. how governing body oversight is secured.
13. If a governing body discharges risk and audit functions, information about how it does so must be set out in the provider's governing body documents. Where a provider has delegated these functions to a separate committee or committees, it must submit the documents which govern the operation of that committee or committees. In either case, these documents must make clear how the provider will effectively deliver those functions in practice. If the body responsible for these functions intends to use the services of an external person, this should be clearly set out.
14. The condition defines 'risk and audit functions' in broad terms. The OfS will consider audit activity in the broadest sense, including, but not limited to:
- a. a provider's arrangements for securing independent auditing of its financial statements
 - b. auditing of a provider's internal controls
 - c. Any other internal programme of audit undertaken in relation to other areas of the provider's business, whether or not these involve external input.
15. The arrangements a provider has in place to identify and manage risk and to oversee its audit activity are likely to overlap. Risk and audit documents should clearly identify responsibilities, describe the nature of those responsibilities and set out how these will be discharged in practice. Examples of the types of information that would help satisfy this requirement include but are not limited to:
- a. Documents which describe the provider's risk management framework, including:
 - i. How it categorises and rates risks, and its tools for doing so (such as a risk register).
 - ii. Mechanisms for risk reporting and monitoring, including who undertakes this and with what frequency.

- iii. How risk appetite is set and communicated.
 - iv. Processes for ensuring all employees are aware of their responsibilities in relation to risk management.
- b. Documents which demonstrate the operation of the provider's risk management framework, including risk registers or other records which demonstrate how key risks have been considered and measured, and describes key mitigations that are in place.
 - c. Documents setting out how a provider will carry out or commission different audit activities, including:
 - i. Responsibilities and processes for appointing and supporting external auditors, including but not limited to auditing of the provider's annual financial statements.
 - ii. The arrangements the provider has in place for internal audit, including identifying and agreeing the programme of cyclical reviews and any external input into these.
 - iii. Any responsibilities and processes for ensuring deficiencies or recommendations identified as part of internal or external audit are addressed.
 - d. Documents which set out responsibilities and processes for scrutinising a provider's financial reporting including, but not limited to, at the financial year end.
 - e. Documents which set out mechanisms for overseeing a provider's internal controls, including the process through which the statement of internal controls required in the audited accounts is produced.
16. The OfS's assessment of whether the provider's documents impose responsibilities for risk and audit functions on suitable persons will include all the factors set out in paragraphs 9a-b. It will also consider whether ~~individuals~~ committees and members of those committees to which the governing body has delegated risk and audit functions:
- a. Have sufficient understanding of risk management in the context within which the provider is operating or intends to operate. This may be demonstrated by the membership of the committee, or the rules and procedures for appointment to the committee, or the appointment of external input to provide this function.
 - b. Have sufficient independence from the senior management of the provider within its membership to enable appropriate and objective challenge to the disclosures and information provided to the committee. Where such independence is not possible internally, this must be delivered by other means.
17. The OfS will assess whether the provider's documents provide for meetings of any committee with responsibility for risk and audit functions to take place at appropriate intervals. This will include whether the meeting's frequency allows the committee to receive timely information, scrutinise relevant reports on activity which it oversees, and make timely decisions. The frequency should not impede efficient operation or conflict with reasonable competing commitments of members.

18. The OfS's assessment of whether the provider's documents contain clear and appropriate mechanisms to ensure the governing body has appropriate oversight of the activities of any committee with responsibility for risk and audit functions (in order to enable the effective governance of the provider in practice (per E7.1)), will include:
- a. Whether the oversight mechanisms reflect the size, complexity and context of the provider, and the scale and complexity of business considered by the committee.
 - b. Whether the documents provide clear information about responsibilities and accountability for delegated decision making by the committee.
 - c. How frequently and when the committee reports to the governing body and the mechanisms the governing body has to scrutinise delegated decisions.
 - d. The adequacy of the processes the governing body follows to review whether the committee's work and decision making is effective.
19. When the OfS assesses whether the provider's documents contain clear appropriate mechanisms to make sure any committee with responsibility for risk and audit functions operates with appropriate input from independent persons, it will consider:
- a. The rules that the documents set out about membership of the committee, including the requirements for independent members of any such committee, and procedures for appointment to it.
 - b. The adequacy and effectiveness of procedures that the documents set out to ensure the independence and objectivity of the external auditor, which will make sure that the provider's financial statements meet the requirements of the OfS's accounts direction.
 - c. The appropriateness of any authority granted to the committee to engage independent advisers.

Assessing compliance

20. The OfS's assessment of this condition will involve a review of the documents a provider submits in relation to the requirements set out in the condition. The OfS may request additional information or documentation as it considers appropriate.
21. The OfS will not assess the provider's governing documents against the OfS Public Interest Governance Principles (PIGPs) at registration. However, governing documents are expected to uphold these principles in order to comply with ongoing conditions E1 and E2. Where there is evidence that a provider is clearly at significant risk of breaching the ongoing conditions, this is likely to be indicative that the provider does not meet the requirements of E7 Part 2: Business plans in relation to ongoing conditions of registration.

Part 2: Business plans

Business plan

22. The business plan means the document, or documents, submitted by a provider to fulfil this requirement. The business plan need not be a new document created solely for the purpose of this condition, providing it meets the information requirements set out in E7.6. A provider may choose to rely on a pre-existing business plan, strategic plan or other planning document it has previously produced, as long as the content remains accurate and up to date. A provider may, where necessary, submit that document alongside additional narrative which covers any omissions. Where a provider chooses to submit multiple documents, these must collectively include all required information and meet all the relevant requirements.
23. As set out in the section 3(5), a provider must inform the OfS of any material changes to its business plan that arise during the registration process. This includes material changes to the provider's business objectives and performance targets, any substantial revisions to its planned higher education provision, or any developments that may affect its ability to deliver the commitments set out in its business plan.

Relevant requirements

24. The 'relevant requirements' a provider's plan must meet are listed in E7.9.j.

Comprehensive plans

25. In judging whether a business plan is comprehensive, the OfS will consider whether the plan provides enough detail and specific factual information to understand how the provider intends to operate.
26. 'Specific factual information' means concrete information relevant to a provider's plans (such as course names, forecast student numbers, demographic statistics, measurable key performance indicators (KPIs)). A plan will not be assessed to contain enough 'specific factual information' if it only contains vague, descriptive statements about what a provider wants to achieve (such as general statements about providing high quality education, or opportunities for students).
27. A provider's business plan will not be considered 'comprehensive' where it omits significant elements of a provider's plans relating to the information requirements set out in E7.8. The OfS would not, for example, consider a provider's business plan comprehensive if it:
- a. Omits any information about plans it is actively pursuing to enter new partnership arrangements, or secure new awarding bodies for its courses.
 - b. Omits information about planned new campuses.
 - c. Omits information about business objectives and targets that it has adopted for the purposes of reporting to shareholders or the governing body.
 - d. Omits information about its strategies for achieving business objectives and targets which are essential to its success, particularly where this involves activities carrying a higher degree of risk, such as recruitment of international students, use of recruitment agents, or delivery through partnership arrangements.

Coherent plans

28. The OfS is unlikely to consider a plan coherent or consistent where:

- a. The future direction of the provider set out in the plan does not tally with financial and student number forecasts submitted in relation to condition D (for example, where the business plan suggests a cautious approach and modest growth, but forecasts show a rapid increase in revenue and student numbers).
- b. The business plan describes robust arrangements for overseeing and managing key risks through a provider's governance structures, but these are not reflected in the provider's set of governing documents and descriptions of a provider's arrangements to prevent fraud and protect public money.
- c. A provider's business plan gives a narrative description of its aims and purpose which prioritise the interests of students, but this is inconsistent with the practical targets, objectives and measures it has put in place to monitor performance, which are purely financial.

Sound understanding of the higher education sector

29. The OfS will consider whether the business plan demonstrates significant misunderstandings or material factual inaccuracies about the operation of the higher education sector. The OfS would not expect a provider to understand every element of the sector but it should have a fundamental understanding of the context in which it would operate.

30. Examples of content in a business plan which are likely to lead the OfS to consider that a provider does not have a sound understanding include:

- a. The provider identifies inappropriate or unrealistic competitors, for example a small college identifying a large established university as a key competitor.
- b. The provider sets out unrealistic or too ambitious short-term goals, such as high performance in league tables or immediately being granted degree awarding powers.
- c. The provider's growth projections are too optimistic or rely on the assumption of unrealistically high rates for conversion of applicants to registrations.

Sound understanding of relevant risks

31. The OfS will assess whether a provider's business plan demonstrates that the provider has a sound understanding of relevant risks by considering whether it identifies the most substantial relevant risks that are likely to arise from its chosen approach. The OfS's assessment will take account of factors, including:

- a. the information included in the provider's business plan about the nature of its students and courses
- b. its business objectives and targets
- c. its strategies for achieving these.

32. The most substantial relevant risks are those that are likely to occur and have the largest impact on students, in terms of scale and seriousness, if they do. The exact nature of relevant

risks will vary depending on the aims and objectives of the provider and its strategy for achieving them. Examples include:

- a. Risks of not meeting student recruitment targets, particularly if there are reasons recruitment may be challenging.
- b. Risks relating to recruitment of international students.
- c. Risks relating to quality and standards of courses, especially where a provider has not delivered higher education courses before or has set out plans to expand its provision.
- d. Risks relating to reliance on validation partners for awarding qualifications.
- e. Risks relating to not being awarded degree awarding powers, or a student sponsor licence.
- f. Risks related to a provider's ability to secure positive outcomes for students with specific support requirements.

33. The OfS is unlikely to consider that a provider's business plan demonstrates a sound understanding of relevant risks where:

- a. The provider's plan fails to identify significant risks which the OfS considers the provider is likely to encounter, particularly where these risks arise from a high-risk approach which a provider has chosen to pursue (for example, where a provider does not identify the potential risks to the interests of students or risks to public funds associated with its planned reliance on domestic recruitment agents).
- b. The provider's plan fails to engage with entire categories of risk set out under the definition of relevant risks (for example, where a provider's plan does not include any consideration of potential risks of regulatory non-compliance).
- c. The provider's plan significantly misjudges the potential severity of the risks it has identified. It may underestimate the likelihood of a risk occurring or underestimate the potential scale or seriousness of negative impacts on students associated with those risks.

Sound understanding of the conditions of registration

34. The OfS will assess whether a provider's business plan demonstrates a sound understanding of the conditions of registration. The OfS will pay particular attention to whether the business plan accounts for compliance with the ongoing conditions of registration in a credible way that is likely to achieve ongoing compliance in practice.

Appropriate strategies to manage relevant risks

35. In determining whether a provider's business plan contains appropriate strategies to manage relevant risks, the OfS will consider:

- a. The risks a provider has identified.
- b. How substantial those risks are (and the OfS's judgement about whether this demonstrates a sound understanding of the relevant risks).

- c. Whether the plan sets out a clear position for the provider to accept, avoid, mitigate or otherwise manage those risks.
 - d. Whether any proposed strategy for managing the risks is appropriate to the likelihood, scale and seriousness of impact or the risk materialising.
36. The OfS is unlikely to consider that a provider's business plan contains appropriate strategies to manage relevant risks where:
- a. The provider has not demonstrated a sound understanding of relevant risks.
 - b. The provider's plans identify risks, but do not set out plans to manage these risks, or the risk management plans are superficial or generic, lacking concrete detail about the actions the provider needs to take that will manage or mitigate risks.
 - c. The provider's assessment of the relevant risks or the impact of its mitigations is too optimistic. The provider may, for example, accept substantial risks but not take any extra actions, or take minimal or insufficient actions in response.

Condition E7.5b and Condition E7.6

Ability to deliver the business plan in practice

37. Guidance on the OfS's approach to assessment of whether a provider can deliver its business plan in practice is set out below.
38. The OfS will assess whether a provider can deliver its business plan in practice. This includes evaluation of the provider's ability to meet all relevant ongoing conditions of registration. The OfS will assess the provider's capacity and the resources available to implement its plans relating to compliance with ongoing conditions and consider whether information provided elsewhere the registration application supports or undermines those plans.
39. The OfS will consider that a provider is unlikely to be able to deliver its plans to comply with the ongoing condition of registration where (for example):
- a. The plan lacks robust processes for collating and validating student data, for example, if it fails to demonstrate that IT systems are adequate or does not identify sufficiently skilled individuals responsible for data management.
 - b. The plan and accompanying financial forecasts suggest that the provider has not accounted for mandatory subscription requirements.
 - c. In communication with the OfS, the chair of a provider's governing body demonstrates insufficient understanding of their responsibilities – such as being unaware of requirements to submit data returns of reportable events or is unable to explain how the provider meets these requirements.
 - d. The provider's set of governing documents submitted in relation to Part 1 of E7 are inadequate for meeting the ongoing conditions of registration. For example, a provider applying for Approved (fee cap) category fails to include provisions for appointing an independent board member.

40. The OfS may also draw on any additional evidence from discussions with the provider's senior staff about its plans to assess the credibility of the provider's plans for meeting its regulatory requirements.

Capacity and resources

41. The OfS's assessment of a provider's ability to deliver its business plan in practice, will consider the provider's capacity and resources. This includes assessing the provider's financial resources. The OfS will pay particular attention to whether the provider can afford any proposed activity in its business plan or governing documents which is necessary to ensure compliance with ongoing conditions of registration or to manage significant risks.
42. The OfS will assess whether the provider's management and governance arrangements are sufficient to deliver its plans. The OfS will consider how the provider oversees activities to ensure compliance with ongoing conditions of registration, including how it structures and resources relevant committees.
43. The OfS may also draw on its communications with a provider's staff during the assessment process. For example, a provider is unlikely to be considered to have sufficient capacity and resources if it has said that it cannot provide audited financial statements to the standard the OfS has specified, or the OfS needs to engage with it extensively before receiving them.
44. A provider is also unlikely to be considered to have sufficient capacity and resources where:
- a. It has identified significant investment needs in a business plan (for example, to invest in IT systems for data returns), but it does not appear to have the financial resources to deliver them.
 - b. Its business plan has not identified or appointed an independent external auditor that meets the requirements of the OfS's accounts direction.

Past performance

45. When assessing whether a provider can deliver its business plan in practice, a provider's past performance may be relevant. This may include (but is not limited to):
- a. The provider's track record in delivering higher education, particularly any evidence in relation to quality, preventing fraud and protecting public money.
 - b. The provider's previous financial performance.
 - c. Published or final judgements from relevant regulatory or statutory bodies, within the last five years, placing more weight on more recent judgements within that period.
46. Circumstances where past performance may inform a judgement that a provider does not have the ability to deliver its business plan in practice include, but are not limited to:
- a. Historical poor performance or adverse judgements against the provider from relevant regulatory or statutory bodies, within the last five years.
 - b. Financial forecasts relating to costs or income, or student number forecasts, that are unrealistic compared with historical performance, where this performance resulted from a similar approach to that which the provider intends to pursue.

47. Looking at past performance will be particularly relevant for providers in subcontractual arrangements. A provider may have already been delivering higher education and indirectly accessing public money as a delivery partner in a subcontractual arrangement with a registered provider. In these circumstances, the OfS will pay particular attention to any evidence about how it has managed activities necessary to facilitate ongoing regulatory compliance historically. This may include evidence which indicates the provider had a poor track record in delivering high quality courses on behalf of a lead provider. It may also include notifications to the OfS about the provider's failure to adequately prevent fraud and protect public money. If the evidence suggests that a provider has not managed these activities well, the OfS would be less likely to consider that it would be able to deliver its plans for complying with ongoing conditions of registration.
48. A provider in a subcontractual arrangement should also provide complete, accurate data in a timely fashion to the Student Loans Company or its lead partner. Doing so informs accurate student finance payments. If evidence suggests a provider has not done this, the OfS would consider that it is unlikely to be able to deliver its plans to comply with ongoing requirements in these areas. The provider would need to show that it had made substantial changes to the way it managed the return of this data in the past.

Other relevant matters

49. The OfS will also consider other matters it considers relevant to whether a provider can deliver its business plan. This will include considering whether the provider can realistically deliver its plan in practice, regardless of its capacity and resources. For example, the OfS would consider that a provider could not deliver a plan that contains opposing or contradictory aims.

Scope of the OfS's judgement

50. Any decision that a provider satisfies this condition does not represent a judgement about whether:
- a. the provider's plan will mean that it succeeds commercially
 - b. the provider will meet the targets in its plan
 - c. the provider's approach is valid or has the OfS's endorsement.
51. A decision only means that the OfS considers that the provider meets the requirements for registration and has not identified any evidence that it cannot deliver its plan in practice.

Condition E7.7

52. A provider would be unlikely to satisfy this requirement if its business plan if it:
- a. Demonstrated little or no consideration of the characteristics or aims of the students it intended to recruit, particularly by failure to properly consider the potential support needs of the specific students it intends to recruit.
 - b. Made little or no reference to students in describing its mission or overarching objectives.
 - c. Focused primarily on commercial or financial targets, with few or no objectives or targets related to its students, their academic experience or outcomes.

- d. Failed to sufficiently prioritise the mitigation of risks of regulatory non-compliance which may have a negative impact on students, or other risks to students, in contrast to a high prioritisation of the mitigation of commercial risks.
- e. Set out targets, including commercial targets, or ways of operating that were likely to create conflict with the interests of students, without considering how that conflict would be managed. This might include, but not be limited to:
 - i. Plans for rapid growth which do not set out how this is going to be done in a way that ensures that all students continue to have a high-quality student experience. For example, ensuring that the provider has adequately prepared and is ready for growth in student numbers, before this happens or where necessary setting limits on growth based on considerations of the staff-student ratio or availability of resources.
 - ii. Plans to generate significant surpluses to be issued as dividends or shared as profits which do not recognise the risks to value for money for students or consider how to manage those conflicting interests by, for example, demonstrating the provider has arrangements in place to provide transparent information to students about value for money.
 - iii. Plans which project minimal ongoing investment in resources and services in order to meet financial targets, without recognising risks of potential negative impacts on the student academic experience. Or plans that do not consider how to manage those conflicting interests. For example, a plan may not balance profit-seeking behaviour with reasonable investment in the provider's staff, estate and physical and virtual infrastructure to deliver a high-quality learning experience.

Condition E7.8

Descriptions of the nature of a provider's higher education provision

53. A provider needs to provide a description of the courses it plans to offer.

54. In addition to a description of its planned provision, where relevant a provider should provide a description of its current courses or the courses it offered in the past. A summary description of the nature of courses offered in the most recent years of delivery, rather than a full history of all the higher education courses it has ever offered, is sufficient.

55. The business plan should provide an overarching description of the provider's provision rather than an exhaustive account. This description should be detailed enough to enable a sound understanding of the provider's business model, its current and/or planned course offering and student population. It should demonstrate that the provider has a comprehensive plan for how it intends to operate. It should also show that the provider understands the higher education sector and allow the OfS to identify any substantial risks the provider is likely to face.

56. A description of the nature of a provider's higher education provision does not need to list every individual course offered. But it should provide a comprehensive picture of the range of courses on offer and the distinguishing characteristics of those courses. For example, a sufficiently detailed description would cover the following points:

- a. A high-level description of the subject areas covered by courses, identifying any areas of specialism or expertise.

- b. A sense of scale and relative importance of the course offering, which may include the number of courses offered across different subject areas and the proportion of students studying (or intended to be recruited) in different areas.
 - c. Whether the providers courses are at first degree level, sub-degree, postgraduate masters', include foundation years or are a mixture of different levels, and the proportion of courses at those levels. For a provider delivering a small number of courses this may include listing individual qualification titles, but for a provider with a large, diverse range of courses it would only need to include some descriptive statistics.
 - d. Details of the awarding body for the provider's courses and any partnerships that it is reliant on, including future plans.
 - e. Whether all courses are delivered on a full-time or part-time basis, involve apprenticeships, are in-person or delivered as distance learning, and any campus locations.
57. Information about the characteristics of the cohorts of students recruited to the provider's courses, or that it plans to recruit, should demonstrate the provider's understanding of its target market, and the academic needs and aims of its current and potential students. Relevant information may include, for example:
- a. whether students are primarily young or mature
 - b. whether they are recruited from the local area or nationally
 - c. their typical level of prior qualification, particularly their typical level of technical proficiency in the English language
 - d. reasons for study
 - e. any other information about the student population which could be considered particularly distinctive, or pertinent to understanding its shared characteristics.
58. Information about a provider's business competitors should show that the provider understands the market in which it will operate and that its plans are informed by sufficient understanding of the higher education landscape. Relevant information may include, for example:
- a. identifying the provider's most relevant competitors and showing that it understands their offer
 - b. a strategy that takes this into account (for example, by setting out how it differentiates itself from its competitors or is responding to unmet demand).

Business objectives and targets

59. The 'business objectives and targets' included in the business plan will vary by provider. E7.9.a provides examples of the business areas in which a provider may have set objectives and targets that would be particularly relevant to the OfS's assessment, such as financial targets, recruitment targets, or objectives around expanding the provider's course offering.
60. In deciding the information to include about objectives and targets, a provider should especially consider including:

- a. Any objectives (financial or otherwise) that are critical to a provider's ability to deliver its plan. These may include, for example, need to secure professional accreditations, obtain degree awarding powers, or meet short-term student recruitment or revenue targets to ensure financial sustainability. The provider's plan should highlight these goals, the timelines for achieving them, and any related regulatory obligations that may arise from them.
- b. Any performance indicators, strategic objectives or other measures of success (financial or otherwise) that the provider has set for itself within the period covered by the business plan. Examples of strategic objectives would include:
 - i. recruitment or revenue targets
 - ii. goals related to successful TEF participation or student sponsor license applications
 - iii. the development of the provider's course portfolio or the establishment of new subcontractual partnerships to deliver courses on behalf of another provider.
- c. Relevant performance indicators would include, but not be limited to:
 - i. Any targets set out by the provider in any business plans, strategic plans, annual reports or other planning documents, particularly where these have been used to secure investment, report to shareholders or report to other stakeholders.
 - ii. Any measures adopted for internal reporting or performance monitoring, for example, through establishing KPIs or metrics which are regularly reviewed by the provider's senior managers or governing body.
 - iii. Any measures used to determine performance-related pay of the provider's senior managers.

61. The OfS will pay particular attention to whether the information provided is comprehensive. Omission of any of the business objectives and targets described above from a provider's business plan may indicate that the business plan does not comprehensively reflect how the provider intends to operate.

62. The business plan should set out, in broad terms, the provider's strategy for achieving the business objectives and targets it has identified. The content of this section will depend on the targets and objectives identified, but may include, for example:

- a. A provider's strategy for achieving recruitment targets, such as its target demographic, approach to marketing, and any planned use of recruitment agents.
- b. A provider's strategy for growth of its course portfolio (or other objectives relating to changes in the provision it offers), such plans to start new partnerships or expand into new subject areas.
- c. A provider's strategy for achieving financial targets, particularly where this involves the generation of surpluses, such as any approaches the provider intends to adopt to increase revenue, reduce or limit costs, or any planned changes to its fee structure.

- d. A provider's strategy for achieving objectives in relation to the academic experience or outcomes of students, such as investment in staff, physical or digital resources, partnerships with employers, curriculum changes, or changes to academic support arrangements.

63. The plan should provide information about any planned strategies which will require:

- a. additional investment
- b. a significant change to the size and shape of the provider or the way it currently operates
- c. approaches which carry a risk that the provider needs to manage.