

Consultation

**Office for
Students**

OfS

Part 2: Proposals for new initial condition E7

Effective governance

This consultation runs from **6 February**
to **23 April 2025**.

Reference OfS 2025.05

Enquiries to regulation@officeforstudents.org.uk

Publication date 6 February 2025

Contents

Introduction	3
What we are consulting on.....	3
Why we are focusing our attention in this area	3
Summary of the proposals	5
How we would implement the proposals.....	6
Proposal 1: Introduce a new initial condition E7 for effective governance	7
What are we proposing?	7
Alternative options considered.....	7
Proposal 2: Direct assessment of a set of governing documents at registration	8
What are we proposing?	8
Why are we making this proposal?	8
Detail of the proposal	10
Alternative options considered	15
Proposal 3: A clear and comprehensive business plan	15
What are we proposing?	15
Why are we making this proposal?	15
Detail of the proposal	18
Alternative options considered	24
Proposal 4: Key individuals have sufficient knowledge and expertise	25
What are we proposing?	25
Why are we making this proposal?	25
Detail of the proposal	27
Alternative options considered	34
Proposal 5: Include the requirement that the individuals responsible for running the provider must be ‘fit and proper’	35
What are we proposing?	35
Why are we making this proposal?	35
Detail of the proposal	36
Alternative options	46
Proposal 6: Requirement for a provider to have comprehensive arrangements to prevent, detect and stop fraud and inappropriate use of public funds	47
What are we proposing?	47
Why are we making this proposal?	47
Detail of the proposal	48
Alternative options considered	51
Other questions about this consultation	52
Annex A: List of consultation questions	53
Annex B: Alternative options considered	58
Proposal 1: Introduce a new initial condition E7 which would replace initial conditions E1 and E2	58
Proposal 2: Direct assessment of a set of governing documents at registration	59
Proposal 3: Include requirement to have a clear and comprehensive business plan	61
Proposal 4: Include requirement that key individuals at the provider have sufficient knowledge and expertise	67
Proposal 5: Include the requirement that the individuals responsible for running the provider must be ‘fit and proper’	68

Proposal 6: Include requirement for provider to have comprehensive arrangements in place to prevent, detect and stop fraud and inappropriate use of public funds	69
Annex C: Part A of proposed condition E7 and related guidance	71
Initial condition of registration	71
Summary.....	75
Proposed guidance	75
Assessing compliance	80
Annex D: Part B of proposed condition E7 and related guidance	81
Initial condition of registration	81
Summary.....	84
Proposed guidance	85
Annex E: Part C of proposed condition E7 and related guidance.....	95
Initial condition of registration	95
Proposed guidance	99
Assessment	103
Annex F: Part D of proposed condition E7 and related guidance.....	104
Initial condition of registration	104
Summary.....	108
Proposed guidance	108
Annex G: Part E of proposed condition E7 and related guidance	117
Initial condition of registration	117
Summary.....	119
Proposed guidance	119
Exceptional circumstances	123
Inappropriate use	124
Public funds	124
Assessing compliance	125

Introduction

What we are consulting on

We are proposing to introduce a new initial condition E7 that would require an institution to have effective governance arrangements for the purpose of being a registered higher education provider. This would replace the existing initial conditions E1 and E2 for providers seeking registration with the Office for Students (OfS) or applying to change registration category. (See .)

1. Our proposed changes would streamline our assessment of a provider's governance arrangements by requiring submission of a set of governing documents directly to the OfS. We are proposing that we would assess these documents directly, removing the need for a provider to carry out a self-assessment of its approach and documents. We think this would reduce burden for well-prepared providers. We are also proposing to include the current requirement (set out in our registration guidance¹) for a provider to produce a business plan within this new initial condition and to set clear criteria and an extended scope for what this business plan should include. Again, we expect that a well-prepared provider will already have this information.
2. We are also proposing requirements that will ensure that the leaders of a provider have appropriate knowledge and expertise and are 'fit and proper' to carry out their roles. Finally, we are proposing that a provider should have comprehensive arrangements to prevent, detect and stop fraud and inappropriate use of public funds.
3. We are not proposing to make any changes to the ongoing conditions of registration for management and governance as part of this consultation. This means that providers registered with the OfS will remain subject to the requirements of ongoing conditions E1 and E2.
4. In this part of the consultation, we are seeking views about our detailed proposals relating to effective governance and the reasons for our proposals. We have set out the main alternative options we have considered in Annex B. Annexes C-G include the proposed drafting for each of the proposed elements of the initial condition. The requirements are presented separately for the purposes of this consultation to make it easier for respondents to comment on the content of the proposals. If we decide to implement our proposals, we will consider how to most clearly present the requirements as part of the OfS regulatory framework.

Why we are focusing our attention in this area

5. As explained in the introduction to this consultation governance in the higher education sector has never been more important.² Higher education providers must be able to navigate a challenging financial landscape in an increasingly volatile, uncertain and complex global environment. Those responsible for the governance of registered higher education providers

¹ See [Regulatory advice 3: Registration of English higher education providers with the OfS](#) and [Guidance for providers about the financial information required for registration](#).

² See [Introduction to the consultation on new registration conditions - Office for Students](#).

must have the capacity and skills to navigate these challenges to ensure that their students continue to receive a high quality education. In doing so, it is important that providers can identify and act to mitigate risks to public funding and ensure value for money for students. This is why we have proposed 'sector resilience' as a strategic priority for the OfS's organisational strategy for 2025 to 2030.³

6. We are clear that new providers can enrich the higher education sector, bringing high quality courses, innovative approaches and extending choice for students. It is important that well-prepared providers are able to register with the OfS smoothly and with minimum burden. However, in the current context, risks to students and taxpayers can be significant if a provider is registered without robust governance arrangements in place. Weak governance increases the risk that students would not receive a high quality education, and that the provider could become insolvent, resulting in harm to students. There could also be an increased risk to the use of the significant public funding that can be accessed by a provider once it is registered.
7. The OfS's current initial conditions relating to management and governance, conditions E1 and E2, have been in place since 2018. During this period, we have registered more than 400 providers, and we have drawn on this experience in developing our proposals. We have seen a shift in the types of providers applying for registration – from large, established providers with an extensive track record, through to the current position where most applicants are smaller, newly established providers. Although many of these new providers are well prepared and go on to make an important contribution to the higher education sector, we think some changes in our assessment of governance arrangements are needed to ensure that we are effective in identifying providers where this is not the case. We have seen some issues of concern including:
 - a. **Governing bodies that lack the skills and experience to navigate the challenges facing their provider.** Some governing bodies have weaknesses that mean that they did not appropriately identify and respond to financial risks, putting their students' education at risk. In the most serious cases, a lack of appropriate skills and expertise on a governing body has resulted in mismanagement over many years, leading to a significant negative impact on students, including disruption to their study due to course or provider closure.
 - b. **Providers seeking registration that do not have sufficient awareness or understanding of the responsibilities of a registered provider, and the associated regulatory requirements.** Some providers have failed to meet their regulatory obligations to submit information once registered. This is particularly of concern where it relates to the submission of financial information. In the most severe cases, serious financial issues at a provider have not been communicated to the OfS in a timely way. This reduces our ability to support students if an institutional closure were to occur. Similarly, a failure to submit accurate data about student outcomes can reduce our ability to ensure courses are high quality and standards secure.
 - c. **Providers that may have misused public funding.** Some providers present governance arrangements at registration that appear to meet our requirements for

³ See [Consultation on OfS strategy for 2025 to 2030 - Office for Students](#).

transparency and external scrutiny, but it subsequently transpires that those arrangements are not representative of how decisions will be made in practice. There have also been instances of a provider applying for registration where we have reason to believe that the provider itself, or people responsible for managing it, have been previously involved in the misuse of public funds.

8. It is important that our registration assessment is sufficiently robust to prevent these sorts of providers from registering and accessing the benefits that come with registration. We need to have the right tests in place at registration to ensure that each provider has effective governance arrangements in place to manage challenging circumstances and deliver high quality courses to students.

Summary of the proposals

9. To address these issues, we are proposing to introduce a new initial condition of registration, condition E7, which would require a provider to have effective governance arrangements for the purpose of being a registered higher education provider. This condition would replace the existing initial conditions for management and governance, initial conditions E1 and E2.

Proposal 1	to introduce a new initial condition E7 for effective governance
Proposal 2	to include direct assessment of a set of a provider's governing documents at registration
Proposal 3	to require a clear and comprehensive business plan
Proposal 4	to require key individuals to have sufficient knowledge and expertise
Proposal 5	to require individuals responsible for running a provider to be 'fit and proper'
Proposal 6	to require a provider to have comprehensive arrangements in place to prevent, detect and stop fraud and misuse of public funds

10. Our proposal to introduce initial condition E7 is intended to make the assessment process more streamlined for well-prepared providers while ensuring that we are able to identify and refuse registration for providers that are not ready. It does this by requiring a provider to submit a set of governing documents and a business plan as part of its registration application. The documents would then be assessed by the OfS. This would remove the need for a provider to carry out a self-assessment of its own arrangements against the public interest governance principles as part of its application, and provide greater certainty to providers about the information we require to make our assessment. We think that well-prepared providers would already have most (if not all) of the documents and information that they would be required to submit, so we expect this to be a reduction in burden overall.
11. The proposed condition also sets out some specific tests in relation to a provider's leadership team. This is to ensure that certain individuals have the right expertise and are fit to lead the provider and meet the responsibilities that come with registration. Our initial view is that these

tests are important to ensure the governance of the provider is robust and able to deliver good outcomes for students and taxpayers.

12. To reduce risks to public funding, we are also proposing requirements to ensure that a provider has appropriate arrangements in place to manage these risks and that it does not have a history of fraud or misuse of public funding.
13. We have considered alternative approaches to those set out in this consultation. We have set these out in Annex B. We welcome views on these alternatives alongside comments on our proposals. The introduction to this consultation (Annex B: Matters to which we have had regard in reaching our proposals) sets out the matters we have considered in formulating these proposals.⁴

How we would implement the proposals

14. This consultation will close on **Wednesday 23 April 2025**. The introduction to this consultation (How we would implement these proposals) sets out how we would implement our proposals, including a proposed timetable for implementation.⁵

⁴ See the introduction: [Annex B: Matters to which we have had regard in developing our proposals - Office for Students](#).

⁵ See the introduction: [How would we implement these proposals - Office for Students](#).

Proposal 1: Introduce a new initial condition E7 for effective governance

What are we proposing?

We are proposing to introduce a new initial condition of registration that would require a provider to have effective governance arrangements for the purpose of being a registered higher education provider. The proposed requirements that would make up this condition are discussed in detail later in this document.

We are proposing that this new condition would replace the existing initial conditions for management and governance, initial conditions E1 and E2. Therefore, if implemented, a provider would be assessed only in relation to the requirements of initial condition E7 when it seeks registration. We consider that this would reduce complexity and burden for providers by reducing the number of initial conditions that relate to management and governance.

Our initial view is that the proposed requirements for initial condition E7 would be sufficient to provide a robust assessment of a provider's governance arrangements at the point of registration. This would remove the need to assess the requirements in the current initial conditions E1 and E2 at registration.

We are not proposing to make any changes to the management and governance requirements for registered providers (the ongoing conditions) at this time. This means that conditions E1 and E2 will remain in place as ongoing conditions and registered providers will have to continue to meet these requirements. This would include any providers registered under initial condition E7, if it is introduced.

Alternative options considered

15. We have considered alternative options for achieving our overarching aims, which are set out in Annex B. For Proposal 1, these are:
 - a. Retaining the current initial conditions in their current form.
 - b. Making changes to the existing initial conditions but not replacing them.

Question 1a

Do you agree with the proposal to introduce a new initial condition that would require a provider to have effective governance arrangements for the purpose of being a registered higher education provider?

Question 1b

Do you agree that this new initial condition should replace the current initial conditions E1 (public interest governance) and E2 (management and governance)?

Proposal 2: Direct assessment of a set of governing documents at registration

What are we proposing?

We are proposing to change the way we assess the effectiveness of governing documents at registration. At the moment, the registration tests rely on a provider's self-assessment of the extent to which its governing documents uphold the OfS's public interest governance principles. We are proposing to replace this with a requirement for a provider to have in place a set of specified governing documents for us to assess. The current requirement to carry out a self-assessment of such documentation would be removed.

We are proposing that our assessment should primarily focus on the documents relating to the workings of the governing body and associated processes. This is so that (in combination with Proposal 4 (knowledge and expertise) and Proposal 5 (fit and proper)) we have confidence that the governing body and those responsible for the management of the provider can run and govern the provider effectively.

For the avoidance of doubt, we are not proposing to make any changes to the ongoing conditions for management and governance, nor to the definition of 'governing documents' applicable to those ongoing conditions. Given the fundamental importance of this in protecting the interests of students and taxpayers, all registered providers will continue to need to ensure that their governing documents uphold the public interest governance principles and that their management and governance arrangements deliver those principles in practice.

Why are we making this proposal?

16. We are increasingly finding that newly established providers (with less experience of delivering higher education) are less sure about what is required in terms of the self-assessment we ask for at registration. This leads to inefficiencies in the assessment as a result of:
 - a. The need for increased back and forward communications between the OfS and applicant providers to answer queries about the scope and content of a self-assessment, or to request additional information.
 - b. Providers spending time assessing and describing their documents to demonstrate they have effective management and governance, rather than simply submitting the documents they already have for direct assessment by the OfS.
 - c. Providers that have only recently been established, and are not currently offering higher education courses, are encouraged to have developed and assessed a full suite of policies and processes. It may be more appropriate that some of these are developed and agreed by the governing body subsequently.
 - d. Unclear or poorly written documents are being submitted. The current initial conditions do not set standards for the clarity or legibility of documents, as the focus is instead on a

provider's self-assessment. Poorly written documents raise questions about the likely effectiveness of a provider's arrangements and also about the degree of assurance that can be taken from that provider's self-assessment of the documents. This can result in delays in the assessment process.

- e. Providers being incentivised to reach a favourable conclusion about their arrangements, to avoid issues with their application, rather than being genuinely reflective about areas for development.
 - f. Small providers setting out governance arrangements which mirror those of large multi-faculty universities, which are unlikely to be appropriate for the provider, or deliverable in reality. It is likely that such providers would be unable to deliver these in practice and so they are unlikely to reflect how the provider will actually operate.
17. Our initial view is that a provider's governing documents remain an important and useful source of evidence for assessing good governance at registration. Our initial view is that well-prepared providers would have these documents in place when they apply for registration, so we do not think our proposal would create material additional burden for a well-prepared provider. By removing the need for a self-assessment, we consider that burden will be reduced for providers and that direct assessment of documents will make it easier for us to refuse a provider that is not ready.
18. For the avoidance of doubt, we are not proposing to change the definition of what constitutes a 'governing document' as set out in the regulatory framework for the purposes of condition E1. This definition, and the scope of ongoing condition E1 would remain unchanged.⁶ However, we propose that at registration, a subset of a provider's governing documents should be directly assessed by the OfS. We have proposed to focus our assessment on the documents that give us confidence that the governing body and its processes are robust and that it will be able to run the provider effectively if it is registered.
19. We have considered whether these changes might cause providers to overlook certain public interest governance principles in their preparation for registration. There may also be a concern that, without a specific assessment of the public interest governance principles at registration, we may register a provider that has not properly addressed those principles when producing its governing documents or designing its governance structures and processes.
20. We think that our proposals overall would increase our confidence in the capability and suitability of the governing body and the processes in place to ensure that it is able to carry out its role effectively. If a provider is registered, we would be assured that its governing body would be effective in ensuring that the provider meets its obligations relating to the public interest governance principles. We are not proposing to make changes to the ongoing conditions of registration that relate to the public interest governance principles, given the fundamental importance of these for students and taxpayers.

⁶ Where we refer to 'governing documents' or a provider's 'set of governing documents' for the purposes of this consultation we are referring to the specific set of documents that we propose to include within the requirements of initial condition E7, which is a more limited subset of documents covered by the definition of governing documents in ongoing condition E1.

21. When developing our proposals for initial condition E7, we have focused on the aspects of effective governance that we consider are most important to assess before a provider's registration. This does not mean that we think other aspects of a provider's governance arrangements are not relevant to the experience of students and do not warrant our attention as a regulator. To manage the volume of information that a provider is required to submit at registration, and to ensure that we are making efficient use of OfS resources during the assessment process, we think it is appropriate to focus on particular areas in our registration assessments.

Question 2a

Do you agree with the proposal that there would not be a direct reference to the OfS's public interest governance principles in initial condition E7?

Detail of the proposal

22. In summary, we propose to:
- a. Require a provider to have a set of governing documents at registration that would enable the effective governance of the provider in practice.
 - b. Set minimum standards for the clarity and consistency of documents, which would mean a provider with poorly written documents would not satisfy the condition.
 - c. Limit the scope of the governing documents a provider is required to submit to those which govern the highest tiers of a provider's decision making, and those we consider particularly relevant for assessment at registration. This would involve focusing on documents relating to:
 - i. How ultimate oversight and decision-making authority is exercised, demonstrated primarily through documents that administer the operation of the governing body.
 - ii. How the provider's risk and audit functions will operate, reflecting the significant risks to a provider's ongoing financial sustainability and to public money that these functions are intended to mitigate.
 - d. Be more specific about what we expect documents to contain and what constitutes an appropriate document in each case for the purposes of enabling effective governance of the provider in practice. This more limited assessment will replace consideration of whether the documents uphold the public interest governance principles.
 - e. Remove the need for a provider to undertake a self-assessment and instead undertake a direct assessment of whether the provider's arrangements meet those requirements.

Documents should enable effective governance in practice

23. We are proposing an overarching requirement that a provider's set of governing documents should enable effective governance of the provider in practice. This means that the rules and procedures set out in the documents should be designed to ensure the provider will be well run, and ultimately deliver high quality experiences and outcomes for students. It also means

that the arrangements set out in those documents would need to be deliverable in practice. The rest of the condition proposes the specific requirements for the information contained within governing documents that we think would be necessary to achieve these aims.

Question 2b

Do you agree with the proposal that initial condition E7 should include a requirement for a provider to have a set of documents which would enable the effective governance of the provider in practice? Please give reasons for your answer.

Limited range of documents

24. We consider that asking a provider to include all governing documents necessary to demonstrate the public interest governance principles are being upheld would likely involve the submission of a large number of policy documents, some of which would set out detailed operational information. Our initial view is that scrutiny of such documents is best delivered in the first instance by a provider's governing body. We are therefore proposing to focus our registration assessment on the documents that relate to the effectiveness and integrity of the governance arrangements themselves and the oversight of risks. A provider will still need to have all necessary documentation in place to comply with ongoing conditions E1 and E2, including as these relate to the public interest principles.

Governing body documents

25. A provider's governing body sets strategic direction, makes decisions and holds ultimate accountability for the provider's actions. While some of this authority may be delegated, the governing body should retain full responsibility for the most important matters and be able to assure itself that it has a line of sight over these. As such, we think it is appropriate to focus scrutiny on how this body will make decisions and exercise its oversight, and that this should continue to include scrutiny of the documents which govern its operation (governing body documents).
26. We have proposed that the governing body documents should contain information about the governing body's purpose, membership, appointment procedures, responsibilities, decision-making procedures, meeting frequency and the arrangements for reviewing effectiveness. The draft guidance underpinning the proposed condition says that, in practice, this will usually mean submission of the terms of reference for a provider's governing body, which we consider would typically include all this information. However, a provider would be able to submit any combination of documents which set out this information.

Any other documents that contain rules administering the operation of the provider's governing body

27. To support the intention of focusing primarily, at the point of registration, on how the governing body will function, we are also proposing that a provider should submit any other documents that might contain additional rules for the governing body's operation – so that we can fully understand how the governance arrangements work, or will work, in practice. We propose that the following documents should be submitted to fulfil this purpose:

- a. Documents that establish the provider as an institution, such as a provider's Royal Charter or articles of association. These documents are also likely to include details of the rules, responsibilities and powers which govern the provider's operation and overlap with the arrangements set out in the governing body documents.
- b. Documents that set out the rules about any decision making which has been delegated by the governing body, such as a scheme of delegation.
- c. Any other documents which contain rules which govern the operation of the provider's governing body. We envisage some providers might have documents like this. An example could be where a provider has shareholder agreements which grant some decision-making power or authority over the governing body, such as voting rights, or rights to appoint or remove members of the governing body.

Risk and audit documents

28. In addition to the documents above, which focus on the highest level of decision making within a provider, our initial view is that a provider's arrangements for delivering its risk and audit functions represent a specific area of corporate governance where ineffective arrangements pose a higher risk to taxpayers and, in cases where the financial sustainability of a provider is put at risk, to students. We therefore think that it is appropriate to seek greater assurance about these arrangements before a provider is registered.
29. We think applying greater scrutiny to the governance arrangements for risk and audit functions, compared with other important functions within a provider, is particularly important given increased risks relating to protecting public funds and financial sustainability.
30. In broad terms, 'risk and audit functions' mean a provider's arrangements for identifying and managing risks, overseeing financial reporting and overseeing audit activity. Different providers are likely to have different arrangements for discharging these functions. Some may have a specific risk and audit committee, but in other providers this may be undertaken by a finance committee, or the governing body, or some combination of all of these. Regardless of a provider's chosen arrangements and structures, our initial view is that all providers should be identifying and managing risk, overseeing audits, including those commissioned to be undertaken on behalf of the provider by a third party organisation, and scrutinising financial reporting. Our proposals would require a provider to submit the documents that govern these functions.
31. Where a provider does have a committee or committees responsible for discharging these functions, we have proposed that it should submit the documents that govern the operation of these committees. Those documents should include similar information about purpose, membership, appointments, decision making and meeting frequency as is required in a provider's governing body documents. We also propose that the documents should set out arrangements for reporting to, and oversight by, the governing body.

A conflict of interests policy

32. We are proposing to require submission of a conflict of interests policy. This is because we think that having robust arrangements in place for identifying and managing conflicts of interests is essential to ensure the overall integrity of the governance arrangements in place

at a provider. Our proposal is therefore to require all providers to have a conflict of interests policy in place at registration.

33. The proposed condition sets out our initial views on the minimum requirements for an effective conflict of interests policy. We propose that the policy should contain, as a minimum:
- a. A definition or guidance of what would constitute a conflict of interests, which would enable users of the policy to determine whether any conflicts may exist.
 - b. An explanation of how and when conflicts of interests should be declared to the provider.
 - c. Mitigations to address conflicts of interests that are declared.

Question 2c

Do you agree with proposals for the governing documents that would be considered as part of the proposed requirement, and the information these should contain? These are:

- Governing body documents
- Any other documents that contain rules administering the operation of the provider's governing body
- Risk and audit documents
- A conflict of interests policy.

Appropriate arrangements

34. We propose that, the set of governing documents required at registration provide 'clear and appropriate arrangements' for discharging the relevant governance functions. For example, our assessment of a provider's governing body documents will consider whether those documents 'provide clear and appropriate arrangements for the constitution and operation of the governing body'.
35. We would expect that the governance arrangements required to satisfy the condition will look different for providers of different size, shape and purpose. For example, the arrangements needed to govern a large, multi-disciplinary institution providing validation services, delivering transnational education and engaged in research activity would be very different to those needed for a small, single-disciplinary, teaching-only provider. It is important that the regulatory framework enables this flexibility.
36. We are therefore proposing to consider 'appropriateness' of a provider's arrangements by reference to the provider's size, complexity, context and the content of its business plan when assessing whether the documents submitted would enable the effective governance of the provider in practice. For example, we propose that, when assessing the composition of a provider's governing body, we would consider:

- a. **The size of the provider:** a large provider managing more substantial risks to students may require different leadership capabilities than a smaller provider.
 - b. **Its complexity:** a provider with a simple business model offering a single subject or course, with modest forward plans and not undertaking complex activities, may require different decision-making capacity on the governing body than a large multi-faculty institution.
 - c. **Its context and business plan:** factors specific to the provider's circumstances, such as a provider's involvement in other activities beyond higher education, or the nature of its ownership or corporate form, might mean it is more appropriate to have particular skills within its governing body to accommodate additional, specific roles.
37. We believe that consideration of these factors would help ensure that a provider's proposed governance arrangements match the needs of the individual provider.
38. Considering appropriateness will ensure that our decisions take into account a provider's context. However, we propose that the primary judgement the OfS will make is whether or not the provider's governing documents enable the effective governance of the provider in practice. A provider's arrangements would not satisfy the condition in cases where arrangements were patently inappropriate in and of themselves. For example, our initial view is that governing body documents that set out an unreasonable schedule of routine meetings, such as once a year, would be unlikely to meet our requirements, regardless of the size or complexity of the provider.

Clarity and consistency

39. We are proposing that all documents submitted in relation to this condition must be clearly written, understandable, internally consistent and consistent with the content of other documents. This is to avoid poorly written, inconsistent documents, as we think this would hinder the effectiveness of a provider's governance arrangements both now and in the future. Ambiguity in key governing documents may mean that we are unable to assess whether the arrangements are appropriate, and this is therefore likely to result in delays in our assessment.

Drawing on additional evidence of deliverability

40. In assessing the deliverability of arrangements in practice, we are also proposing to draw, where appropriate, on additional evidence from our engagement with the senior leaders of a provider, including members of the governing body, undertaken as part of a provider's registration application. Where members of a provider's governing body fail to demonstrate a clear understanding of the arrangements set out in these documents, or describe arrangements that contradict the documents submitted, our initial view is that this could be taken as evidence that the governance arrangements set out in documents are unlikely to be deliverable for the provider in practice, and that the condition is not satisfied.

Question 2d

Do you agree with the proposed requirements for each of the governing documents that would be considered in relation to this requirement? These are:

- Arrangements should be 'appropriate' to the size, shape and context of the provider
- Documents should be clear and consistent
- Documents should be deliverable in practice.

Alternative options considered

41. We have considered alternative options for achieving our overarching aims, which are set out in Annex B. For Proposal 2, these are:
 - a. Retaining current arrangements.
 - b. Assessing the public interest governance principles without reference to a self-assessment.
 - c. Assessing a more comprehensive range of governing documents.
 - d. Assessing a narrower range of governing documents.

Question 2e

Do you have any additional comments on this proposal?

Proposal 3: A clear and comprehensive business plan

What are we proposing?

We are proposing that, in order to be registered, a provider must be able to present a clear and comprehensive plan for how it will operate. This should describe the provider's business, and set out its objectives over the medium term and its strategy for achieving them. The plan should also set out how the provider will comply with the ongoing conditions of registration.

Why are we making this proposal?

42. Before a provider is able to enter the regulated higher education sector and access the benefits of registration, it must be properly prepared to ensure it will offer high quality education to students, treat students fairly and reduce risk of misuse of public money. This is particularly important given the increasing challenges and risks in the higher education sector

discussed in the introduction to this consultation.⁷ Our initial view is that part of this preparation will be to have a robust business plan. This will support a viable and sustainable business that meets regulatory requirements.

43. Providers that are seeking registration are less likely to have had a strong history of delivering higher education, and some providers are not sufficiently prepared to do so. Some providers applying for registration have not been able to demonstrate that they have sufficient understanding of how the higher education sector operates. This can result in a provider making unrealistic assumptions in its planning, such as overestimating its ability to recruit students in a competitive market, which can pose risks to the ongoing viability of the provider and cause associated harm to students.
44. Part of being sufficiently equipped to deliver higher education is preparing to meet the relevant regulatory requirements. We have encountered issues where newly registered providers were not sufficiently aware of the regulatory framework and so did not have robust plans in place to meet ongoing requirements. For example, providers have faced difficulties in returning important financial information to the OfS, or returning accurate data to the designated data body or the Student Loans Company (SLC) because they had failed to adequately prepare for these obligations. This creates risks for students as it can delay or weaken the OfS's ability to tackle risks including those relating to financial sustainability and the quality of higher education that students receive. Addressing compliance issues that arise in underprepared providers after they are registered also creates a drain on the resources of both the provider and the OfS.
45. It is also important that a provider understands the most substantial areas of risk associated with its business model and has in place appropriate strategies for managing these risks. Through our regulation of registered providers, we have identified common high-risk approaches to delivering higher education and ways of operating adopted by some newly registered providers that are more likely to lead to potential breaches of our conditions and harm to students and taxpayers. These include:
 - a. A provider pursuing rapid growth that outstrips its ability to effectively support students, or to exercise effective internal controls, and therefore protect public money.
 - b. A provider pursuing a low-cost-high-volume business model to maximise surplus generation, without sufficient consideration of the potential negative consequences for students' academic experiences or value for money.
 - c. A provider's future plans being dependent on the decisions of third parties or other factors outside its control, such as the need to be granted a student sponsor licence by UK Visas and Immigration (UKVI), achieve certain professional, statutory and regulatory body (PSRB) accreditation, be granted degree awarding powers, or reliance on partners to award qualifications on its behalf and support any plans for growth.
46. Where a provider does not have robust plans in place, it may encounter financial challenges after registration. Providers have at times taken steps to address this without fully considering the risk of doing so, for example:

⁷ See [Introduction - Office for Students](#).

- a. Rapidly entering into new partnership arrangements because of the unexpected withdrawal of a current partner without having the governance and management processes needed to manage this change properly.
 - b. Employing financially incentivised external recruitment agents to meet recruitment targets that are too ambitious.
 - c. Taking out additional unplanned borrowing to fund unanticipated expenditure.
47. All of these behaviours can result in negative consequences for students and taxpayers.
48. Our proposal to require a business plan is intended to reduce these risks. We would be able to test a provider's preparation and its understanding of the sector, the OfS's conditions of registration and the risks it may face (and how it plans to account for these in its business). We consider this proposal would help us to identify providers that are not yet ready for registration. It would also allow the OfS to better understand areas of risk that could be mitigated through the imposition of specific conditions of registration targeted at those areas.
49. We welcome innovation in the sector because this is an important means of creating diversity and competition. Innovation can benefit students by increasing choice and driving improvement. We do not intend to prevent providers from pursuing legitimate commercial objectives or strategies, even where these may carry increased risk, nor seek to refuse a provider's registration application based solely on the business model it has chosen to pursue, provided we can gain assurance that those risks sit with the provider or its shareholders and not with its students or taxpayers. While we want to facilitate new providers to enter the market and test new delivery models, this cannot be done in a way that causes detriment to students.
50. We have considered whether our proposal to require a provider to have in place a business plan, would result in additional burden for a provider. A provider that is new to the higher education sector is already required to produce a business plan as part of its application for registration (as set out in Regulatory advice 3).⁸ This proposal would move that obligation into the initial condition of registration, apply it to all providers wanting to register, and expand the requirements of the business plan as proposed in this consultation.
51. Our initial view is that well-prepared providers are highly likely to have appropriate business plans in place. We have designed the requirements for the business plan to align where possible with content that is typically expected to be covered in business or strategic plans that providers may need to have in place for other purposes. We have also aligned the scope and time period for forecast information with the requirements in initial condition D, to ensure that there is appropriate consistency.⁹ We recognise that although a well-prepared provider is likely to have the information we require, it may not have it in a single document. We are therefore proposing that a provider could submit an existing document or documents containing the information to minimise burden.

⁸ See [Regulatory advice 3: Registration of English higher education providers with the OfS - Office for Students](#).

⁹ See [Condition D: Financial viability and sustainability - Office for Students](#).

52. Our initial view is that the proposed content of the business plan largely mirrors what might typically be covered in standard templates for a business plan, or for a strategic plan (with the exception of the content about a provider's arrangements to ensure compliance with the OfS's ongoing conditions). We therefore expect that most providers should be able to submit documents they already have or repurpose existing material to fulfil this requirement with minimal additional burden. For a provider that does not already have a plan in place, we think that the creation of a plan will ensure it undertakes necessary business planning before applying for registration and so help to avoid risks to students and taxpayers.
53. We have also considered the cumulative impact of changes that would be brought about by proposed new condition E7. Our initial view is that any additional burden relating to the provision of a business plan will be balanced by the removal of the requirements for a self-assessment of the provider's management and governance arrangements. On balance, we think this means that the new requirements rebalance the focus of a provider's efforts, rather than creating significant additional burden, in aggregate.

Detail of the proposal

54. To address the issues above, we propose to introduce new requirements for a provider to:
- a. Have a business plan which:
 - i. Meets requirements relating to the comprehensiveness, clarity and coherence of the plan, the provider's understanding of the higher education sector and relevant risks (and strategies to manage those risks), and the provider's understanding of requirements that will apply to it under the OfS's ongoing conditions of registration.
 - ii. Covers the provider's current financial year and four future years.
 - b. Have the ability to deliver that plan in practice.
 - c. Demonstrate significant consideration of the interests of students in formulating its business plan.
 - d. Include specific information about its courses and planned approach within its business plan.

Business plan

55. We are proposing that the business plan includes elements that may normally be found in a business plan created for the purposes of securing investment, plans produced by an established provider to set out shorter term operational priorities, or elements that might normally be found in a business strategy or strategic plan. We think that the information required for the business plan should be readily available to any provider operating a well-run business. We have proposed allowing flexibility for a provider to satisfy this requirement, in full or in part, by submitting any documents of this nature that it already has (see [Format of the information submitted](#)).

Question 3a

Do you agree with the proposal that initial condition E7 should include a requirement for a provider to have a business plan which describes the provider's business, sets out its objectives over the medium term, and its strategy for achieving them?

Proposed requirements

56. Our initial view is that the business plan should meet the following relevant requirements:

- The plan must be **comprehensive**, to ensure it provides sufficient detail about a provider's plans. This would enable us to judge whether the provider is sufficiently prepared to deliver higher education, and whether its planning is based on sufficient understanding of the higher education sector. Our initial view is that a comprehensive plan, covering all aspects of a provider's intended activities, would enable the OfS to make a judgement on whether the provider has managed to identify all relevant risks.
- The plan must be **clearly and professionally written**, to avoid any ambiguity about what a provider's plans are.
- The plan must be **coherent and consistent** with any other information available to the OfS when assessing the provider's application. Coherence and consistency are important to avoid any ambiguity about the provider's plans, while also providing some assurance that it represents the provider's genuine intention for how it will operate and its ability to do so in practice.
- The plan must demonstrate a **sound understanding of the higher education sector**. This should ensure that providers either have sufficient experience in the higher education sector, or take steps to ensure a sufficient understanding of the sector before finalising their plans and applying for registration with the OfS. They will therefore be better prepared to deliver higher education courses as planned and comply with conditions of registration if registered.
- The plan must demonstrate a **sound understanding of risks** and demonstrate the provider has **appropriate arrangements to manage risks** and comply with conditions of registration. This should provide assurance that the provider has considered the risks that are most relevant to its circumstances and approach before finalising its plans and applying for registration, and has committed to actions to manage those risks in order to limit the risk of future non-compliance and harm to students.
- The plan must demonstrate a **sound understanding of the ongoing conditions of registration**. This should ensure that a provider will review the regulatory framework and gain an understanding of the requirements before finalising its plans and applying for registration with the OfS. This will reduce the risk of that provider's future non-compliance.

Question 3b

What is your view of the proposed requirements of the plan?

Time period for plan

57. We have proposed that the business plan covers a five-year period. Our aim in doing so is to ensure a provider has made sufficiently detailed plans over the medium term. We consider this length of time will allow a provider to sufficiently set out its intended course of direction, and therefore demonstrate key strategic objectives and targets, and consideration of associated risks. A five-year period also aligns with the period over which financial forecasts and information is required for a newly established provider (that does not have audited financial statements) under condition D. Our initial view is that a shorter period would not provide a sufficiently long-term view of a provider's aims to enable it to illustrate its plans for change and therefore demonstrate that it has undertaken sufficient planning and is appropriately managing risks.
58. We have specifically suggested that the plan covers a five-year period – comprising the provider's current financial year plus four additional years – to align with the financial forecasts and information requested from newly established providers under condition D. To produce these forecasts, we think that a provider will have undertaken a detailed level of planning over this period. This means a business plan covering this period would minimise the additional burden arising from this proposal.

Question 3c

Do you agree with the proposal that the business plan should cover a five-year time period?

Question 3d

If you think another time period is more appropriate, please explain what this time period is and why.

Ability to deliver the plan in practice

59. We have proposed that a provider should, in the OfS's judgement, have the ability to deliver its business plan in practice. The overarching aim of the business plan requirement is to prevent harm to students by ensuring a provider has undertaken the preparation and planning necessary to inform its plans. However, any assessment of those plans would be meaningless if the provider is unable to deliver them in practice.
60. Our proposed approach to considering the ability of a provider to deliver plans in practice mirrors the OfS's consideration of the quality plan a provider must submit in relation to initial condition B7 – where credibility of the plan is assessed by reference to whether a provider has the capacity and resources to deliver it in practice.¹⁰ In considering a provider's ability to deliver its business plan for initial condition E7, we propose that capacity and resources would be a central consideration, but other factors would also be taken into account. This is

¹⁰ See [Condition B7: Quality - Office for Students](#).

because a provider's business plan will include elements that are reliant on much more than a provider's capacity and resources (for example, any recruitment targets a provider sets out will also depend on the conditions of the market and activity of other providers). The proposed consideration of a provider's ability to deliver its plan would therefore take into account a wider range of factors (for example, whether targets are realistic in the context of the sector).

61. As is the case for assessment of a provider's set of governing documents, we are proposing that our judgement of whether a provider has the ability to deliver the arrangements and activities set out in its business plan may, in part, be informed by communications with key individuals in a provider's senior management and governing body, and assessments of those individuals' knowledge and expertise. For more information around these proposed tests of key individuals, [see Proposal 4](#).

Question 3e

Do you agree with the proposed approach to considering a provider's ability to deliver its business plan in practice?

Significant consideration of the interests of students

62. We propose that the business plan must demonstrate that the provider has given significant consideration to the interests of students in its formulation. This is intended to address the issue of providers adopting high-risk business models without ensuring students are protected from potential detriments arising from those approaches.
63. In a business plan that sets out a provider's overarching purpose, its planned activities, targets and risks, under our proposals we would expect to see the interests of students as a primary consideration. Where a provider is also pursuing commercial objectives, which have the potential to conflict with the interests of students, we would expect it to demonstrate awareness of the potential risks, and to have given thorough consideration to how any such conflicts will be managed. The proposed guidance underpinning the condition (see Annex D) sets out a number of indicators that we are proposing to take into account when assessing this part of the plan. We invite respondents' views about whether these are the best ways of identifying potential risks in this area.

Question 3f

Do you agree with the proposal that the business plan should include significant consideration of the interests of students? Please give reasons for your answer.

Plans for compliance with ongoing conditions of registration

64. We propose that as part of the specific information requirements (see Table 1) a provider's business plan should set out how it will ensure compliance with the OfS's ongoing conditions of registration, if it is registered. We would also consider a provider's ability to deliver this element of its business plan in practice by reference to the capacity and resources that a provider has in place (or plans to put in place) for ensuring compliance.

65. Our initial view is that requiring consideration of regulatory compliance in a provider’s business plan would ensure that it is prepared to meet the ongoing conditions of registration and this will help to ensure that the interests of students continue to be protected.

Question 3g

Do you agree that requiring a provider set out its plans for ensuring compliance with the OfS’s ongoing conditions of registration would provide assurance that the provider is adequately prepared to deliver higher education and has an understanding of the regulatory requirements?

Specific information required to be included in plan

66. Paragraph E7B.5 of the proposed condition specifies the information we propose should be included in a provider’s business plan. Table 1 sets out how each information requirement in the business plan would support the OfS’s assessment of the plan.

Table 1: Business plan information requirements

Information required in the business plan	Purpose
<p>Description of the nature of a provider’s current range of higher education courses and geographic context.</p> <p>Description of the nature of a provider’s planned range of higher education courses.</p>	<ul style="list-style-type: none"> To inform assessment of whether a provider has a sound understanding of the risks associated with its plans.
<p>Description of a provider’s current student population (where applicable).</p>	<ul style="list-style-type: none"> To inform assessment of whether the provider has given significant consideration to the interests of students in formulating its plans. To inform assessment of whether a provider has a sound understanding of the risks associated with its plans.
<p>Description of the provider’s higher education competitors.</p>	<ul style="list-style-type: none"> To inform assessment of whether a provider has a sound understanding of the higher education sector.
<p>Description of a provider’s planned student population.</p>	<ul style="list-style-type: none"> To inform assessment of whether a provider has a sound understanding of the risks associated with its plans. To inform assessment of whether the provider has given significant consideration to the interests of students in formulating its plans. To inform assessment of whether a provider has a sound understanding of the higher education sector.

Information required in the business plan	Purpose
<p>The provider's business objectives and targets.</p> <p>The provider's strategy for achieving its business objectives and targets.</p>	<ul style="list-style-type: none"> • To inform assessment of whether a provider has a sound understanding of the risks associated with its plans. • To inform assessment of whether the provider has given significant consideration to the interests of students in formulating its plans. • To inform assessment of whether a provider has a sound understanding of the higher education sector. • To inform assessment of whether the provider has the ability to deliver its plans in practice.
<p>Any relevant risks and how the provider plans to manage those risks.</p>	<ul style="list-style-type: none"> • To inform assessment of whether a provider has a sound understanding of the risks associated with its plans. • To inform assessment of whether the provider has given significant consideration to the interests of students in formulating its plans. • To inform assessment of whether a provider has a sound understanding of the higher education sector. • To inform assessment of whether the provider has appropriate strategies for managing risks.
<p>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, which demonstrate that the provider has allocated sufficient capacity and resources to these activities to deliver them in practice.</p>	<ul style="list-style-type: none"> • To inform assessment of whether a provider has a sound understanding of the risks associated with its plans. • To inform assessment of whether the provider has given significant consideration to the interests of students in formulating its plans. • To inform assessment of whether a provider has a sound understanding of the ongoing conditions of registration. • To inform assessment of whether the provider has appropriate strategies for managing risks. • To inform assessment of whether the provider has the ability (including the capacity and resources) to deliver its plans in practice.
<p>All elements of the provider's business plan.</p>	<ul style="list-style-type: none"> • To inform the assessment of whether the plan is comprehensive, clearly written, consistent and coherent.

67. We invite respondents' views on whether there are better ways of gaining the assurances and information we are seeking.

Question 3h

Do you agree with the proposed information that would need to be included in the business plan?

Question 3i

Is there any additional information you think should be included as part of the business plan?

Information requirements related to a provider's business objectives and targets, and strategies for achieving them

68. We are not proposing that the OfS carried out a detailed qualitative assessment of the business objectives, target and strategies set out in a provider's business plan. Instead, we propose that assessors will undertake a qualitative assessment against requirements that apply across all elements of the plan, namely: comprehensiveness, clarity and consistency with other information in the provider's application, understanding of the sector or potential risk, consideration of the interests of students. For example, we are not proposing any assessment of whether the objectives and targets are the proper things for the provider to pursue (other than where these have scope to conflict with students' or taxpayers' interests) nor whether the provider's planned strategies for achieving these targets are the most effective approaches. This is because providers should be free to determine their own strategic aims and approach. We are not proposing that the OfS should seek to endorse or approve a provider's business plan or strategy as part of this requirement or seek to assess its likelihood of success. Instead, we are proposing that we would ask for this information as a means of understanding a provider's chosen approach and direction of travel to enable an assessment of whether the provider has undertaken a level of planning necessary to articulate its plans, and as a means of determining whether the provider's understanding of the potential risks that arise from these plans is sound.

Format of the information submitted

69. We are proposing to allow providers to decide on the best format for meeting the business plan requirements rather than specifying a format. The information could be provided in a single or multiple documents. A provider may choose to submit an existing business plan or strategy documents, if necessary supplemented by additional narrative to meet the criteria set out in the condition. If we were to proceed with this proposal, we may decide to publish further guidance for providers about how to best organise and signpost information contained across multiple documents, or how to structure a single document where that approach is taken. Alternative options related to this proposal are discussed in Annex B.

Alternative options considered

70. We have considered alternative options for achieving our overarching aims, which are set out in Annex B. For Proposal 3, these are:
- a. Retaining the current arrangements.

- b. Adopting the proposed approach but considering different 'relevant requirements' (including setting a lower threshold than 'sound understanding' and adopting alternative approaches to assessing a provider's plans to ensure ongoing compliance).
- c. Setting a lower threshold than 'sound understanding'.
- d. Adopting the proposed approach with alternative information requirements.
- e. Adopting alternative means of collecting information about a provider's provision.
- f. Introducing a survey as an alternative submission requirement.
- g. Adopting the proposed approach but considering a different time period.
- h. Adopting the proposed approach with an alternative submission format.

Question 3j

Do you have any further comments about this proposal?

Proposal 4: Key individuals have sufficient knowledge and expertise

What are we proposing?

We propose requiring a defined set of 'key individuals' to be able to demonstrate that they have sufficient knowledge and expertise to ensure the provider, if registered, would be able to comply with the conditions of registration, deliver its business plan, and deliver its arrangements for preventing fraud and protecting public funds.

We are also proposing that we would normally assess the knowledge and expertise of these individuals via an interview.

Why are we making this proposal?

71. If the people responsible for running a provider are not sufficiently skilled or knowledgeable to fulfil their duties, this poses a variety of risks to students. Poor governance and management at a higher education provider can have a significant negative impact on students: it can mean that they don't receive a high quality education, that they are not treated fairly or even that the provider is at risk of financial failure, which could significantly disrupt students' education. There is also a risk that public funds would not be managed appropriately. Therefore, it is essential that key individuals in an institution are sufficiently knowledgeable and experienced to carry out their role.
72. The knowledge and expertise of key leadership positions within providers is not currently tested directly at registration, beyond expectations regarding the capabilities of senior leaders

set out in the public interest governance principles. To satisfy current initial condition E1, a provider must ensure that its documents uphold these principles. The public interest governance principles relating to the governing body, and fit and proper persons, set these expectations in broad terms. We have encountered challenges with this approach at registration (see Proposal 2).

73. Many providers applying for registration have knowledgeable and experienced leaders in place. However, some providers are not well prepared. Even after registration, we have seen situations where individuals in key leadership positions do not adequately understand the business, student cohort or the regulatory obligations – which causes significant concern. We are therefore proposing a more targeted and focused test of the knowledge and expertise of key individuals.
74. Providers often engage the services of external consultants or other temporary third party support to help them complete their registration application (for example, help with pulling together governing documents or a business plan). While this may be an efficient use of the provider's resources, we have seen situations where this can mask a lack of knowledge and experience of key leaders. This can then lead to problems post-registration which can harm students. We have, for example, seen a single person trying to fill multiple key roles themselves where the complexity or size of provision means this is not appropriate, and situations where individual are appointed to a position without having the knowledge or skills necessary to perform the relevant duties.
75. Our proposals in this area are designed to ensure a provider has appointed individuals to senior roles who are sufficiently prepared to comply with regulatory requirements and are properly equipped with the knowledge and skills to perform the duties of their role, at the point of registration. Our initial view is that the proposals will achieve this by introducing clear tests which set out more explicitly defined expectations, targeted at the most common issues seen in recent registration applications. We propose to apply these tests to a narrow group of individuals holding key roles.
76. We also consider there to be benefits from setting clear, explicit expectations for knowledge and expertise for specific individuals upfront. It is our initial view that the effect of this proposal would be to provide greater certainty on our knowledge and expertise expectations for providers and for individuals in key roles. We expect that this approach will reduce any ambiguity around what is required, and therefore reduce the need for clarifications during the assessment process, improving efficiency for applicants and assessors.
77. We have considered the extent to which these proposals are likely to require additional work from applicants compared to our current requirements. Our proposals are intended to be proportionate and to reflect reasonable expectations. We think that the requirements we are proposing in these areas do not go above and beyond the knowledge and expertise that senior leaders of a provider seeking registration need to run and manage effectively, a registered higher education provider. We recognise that an interview would require preparation by the individuals involved but we think it is reasonable for key leaders of an organisation to engage directly and openly with us as part of the application process. Where a provider is not sufficiently prepared, these proposals may require significant upskilling and learning by key individuals. Our initial view is this would result in a benefit to students by improving the effectiveness and resilience of the provider. It will also enable us to refuse

registration applicants for providers that do not have sufficiently skilled and knowledgeable leaders in place; this would be likely to protect students and reduce risks for taxpayers.

78. We have considered the potential for discrimination against people with protected characteristics arising from the proposal that we would use an interview, conducted in English, to assess aspects of a provider's compliance with proposed initial condition E7. In particular, we have considered the potential for this proposal to disadvantage individuals from minority ethnic backgrounds if they are non-native English speakers or individuals with disabilities that could affect their participation. We consider that this proposed approach is similar to other activities undertaken by the OfS, including interviews conducted as part of recruitment exercises. We therefore intend to take a similar approach to our duty to make reasonable adjustments when interviewing key individuals at a provider, including (but not limited to):

- ensuring the interview space is physically accessible for all individuals including those who have impaired mobility or use a wheelchair
- providing a sign language interpreter for the interview if needed
- allowing individuals to bring notes and refer to these
- giving individuals more time to complete interviews if needed.

Detail of the proposal

79. We propose to:

- a. Introduce a new substantive requirement that key individuals must have sufficient knowledge and expertise to facilitate regulatory compliance, and to enable delivery of the provider's plans in practice.
- b. Apply this requirement to a limited list of 'key individuals' that fulfil specific roles at the provider – the chair of the governing body, accountable officer, and where applicable, the person with overarching responsibility for financial management and an independent member of the governing body – recognising that in some providers, it may be appropriate for more than one of these roles to be filled by the same person.
- c. For each 'key individual', set out explicitly what matters we expect them to demonstrate knowledge and expertise in, and whether they should be able to demonstrate in-depth understanding, or higher-level awareness of those matters.
- d. Normally, assess whether these requirements have been met by undertaking interviews with each 'key individual'.

Requirement for individuals to have sufficient knowledge and expertise

80. We propose that key individuals within a provider must demonstrate their knowledge and expertise are 'sufficient' for three purposes:

- a. To facilitate delivery of a provider's business plan.

- b. To facilitate the provider's ongoing compliance with the OfS's conditions of registration that will apply to it, once registered.
 - c. To facilitate delivery of a provider's fraud and public fund arrangements.
81. We propose that these individuals should be required to demonstrate a mixture of **knowledge** of key subject matters and, where relevant, practical **expertise** in particular areas. We propose relevant **knowledge** to include, in particular:
- a. Knowledge of what the provider has set out in its application about how it will be run, particularly in its business plan, set of governing documents submitted at registration and policies and processes for preventing fraud and protecting public funds. We consider that demonstration of knowledge in these areas by key individuals will provide assurances that these individuals are sufficiently knowledgeable to facilitate ongoing compliance.
 - b. Knowledge of the requirements and expectations associated with OfS registration, such as the ongoing conditions to which the provider will be subject, including the need to make required data returns. We consider that demonstration of knowledge in these areas by key individuals will provide assurances that these individuals are sufficiently knowledgeable to facilitate ongoing compliance.

Question 4a

Do you agree with the proposal that initial condition E7 should include a requirement for key individuals to have sufficient knowledge and expertise to ensure the provider, if registered, would be able to:

- deliver its business plan,
- comply with the OfS's conditions of registration, and
- deliver its arrangements for preventing fraud and protecting public money?

Please give reasons for your answer.

82. In addition to the knowledge requirements above, we propose minimum requirements for expertise of certain individuals as set out in the sections below.

Key individuals

83. We propose that knowledge and expertise requirements should be assessed in relation to the following 'key individuals':
- a. **The chair of the governing body**, as the person responsible for leading the board (or equivalent) and ensuring it functions effectively.
 - b. **The accountable officer**, as normally the most senior officer of the provider, with overall responsibility for operational matters.

- c. **The person with overarching responsibility for managing the provider’s finances.**
 - d. **The independent member of the governing body** (for a provider applying in Approved (fee cap)), as the person who, by virtue of their role, is intended to provide challenge to the governing body and offer assurance about the adequacy and effectiveness of governance arrangements for providers in receipt of financial support from the OfS or from UKRI.
84. Our proposals recognise that not all of these roles will exist in every provider, or that more than one of these roles may be filled by the same person.
85. A diversity of skills and experience among a provider’s senior management and governing body is important, and we don’t consider that it would be proportionate to expect all individuals to have an in-depth understanding of all these issues. However, we do think the individuals above, due to the responsibilities of their role, must be able to demonstrate a level of understanding and expertise in these areas.
86. Where a provider intends to have one of these roles but has not yet recruited an individual to fill it, the provider would be required to set out how it will ensure the individual appointed will meet these requirements.

Specific requirements for each key individual

87. The draft condition proposes specific requirements that should apply to each of these roles. This level of specificity is intended to provide certainty to providers about our requirements, how they will be assessed, and what is expected of individuals fulfilling those roles.
88. To avoid placing unrealistic or disproportionate expectations on individuals, we have sought to limit the knowledge requirements to the minimum necessary to fulfil key functions. The requirements therefore recognise that while there are some elements of our regulation, or of the provider’s own arrangements, about which these individuals should have a **sound understanding** there are others where only **sufficient awareness** is necessary, and expectations should reflect the knowledge and expertise which is most relevant to that individual’s particular role. Our requirements for each key individual therefore separate expectations into these two levels of knowledge, requiring individuals to demonstrate either:
- a. **Sufficient awareness** of a subject matter; or
 - b. **A sound understanding** of a subject matter.
89. Sufficient awareness represents a lower threshold of knowledge. The exact expectations are likely to vary depending on the context of the subject matter, but ‘sufficient awareness’ is likely to be limited to either:
- a. Awareness of the existence of the regulatory requirements, plans, or arrangements in question rather than active, continued engagement with them; or
 - b. Broad, high-level knowledge of the content of requirements, plans or policies, rather than detailed knowledge of the specifics.

90. We have proposed that an individual should be required to have ‘sufficient awareness’ of a subject in cases where we do not consider it a subject which their role necessarily requires them to directly engage with on a practical level, and for which operational matters of compliance are more likely to be undertaken by others. However, we require the individual to have at least some broad knowledge of the subject as a minimum.
91. ‘A sound understanding’ represents a higher threshold which is likely to encompass the points above, plus either:
- a. A demonstrable ability to more actively engage with the subject matter, including an ability to explain the contents, purpose and practical implications of relevant documents, requirements or policies; or
 - b. More detailed, though not necessarily exhaustive, knowledge of the specifics of a document, requirement or policy.
92. We have proposed an individual is required to have ‘a sound understanding’ of a subject in cases where we expect that it will be central to the individual’s role, and something they will need to be engage with on a practical level. It is a higher threshold, representing an expectation of more in-depth understanding at the point of registration, than ‘sufficient awareness’.
93. The following paragraphs set out the specific requirements we propose for each ‘key individual’.

Chair of the governing body

94. The central responsibility of this role will be to lead the governing body and ensure that in exercising its oversight responsibilities and making decisions, it follows the agreed rules and procedures which are set out in the provider’s governing documents. We therefore propose the chair should demonstrate a sound understanding of the provider’s set of governing documents submitted in its registration application, and how they authorise or obligate the chair to act.
95. The governing body will also have a role in ensuring that the provider’s arrangements for preventing fraud and protecting public money are adhered to and have accountability for the conflict of interests policy. However, as some of the detailed responsibilities in this area are likely to be shared, and a higher level of knowledge is expected to be demonstrated by other key individuals, we propose that the chair should demonstrate sufficient awareness of these arrangements.
96. A provider’s governing body should be responsible for setting and implementing the institution’s direction and strategy. We therefore propose that the chair of the governing body should demonstrate a detailed understanding of the elements of the provider’s business plan which set out the provider’s business objectives and targets and its strategy for achieving those objectives and targets.
97. The governing body should also retain overall oversight of risk, so we also propose that the chair should demonstrate a sound understanding of the related content of the business plan which describes any risks which could limit the provider’s ability to achieve the identified objectives and targets and how the provider plans to manage those risks. There are some

related areas of a provider's business plan that we do not consider it proportionate to require the chair to have a detailed knowledge of, but nonetheless consider it important for the chair to demonstrate a broad awareness of in order to support a rounded understanding of the provider's strategic approach. We therefore propose the chair should demonstrate sufficient awareness of: the characteristics of the cohort students the provider has recruited, or will recruit, and their academic needs; and the higher education sector and the context in which the provider plans to operate.

98. The regulatory framework places specific compliance responsibilities on a provider's governing body. Ongoing condition of registration E3 requires the provider's governing body to accept responsibility for the interactions between the provider and the OfS and its designated bodies, and to ensure the provider's compliance with all of its conditions of registration and with the OfS's accounts direction. We therefore propose that the chair should demonstrate a sound understanding of the regulatory requirements imposed by ongoing condition E3 and associated guidance. We recognise that the delivery of these obligations may be undertaken by others within the organisation but consider the Chair would need to understand this enough to be assured that the arrangements are effective. We also propose that the chair of the governing body should demonstrate sufficient awareness of other regulatory requirements imposed by the OfS and the potential regulatory consequences that could arise from a breach of the ongoing conditions.
99. In addition to the knowledge requirements above, we propose the individual proposed as the chair of the governing body requires expertise to enable them to effectively lead the governing body. The draft condition guidance provides examples of the sorts of evidence which might help demonstrate an individual holds this expertise including, but not limited to, prior experience of similar positions on governing bodies or chairing committees, business leadership experience or specialist knowledge and understanding of the provider's business activities and the external environment.

Accountable officer

100. As normally the most senior officer of the provider, with overall responsibility for operational matters including delivery of the provider's business plan, we propose the accountable officer should demonstrate sound understanding of the content set out in the provider's business plan, and of the higher education sector and the context in which the provider plans to operate.
101. As is the case for the chair of the governing body, we consider it necessary for the accountable officer to have a broad awareness of the OfS's wider regulatory requirements, although we recognise that responsibilities for delivering the associated activities are likely to be distributed across different individuals in practice. We have set slightly different expectations for the accountable officer than have been set for the chair of the governing body, reflecting the greater responsibility of the accountable officer for operational matters. We therefore propose that the accountable officer should demonstrate sufficient awareness of:
- regulatory requirements imposed by the OfS and associated guidance
 - the role of any other Public Authority or government body with which the provider may interact if registered.

102. Regulatory advice 10 sets out that an accountable officer is responsible for ensuring that the governing body understands its regulatory responsibilities and acts on them.¹¹ The accountable officer will have an important role in ensuring arrangements between the board and the executive work effectively and so we consider that this individual should have a sound understanding of relevant provisions in the provider's set of governing documents.
103. Regulatory advice 10 also sets out that an accountable officer is personally responsible for the taxpayer-backed student loans received on behalf of the provider's students to cover their tuition fee payments. We consider that this level of personal responsibility warrants a higher level of knowledge of the provider's fraud and public money arrangements. We therefore propose that an accountable officer should demonstrate sound understanding of these arrangements.
104. In addition to the knowledge requirements above, we propose the individual proposed as the accountable officer requires expertise to enable them to effectively lead and manage the provider and its activities. The draft condition guidance provides examples of the sorts of evidence which might help demonstrate an individual holds this expertise including, but not limited to, previous business or non-profit leadership experience and understanding of how organisations run.

The individual with responsibility for the management of a provider's financial affairs¹²

105. We have sought to limit the knowledge and expertise requirements placed on the person fulfilling this role to those which relate to financial matters, but we would generally expect a sound understanding of such financial matters to be demonstrated.
106. In terms of the provider's business plan, we would expect this person to have detailed knowledge of the elements of a provider's plans on which its ongoing financial sustainability may depend. We therefore propose that the financial officer should demonstrate sound understanding of the financial elements of the provider's business plan, of any business objectives and targets relating to financial matters, and the provider's strategy for achieving those objectives and targets. We also consider it important that this detailed understanding is supported by some broader contextual knowledge of the sector. Financial targets and strategies for achieving them are unlikely to be credible if they are not informed by an awareness of the context in which a provider will be operating. We therefore propose the financial officer should demonstrate sufficient awareness of the higher education sector and the context in which the provider plans to operate.
107. This individual will also be responsible for managing the provider's financial affairs in a way that ensures regularity, propriety and value for money. We therefore consider this individual will play a significant role in preventing fraud and protecting public money. As such, we propose that they should demonstrate a detailed understanding of the provider's fraud and public money arrangements.
108. This individual will also be responsible for providing the accountable officer and governing body with expert advice relating to financial matters which ensures compliance with the OfS's

¹¹ See [Regulatory advice 10: Accountable officers. Guidance for providers on the responsibilities of accountable officers - Office for Students](#).

¹² Referred to in this document as 'the financial officer'.

requirements in these areas. We consider that this will require more a detailed, in-depth knowledge of regulatory requirements in relation to financial matters, and also a broad awareness of how the governance of the provider operates. We therefore propose that the financial officer should demonstrate:

- sufficient awareness of the relevant provisions in provider's set of governing documents
- sound understanding of the OfS's regulatory requirements and associated guidance on financial matters (including, but not limited to, requirements for reportable events and financial reporting and data returns).

Independent member of the provider's governing body (where applicable)

109. We propose that some of the knowledge requirements placed on the chair of the governing body are equally applicable to this individual. We therefore propose that the independent member should demonstrate:

- sound understanding of the provider's set of governing documents
- sound understanding of the provider's business objectives and targets, its strategy for achieving those objectives and targets, and any associated risks
- sufficient awareness of the characteristics of the cohort of students the provider has recruited and/or intends to recruit and their academic needs.

110. As a member of the governing body, this person also shares the responsibilities under condition E3. However, we consider this individual to hold less personal responsibility for ensuring the governing body fulfils these responsibilities than is the case for the chair of the governing body. We therefore propose that the independent member should demonstrate sufficient awareness of the regulatory requirements imposed by ongoing condition E3 and associated guidance, rather than detailed understanding.

111. In addition to the knowledge requirements above, we propose this role requires some minimum level of expertise in relation to governance experience. The draft condition guidance sets out that this could be demonstrated by previous board experience, or other experience at the senior levels of an organisation that will allow them to effectively provide external perspectives and scrutiny to the board's decision making.

Question 4b

Do you agree with the proposed knowledge and expertise requirement for each of the individuals that would be covered by this test?

If you think there are any requirements that should be added or removed, please explain your reasons.

Assessment by interview

112. We propose that, where possible, we would assess these requirements through interviews with 'key individuals'.

113. Each individual responsible for one or more of the key roles defined in the condition would be interviewed by OfS officers. These interviews could be undertaken in-person or virtually; would likely last between 30 to 60 minutes (depending on the number of roles held by each individual being interviewed); and would be based on a set of questions aimed at testing whether the individual could demonstrate the knowledge and expertise requirements set out in the condition. If we decided to take this proposal forward, we would expect to publish more detailed operational information about the interview format and process to help individuals understand what to expect, and how to prepare. We would make any reasonable adjustments that need to be made in respect of people with disabilities.
114. As well as providing evidence of an individual's knowledge and expertise, we consider that interviews could reassure us that documents submitted (such as the provider's business plan and governing documents) were credible. They would be more likely to be delivered in practice where the individuals responsible for implementing them could demonstrate a sound understanding of the content. The interview would therefore also be used as evidence in assessing whether the provider had submitted a set of governing documents, and business plan, which met our requirements. We consider that using the interview as a means of triangulation between the knowledge and expertise requirements, and the credibility of a provider's governing documents and business plan, means that interviews would represent an efficient use of OfS resources.
115. An assessment of knowledge and expertise which relied solely on the submission of additional paper documents would be possible, but could be subject to some of the same issues as the current arrangements. For example, where key individuals rely heavily on consultants to support production of relevant documentation, it is more likely that the provider does not have sufficient expertise and knowledge in key leadership positions. Testing this through interviews would mitigate this risk. Although we would accept other forms of evidence, for example, paper-based evidence, we consider this would be very burdensome for the provider to prepare as it would need to be able to evidence each criterion clearly for each individual.

Question 4c

Do you agree that holding interviews with key individuals would be the most efficient and effective way of testing this requirement?

Alternative options considered

116. We have considered alternative options for achieving our overarching aims, which are set out in Annex B. For Proposal 4, these are:
- a. Retaining current arrangements.
 - b. Applying knowledge and expertise requirements to a different set of individuals.
 - c. Using alternative means of testing the knowledge and expertise of key individuals.

Question 4d

Do you have any additional comments in relation to this proposal?

Proposal 5: Include the requirement that the individuals responsible for running the provider must be 'fit and proper'

What are we proposing?

We propose to introduce a requirement in initial condition E7 that a provider must ensure that certain individuals within its organisation are 'fit and proper' for the purposes of ensuring that:

- the provider is suitable to access and receive public funds
- public trust and confidence in the higher education sector are maintained
- the provider is suitable to protect the interests of students.

Why are we making this proposal?

117. If the people responsible for running a provider are not fit and proper, there can be significant risks for students and taxpayers. For example, this could increase the risk that students are not treated fairly, do not receive a high-quality education and that taxpayers and students do not receive value for money from the higher education courses they fund. The introduction to this consultation¹³ explains the reasons why risks in this area are increasing, particularly in relation to the treatment of students and the misuse of public funding.
118. The current initial conditions for management and governance require that a provider upholds the public interest governance principles, both in its governing documents and in practice. These include a principle that those in senior positions in the provider should be fit and proper persons. However, the conditions do not include a direct test of whether relevant individuals are fit and proper.
119. We have seen escalating risks in regard to fraud and misuse of public funds. The recent National Audit Office (NAO) report into student finance for study at franchised providers¹⁴ highlighted growing risks relating to the misuse of public funds. For example, fraud of £4.1 million was detected by the Student Loans Company in 2022-23. The report further highlighted risks of mis-selling of courses and opaque recruitment practices, and the

¹³ See [Introduction - Office for Students](#).

¹⁴ Available at [Investigation into student finance for study at franchised higher education providers - NAO press release](#).

corresponding need for strong management and governance in providers to ensure risks in these areas are managed more effectively for both students and taxpayers.

120. In our experience, a provider seeking registration has normally undertaken fit and proper tests as part of its recruitment to relevant individual roles. However, providers take a subjective view about how to respond to anything flagged by their checks, which means there can be inconsistencies across the sector. For example, there have been instances where we have reason to believe that a provider itself, or people responsible for managing it, have previously been involved in the misuse of public funding. It is essential that our assessment is able to identify such behaviour, so we can refuse applications where the key leaders are not fit and proper.
121. Given these emerging risks, and the profile of the providers now applying for registration, we are proposing to introduce more prescriptive, comprehensive and rules-based requirements in this area. We think this will provide additional assurance that the people responsible for overseeing governance and management will be fit and proper to manage the key responsibilities that arise from registration. This would then reduce risks to students and taxpayers.
122. We have considered the extent to which this proposal would place additional burden on providers. Providers already have obligations relating to fit and proper matters, so a provider seeking registration has normally undertaken relevant tests for its relevant individuals. We therefore think additional burden of undertaking the tests will be low for most providers. We recognise though there will be additional burden in terms of providing information to the OfS in this area. Therefore, we have considered how to limit the information required to that which we consider is strictly necessary to meet our aims, and to require the tests to only be undertaken for specific roles. We have deliberately not proposed to prescribe the manner in which a provider must undertake the tests, to provide flexibility and reduce burden. On balance, our initial view is that the value of this proposal in terms of reduction of risks to students and taxpayers would outweigh any potential increase in burden.

Detail of the proposal

123. Our proposal is to require a provider seeking registration to ensure that individuals who are its senior managers, leaders or owners have a track record which will give us confidence that they are fit and proper for the purposes of ensuring the provider:
 - a. is suitable to access and receive public funds;
 - b. can maintain public trust and confidence in the higher education sector;
 - c. is suitable to protect the interests of students.

Question 5a

Do you agree that the overarching test should be based on an assessment of relevant individuals' track record in relation to the protection of public money, the maintenance of the good reputation of the higher education sector and the protection of the interests of students?

If you agree, please explain why. If you disagree, please explain why and any alternative approach you would recommend.

124. For the avoidance of doubt, we are not proposing that the OfS should approve relevant individuals in defined positions as being fit and proper before they are appointed by a provider. As the requirement relates to a provider seeking registration, it would be impractical to expect a provider to delay appointments to such positions until it has applied for registration. We think such an approach would create additional work for providers and delay appointments to key positions. This would create uncertainty for providers when recruiting relevant individuals and thereby cumulatively add risk to ongoing oversight of management and governance at providers. We also consider that placing this obligation on a provider to check a relevant individual is a fit and proper person is more consistent with institutional autonomy.
125. When assessing whether a provider meets the proposed fit and proper requirement, our initial view is that the OfS would review a provider's policies and processes to assess whether they are robust, as well as testing the credibility of the outcomes of checks completed. This would include running our own checks to validate the outcomes presented by the provider. We would therefore require a provider, as part of its registration application, to submit relevant personal details for all relevant individuals so that we can undertake such checks. This is already our practice, albeit for a smaller number of individuals than are proposed in this condition. We will also require providers to submit a declaration (in a template that will be provided by the OfS) stating whether the provider is aware of any indicative matters as listed in E7D.2 and E7D.4 for relevant individuals.

Question 5b

Do you agree that a provider should retain responsibility for appointing relevant individuals against a published fit and proper test and related criteria?

126. We propose to set out a non-exhaustive list of matters that may lead the OfS to decide that an individual is not a fit and proper person.
127. All matters contained within these paragraphs relate to one or more of the purposes set out in the proposed fit and proper test. They are therefore indicative of behaviour that may indicate a relevant individual does not have a satisfactory track record in relation to these purposes and therefore may not be a fit and proper person.
128. We recognise that there may be mitigating circumstances, so when considering these matters, we are proposing to consider any mitigating information submitted by a provider. This approach is intended to offer a proportionate approach to issues that may have been identified by these checks. Examples of potential mitigating circumstances have been included in the draft guidance under each relevant matter.
129. Table 2 summarises the indicative matters set out in the proposed condition and explains why they are relevant to one or more of the key aims of this requirement.

Table 2: Matters to which the OfS will give particular consideration when assessing this requirement

Indicative matters	Relevance
<p>The individual has been subject to any adverse findings in civil proceedings (in any jurisdiction), and those findings relate to that individual operating in a business or professional capacity.</p>	<p>Adverse findings in civil proceedings that are relevant to a relevant individual operating in a business or professional capacity may indicate a track record that leads to an assessment that the individual is not fit and proper. This is particularly the case where such adverse findings are in connection with financial misconduct or fraud. Such findings will be given particular weight in our assessment.</p> <p>Not all adverse findings in civil proceedings will be relevant to the fit and proper test. For example, findings in relation to a planning matter with a neighbour may not weigh against a relevant individual as it would not be relevant to the relevant individual operating in a business or professional capacity nor be directly a risk to the key aims of the proposed requirement.</p>
<p>The individual has been subject to any adverse findings in disciplinary proceedings by any relevant person or body (in any jurisdiction), or is currently the subject of such disciplinary proceedings.</p>	<p>Where an individual’s track record includes adverse findings in disciplinary proceedings by a relevant person or body this may be evidence of inappropriate professional behaviour that could pose a risk to the protection of the interests of students as well as the protection of public funding.</p> <p>The OfS will give particular weight to such proceedings that relate to financial misconduct, misrepresentation/mis-selling or dishonesty.</p>
<p>The individual, or an organisation they are or have been involved in, that is or has been connected to the education sector, has been subject to any adverse findings by any relevant person or body (in any jurisdiction).</p>	<p>Previous adverse findings by a relevant body against an individual or an organisation they are or have been involved with in the education sector will be given particular weight when assessing the track record of a relevant individual for the purposes of the aims of the condition.</p> <p>Such matters by their nature may be relevant to all of the aims of the requirement and in particular to the protection of the interests of students and in maintaining the good reputation of the higher education sector.</p>
<p>The individual, or an organisation they are or have been involved in, has been subject to any adverse findings by any relevant person or body (in any jurisdiction) in relation to the inappropriate use of relevant public funds.</p>	<p>Adverse findings in relation to the inappropriate use of relevant public funds are highly likely to demonstrate a track record of a relevant individual that is not fit and proper for the purposes of the aims of the requirement.</p> <p>Such findings directly pose risks to ensuring that the provider is suitable to access and receive public funds; maintaining public trust and confidence in the higher</p>

Indicative matters	Relevance
	education sector; and ensuring that the provider is suitable to protect the interests of students.
The individual, or an organisation they are or have been involved in, is currently the subject of an investigation by any relevant person or body in relation to the inappropriate use of relevant public funds.	<p>See the row above for reasons why this may be an indicative matter.</p> <p>The OfS may in such circumstances delay making a decision on the registration application until the outcome of any investigation is reached, in order to ensure a proportionate decision is taken in such cases.</p>
<p>The individual, or an organisation they are or have been involved in, has (in any jurisdiction):</p> <ul style="list-style-type: none"> i. been refused a registration, authorisation, membership or licence to carry out a trade, business or profession (including any licences which relate to student visas); and/or ii. had a registration, authorisation, membership or licence to carry out a trade, business or profession revoked, withdrawn or terminated (including any licences which relate to student visas); <p>for reasons which are relevant to OfS regulation.</p>	<p>Refusal or revocation of a registration, authorisation, membership or licence to carry out a trade, business or profession (including any licences which relate to student visas) may demonstrate a track record of a relevant individual who is not fit and proper for the purposes of the requirement.</p> <p>This is particularly the case where this is due to professional malpractice, dishonesty and/or misuse of funds. Such instances are relevant to an assessment of a relevant individual's track record in regard to ensuring the protection of public funding and the interests of students.</p>
An organisation that the individual is, or has been, involved in has been convicted of the offence provided for in section 199 of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud), or any relevant fraud offence, or a similar offence in an overseas jurisdiction.	<p>Section 199 of the Economic Crime and Corporate Transparency Act 2023 creates an offence of failure to prevent fraud for large organisations (as defined in the Act).¹⁵</p> <p>Where an individual held a senior role within the finance or compliance team of the organisation at the time when matters leading to the conviction took place, this may be evidence of a track record of failure to prevent fraudulent activity. This is of particular relevance to ensuring the protection of public funding and maintaining the good reputation of the higher education sector.</p>

¹⁵ See [Economic Crime and Corporate Transparency Act 2023](#).

Indicative matters	Relevance
<p>An organisation that the individual is, or has been, involved in has been convicted of any criminal offence in relation to tax matters (in any jurisdiction).</p>	<p>Criminal convictions in relation to tax matters may indicate a track record of a relevant individual not being a fit and proper person for ensuring the protection of public funding.</p> <p>Often corporate criminal convictions for tax matters indicate that an organisation has failed to put in place reasonable prevention procedures in relation to financial matters. Where an individual held a role that was senior (director, for example) or directly involved in the governance of financial controls, this is likely to show a poor track record in regards to financial matters and would therefore be relevant to the aim of ensuring prevention of the misuse of public funds.</p>
<p>An organisation that the individual is, or has been, involved in went into insolvency, liquidation or administration (in any jurisdiction).</p>	<p>The ability of an individual to maintain solvency and prudent financial control evidences a track record of ensuring adequate control over financial risks on a continuing basis.</p> <p>Where an individual has been involved with an organisation that has gone into insolvency, liquidation or administration, this may indicate a track record that may not ensure the protection of public funding nor protecting the interests of students.</p>
<p>The individual was dismissed, or was asked to resign and did resign, from a role at an organisation (in any jurisdiction) where the individual held significant managerial responsibility or influence, whilst operating in a business or professional capacity.</p>	<p>Dismissal or being asked to resign (and resigning) whilst operating in a business or professional capacity may be indicative of a poor track record in management and governance that may be relevant to assessing a key individual is not fit and proper.</p> <p>Reasons for the dismissal will be central to the weight to be given to such matters. Reasons for dismissal or resignation related to fraudulent behaviour, theft, financial mismanagement, gross misconduct or academic misconduct will carry significant weight, given their relevance for ensuring the protection for public funding and the protection of the interests of students.</p>
<p>The individual has previously been disqualified as company director under the Company Directors Disqualification Act 1986 or an equivalent overseas regime.</p>	<p>Disqualification as a company director may indicate a track record of poor governance, financial mismanagement or misconduct. Disqualification as a director is a matter of public record. Such matters could be a relevant consideration to all the aims of the fit and proper test.</p>
<p>The individual has previously been disqualified from being a charity trustee or trustee for a charity under s 178(1) of the</p>	<p>Previous disqualification from being a charity trustee may indicate (amongst other matters) a track record of dishonesty, bribery, unwillingness or inability to comply with regulatory orders.</p>

Indicative matters	Relevance
Charities Act 2011 or an equivalent overseas regime.	The above matters are often of a serious nature and are a matter of public record which may be directly relevant to the aims of the fit and proper test.
The individual has previously been declared bankrupt (or equivalent) in any jurisdiction.	An individual's own financial soundness, and whether they have in the past been declared bankrupt, is informative of a track record of personal financial mismanagement. This is central to financial management and governance and is therefore of importance in assessing whether an individual is fit and proper to ensure a provider is suitable for the protection of public funding.

Question 5c

Do you agree that the non-exhaustive list of matters in the proposed condition are matters which should be considered in the fit and proper test?

If you agree, please explain why. If you disagree, please indicate which matters you believe are not matters that should be considered and why, or which other matters should be included.

130. When considering the weight to give any of the matters listed in the table above, we propose to take context into account in relation to the risks an issue poses to the stated purpose of our test. Our approach to this is explained in the draft guidance underpinning the proposed condition and highlights the following contexts for matters to which we would give additional weight:

- **Recent** – the closer a matter occurred to the date on which a provider seeks registration, the more relevant that matter is to whether the individual is fit and proper, and the more weight this would be given. Matters that have occurred more recently will be given greater weight by the OfS. We believe that this represents a proportionate approach.
- **Serious** – matters that the OfS considers to be serious. Such matters include, but are not limited to: criminal convictions; matters of financial mismanagement or impropriety; matters that could be seen as bringing the higher education sector into disrepute; and matters that have had a direct detrimental impact on students studying at a higher education provider.
- **Repeated and/or sustained** – matters that occurred repeatedly or continuously over a sustained period of time (i.e. over years rather than a one-off incident) are more indicative of a poor track record.
- **Indicative of bad or poor conduct** – matters that are indicative of dishonesty, negligence, financial mismanagement, criminality or lack of ability to comply with regulations.

131. Under our proposals, these factors would normally weigh against a judgement that a relevant individual is a fit and proper person. We propose to consider these factors in combination. For example, if a serious and relevant matter occurred 72 months ago, although it may not necessarily be 'recent', it is 'serious' and 'relevant' and therefore it would be more likely that we would assess an individual to be not a fit and proper person.

Question 5d

Do you agree with the proposed factors to which we will give weight?

If you agree, please explain why. If you disagree, please indicate which other matters you believe should be included in this approach.

132. There are some matters that we consider to be so serious that we are proposing that these would automatically result in an individual being deemed not to be fit and proper, unless exceptional circumstances apply. These matters are set out in Table 3 below and included in section E7D.4 of the proposed condition. Our proposal is that there would be a high bar in relation to the exceptional circumstances that could enable the OfS to assess a person to be fit and proper in these situations. Table 3 summarises the indicative matters set out in the proposed condition and explains why they are relevant to one or more of the key aims of the requirement.

Table 3: Matters that the OfS will consider indicate that an individual is not fit and proper, unless there are exceptional circumstances

Indicative matter	Reasons for conclusion
<p>At any point during the course of the provider's application to register with the OfS (and the OfS's consideration of that application) the individual was disqualified as a company director under the Company Directors Disqualification Act 1986 or an equivalent overseas regime.</p>	<p>Disqualification as a company director may indicate a track record of poor governance, financial mismanagement or misconduct.</p> <p>Disqualification is a matter of public record and hence would have an impact on the maintenance of the reputation of the higher education sector.</p> <p>Where a disqualification order is in force, this not only indicates a serious but recent matter.</p>
<p>At any point during the course of the provider's application to register with the OfS (and the OfS's consideration of that application) the individual was disqualified from being a charity trustee or trustee for a charity under s 178(1) of the Charities Act 2011 or an equivalent overseas regime.</p>	<p>A current disqualification from being a charity trustee may indicate (amongst other matters) a track record of dishonesty, bribery, unwillingness or inability to comply with regulatory orders.</p> <p>Disqualification from being a charity trustee is matter of public record and hence would have an impact on the maintenance of the reputation of the higher education sector.</p>

Indicative matter	Reasons for conclusion
	This includes matters relating to criminal convictions of a serious nature as well as dishonesty or an inability or unwillingness to follow regulatory orders.
At any point during the course of the provider's application to register with the OfS (and the OfS's consideration of that application) the individual was an undischarged bankrupt (or equivalent) in any jurisdiction.	<p>An individual's own financial soundness and whether they are an undischarged bankrupt is informative of a track record of personal financial mismanagement.</p> <p>Undischarged bankruptcy is a matter of public record and hence would have an impact on the maintenance of the good reputation of the higher education sector.</p> <p>Undischarged bankrupts in the UK need the permission of the court to act as a company director. This includes directly or indirectly taking part in, or having a concern in the promotion, formation or management of a limited company. Acting as a director or managing a company when bankrupt is a criminal offence.</p>
The individual has been convicted of an unspent criminal offence (excluding minor offences) in any jurisdiction.	Unspent criminal offences are considered to be so serious that they are seen as evidence of a poor track record for all aims of the fit and proper test.

133. We propose that the matters listed above include actions that occur overseas in addition to any that have occurred in the UK. Our initial view is that the location of the matters listed is secondary to the finding itself when assessing whether an individual is fit and proper for the purposes of protecting the interests of students and public funding and continuing to uphold the reputation of the higher education sector.

134. In including matters that occurred in overseas jurisdictions within the requirement, we propose to consider equivalency (for example, to consider if the issue would also have been a breach of UK legislation or relevant similar regulations). We also recognise that, for some overseas jurisdictions, some matters (such as bankruptcy, insolvency and dismissal from previous organisations) may not be easily verifiable by a provider through public sources. As such, the provider may need to rely on self-declarations from key individuals. When assessing the provider's processes and policies, as well as the outcomes of these, the OfS will consider the availability of reliable data for relevant matters.

135. In proposing this approach, we have been mindful of the need to ensure the matters we would consider are relevant to the key purposes of the fit and proper test, and are also drawing on the formal findings of relevant third party regulatory bodies, courts or tribunals, government bodies and professional bodies. Such an approach means that any findings against an individual or an organisation were made by a responsible body and subject to clear procedures and processes with relevant routes of challenge. This offers a strong

indication of an individual’s previous behaviour that may mean they do not meet the fit and proper test.

Question 5e

Do you agree that the list of matters in Table 3 and draft condition E7D.4 are matters which should be considered as meaning an individual is more likely to not meet the fit and proper test, except in exceptional circumstances?

If you agree, please explain why. If you disagree, please indicate which matters you consider should not be considered and why, or which other matters should be included.

- 136. We propose that the enhanced fit and proper person requirement should apply to the senior governance and managerial positions that would have oversight of the operations of a provider in relation to the protection of the interests of students and use of public funding as well as decisions that may affect compliance with the OfS’s requirements.
- 137. We are proposing that the fit and proper person requirement should apply to individuals in roles which, in our experience, exercise significant control over the management and governance of providers in the higher education sector. When seeking to define such roles we have been mindful of the need to ensure that these definitions work and are easily understandable for providers with diverse corporate structures and different sizes and shapes. We have therefore considered which roles are subject to the fit and proper persons tests applied by different regulators, and how these might apply to the range of English higher education providers, from more traditional providers through to providers that are businesses with shareholders (as many providers seeking registration now are).
- 138. This has led to our proposal to set out a list of positions that span the various corporate entities and structures that we see in providers delivering higher education in England and that have significant control over the management and governance of operations affecting the protection of the interests of students, public funds and the continuing good reputation of the English higher education sector. This is intended to provide certainty about the individuals who need to be subject to the checks, while offering breadth and flexibility of application.
- 139. Table 4 lists the roles to which the fit and proper tests would apply and the reasons for this.

Table 4: Individuals who should be fit and proper for the purposes of the proposed condition

Role	Reason for inclusion
Members of the governing body	Members of a governing body are ultimately responsible for the good governance of the provider. They are collectively responsible and accountable for institutional activities and ensuring that the provider meets all legal and regulatory requirements, including those relating to public funding. They are likely to have

Role	Reason for inclusion
	ultimate responsibility for ensuring the student experience and interest.
Accountable officer	Accountable officer is the executive leader of the institution (e.g. the head of the provider, vice-chancellor, principal, chief executive or equivalent). Given this senior role they would have responsibility for the management and oversight of all the provider's operations including the appropriate use of public funds.
The individual(s) proposed to hold overarching responsibility for the management of the provider's financial affairs	Such a role would normally be responsible for ensuring robust financial management and that regulations to guard against fraud and inappropriate use of public funds were in place and followed across the provider. ¹⁶
Any company director of the provider	A director of the company will have individual or collective (as part of a board of directors) responsibility and oversight of matters in regards to the use of public finances, maintenance of the reputation of the provider and hence the wider higher education sector and the interests of students.
Any company secretary of the provider	A company secretary may be responsible for advising the board of directors on all governance matters as well as maintaining certain registers and submitting certain returns for company law purposes and providing advice to directors on their legal duties under any articles of association. This is often a senior role within an organisation that would have oversight of governance of areas such as use of public funds and would also be responsible for the maintenance of the good reputation of the provider and hence the wider higher education sector.
Any individual who holds more than 25 per cent of the shares in the provider	An individual owner of a significant number of shares in a provider can exercise significant levels of influence over a company in regard to financial decisions and general governance matters.

¹⁶ The post carrying this responsibility will differ between providers. For example, this could be the chief financial officer, Director of Finance, Head of Finance, Head of Corporate Affairs etc. or, in small institutions, be part of the role of the Accountable Officer. Given this, we propose to require each provider to specify the individual that carries these responsibilities.

Role	Reason for inclusion
	In addition, under the Small Business, Enterprise and Employment Act 2015, ¹⁷ companies are required to identify such individuals to Companies House, meaning that such individuals' involvement with a provider will be a matter of public record and could impact their own and the wider sector's reputation.
Where the provider has a parent company, any individual who holds more than 25 per cent of the shares in that parent company	See above.
Any individual who would have significant overarching responsibility for ensuring that the provider complies with the ongoing conditions of registration (if registered)	While the accountable officer is ultimately responsible for ensuring a provider meets the ongoing conditions of registration there will be instances where due to the size and complexity of the provider or technical knowledge required certain responsibilities for meeting the OfS conditions will be undertaken by other individuals on their behalf. Such roles would therefore have management and governance responsibilities over the interests of students.

Question 5f

Do you agree that the fit and proper test should be applied to a specific list of relevant individual roles and interests, rather than a more general definition such as 'beneficial owners' or 'senior managers'? Please explain the reasons for your answer.

Question 5g

Do you agree that the list of roles contained in the definition of relevant individuals in the proposed condition is appropriate?

If you agree, please explain why. If you disagree, what roles would you remove or add and why?

Alternative options

140. We have considered the following alternative options for achieving our overarching aims, which are set out in Annex B. For Proposal 5, these are:

- a. Retaining current arrangements.

¹⁷ See [Small Business, Enterprise and Employment Act 2015](#).

- b. Adopting an approach where the OfS is required to approve each appointment of a relevant individual as fit and proper before their appointment by a provider.
- c. Adopting the proposed approach but restricting matters to which the OfS will have regard when determining if an individual is fit and proper (sections E7D.2 and E7D.4) to those occurring in the UK only
- d. Adopting 'honesty, integrity and reputation' as the test, rather than the fit and proper test as proposed.

Proposal 6: Requirement for a provider to have comprehensive arrangements to prevent, detect and stop fraud and inappropriate use of public funds

What are we proposing?

We propose that a provider applying for registration must have arrangements in place which are adequate and effective for preventing, detecting and stopping fraud and the inappropriate use of public funds. It must also have a demonstrable satisfactory track record in relation to receiving and accessing public funds.

Why are we making this proposal?

141. As set out in the introduction to this consultation,¹⁸ it is essential that our assessment can identify and refuse applications from providers where there is a material risk of fraud or inappropriate use of public or student funding. We have seen a number of cases where a provider with an unsatisfactory track record of receiving public funds through partnership arrangements seeks registration with the OfS. Our firm view is that a provider in this situation should not be registered because of the risk it poses to the student experience and the interests of taxpayers.
142. At the moment, providers must deliver in practice the public interest governance principles that are applicable to it under initial condition E2. This includes risk management and control arrangements but does not include any specific requirements relating to fraud or the inappropriate use of public money. Additionally, the 'Regularity, propriety and value for money' principle requires a provider's governing body to ensure that there are adequate and effective arrangements in place to ensure public funds are managed appropriately and to protect the interests of taxpayers and other stakeholders. However, this principle applies only to providers in receipt of financial support from the OfS or UKRI. We consider that a more explicit requirement relating to arrangements to prevent, detect and stop fraud and inappropriate use of public funds will help ensure that a provider seeking to register would be prepared to receive public funds if it is successfully registered. Our initial view is that this requirement will therefore, by extension, improve student number reporting, internal control

¹⁸ See [Introduction to the consultation on new registration conditions - Office for Students](#).

arrangements and management oversight relating to financial management. It is essential that all of these areas are robust before a provider starts to access public or student funding directly.

143. Our initial view is that an explicit requirement for specific arrangements to protect public funds is necessary because of the risks we have observed in the sector. As outlined in the introduction to this consultation,¹⁹ we have seen a significant increase in higher education being delivered through some subcontractual partnerships which pose specific risks to students and public funds where there are poor management and governance arrangements.²⁰ It is our view that this requirement will enable the OfS to more effectively assess a provider's risk at registration and to fulfil its general duty to promote value for money in the provision of higher education.
144. The current method of assessing existing initial condition E1 requires providers to undertake a self-assessment of their governing documents against the relevant public interest governance principles. In our experience, providers seeking registration have often been insufficiently self-critical in their self-assessment, reducing its value. Our initial view is that our proposals (which require the submission of a range of documents that make up a provider's arrangements to prevent fraud and protect public money) will be a lower burden activity for providers who already have comprehensive arrangements in place and a more effective method of assessing the actual arrangements for the OfS. We think that the proposed test relating to arrangements is the least intrusive way to achieve the aims outlined above.
145. When developing these proposals, we considered that the types of providers that are applying now or in the future are more likely to be small providers that have previously delivered higher education in partnerships with registered providers and therefore have accessed public funds through those partnerships. Accordingly, we are proposing a new requirement that will test a provider's track record in relation to fraud and receiving public funds as we believe track record to be a strong indicator of a provider's suitability to be registered.
146. At the moment, there is no clear registration test relating to a provider's track record in relation to fraud and inappropriate use of public funds and our initial view is that such a test is needed to ensure that this can properly be accounted for in our assessment. If a provider has no prior experience with public funds and no relevant fraud convictions, it only needs to show that it has comprehensive arrangements in place to detect, prevent and stop fraud and the inappropriate use of public funds.

Detail of the proposal

147. We propose to require a provider seeking registration to have:
- a. Comprehensive arrangements in place which are adequate and effective for preventing, detecting and stopping fraud and the inappropriate use of public funds.
 - b. A satisfactory track record of fraud convictions and receiving or accessing public funds.

¹⁹ See [Introduction to the consultation on new registration conditions - Office for Students](#).

²⁰ See [Investigation into student finance for study at franchised higher education providers](#).

148. We propose to prevent any provider that has previously been found to have committed misconduct in relation to fraud or the inappropriate use of public funds (within the last 60 months) from registering with the OfS.

Question 6a

Do you agree that initial condition E7 should include the two proposed tests (relating to arrangements a provider would need to have in place and evidence that the provider has a satisfactory track record in relation to fraud and public funds) in its requirements?

149. To demonstrate that it has comprehensive arrangements in place to detect, prevent and stop fraud and the inappropriate use of public funds, we propose that a provider should have a combination of policies, processes, training and designated staff responsible for these processes. We recognise that different providers may need different arrangements because of their individual circumstances and the risks posed by their business models. However, we propose that comprehensive arrangements must include, as a minimum:

- a. A conflict of interests policy
- b. A risk register and corresponding mitigations relating to the prevention of fraud and protection of public funds
- c. Internal control processes relating to the prevention of fraud and protection of public funds, including in relation to the submission of accurate data
- d. Whistleblowing policy
- e. Anti-bribery policy
- f. Fraud awareness and prevention training
- g. Provision for staff (and reporting structures) responsible for oversight of the arrangements listed above.

150. Our initial view is that all providers, regardless of size, shape, or complexity should have the arrangements listed above in place to safeguard against fraud and the inappropriate use of public funds. The proposed list of minimum requirements represents the arrangements that are most commonly absent or ineffective in registered providers that have had issues with fraud or inappropriate use of public funds. Where a provider's business model poses specific risks, for example where it uses recruitment agents, we would expect it to identify those risks and have appropriate mitigations (policies/processes/training/staff) in place to meet the requirement of this test.

Question 6b

Do you have any comments about the proposed requirements for the arrangements that a provider would need to have in place to prevent, detect and stop fraud and the inappropriate use of public funds?

Question 6c

Do you think we have identified the correct minimum requirements to be considered as 'comprehensive arrangements'? What else should be included?

151. We propose that the arrangements that a provider has in place must be adequate and effective for the purposes of detecting, preventing and stopping fraud and the inappropriate use of public funds.
152. We have defined 'adequate' to mean an arrangement is capable of delivering its stated or implied objective.
153. To assess 'adequacy', we propose to consider a range of factors such as whether the arrangements are regularly reviewed, whether they are tailored to address specific risks in the provider's business plan, and whether the provider has the resources and staff to implement its arrangements in practice.
154. We have defined 'effective' to mean it is operated so as to deliver its stated or implied objective, and those objectives are delivered as a result.
155. To assess 'effectiveness', we propose to consider evidence from our regulatory activity, third party notifications, or publicly available information. For example, where we have evidence that a provider's operation of its conflict of interests policy has failed, that provider's arrangements may not be considered as effective.
156. The second test in this proposal is that a provider must have a satisfactory track record of receiving or accessing public funds. We propose that a provider will be deemed not to have a satisfactory track record if one of the following has occurred within the past 60 months:
 - a. The provider was convicted of the offence provided for in section 199 of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud);
 - b. A relevant person has made a final decision which directly or indirectly revokes the provider's access to, or directly or indirectly requires the provider to repay, relevant public funds on grounds relating to a relevant fraud offence and/or the inappropriate use of such funds; and/or
 - c. A conviction described in E7E.3.a.i, and/or a decision described in E7E.3.a.ii, has been made in relation to another legal entity that the OfS considers to have been operating substantially the same higher education business as the provider.
157. The offence provided for in section 199 of the Economic Crime and Corporate Transparency Act 2023²¹ is related to a failure to prevent fraud. We propose using this offence as an indicator that a provider does not have a satisfactory track record – we consider that a previous failure to prevent fraud is a negative indicator of its ability to prevent fraud in the future.

²¹ See [Economic Crime and Corporate Transparency Act 2023](#).

Question 6d

Do you agree that a provider should have a satisfactory track record in relation to receiving or accessing public funds in order to be registered with the OfS?

158. We propose to consider that a provider does not have a satisfactory track record where it has had its access to public funds revoked or where it has had to repay public funds. We consider that where a provider has previously had access to public funds and has demonstrably failed to protect those public funds, this should be considered as a negative indicator that it is able to prevent fraud and inappropriate use of public funds in the future.
159. A provider may have previously operated as a different legal entity but operated substantially the same higher education business. In this case, we propose that (for the purposes of this requirement) the OfS will judge that the provider does not have a satisfactory track record of receiving public funds if it has been subject to a decision or conviction described in the paragraphs above. This proposal has been designed to ensure that a provider that has previously been subject to a decision or conviction set out in this requirement is not able to circumvent the test by changing its legal form.

Question 6e

Do you agree with the proposed factors that the OfS would use to establish a provider's track record?

160. Our proposals would apply to all providers seeking to register with the OfS. All a provider's higher education courses, and the students on those courses, would be within the scope of the condition, irrespective of where or how courses are delivered or who delivers them. The reason for this approach is to ensure that all students, and the associated public funds attached to the course they are studying, benefit from regulatory protection where a registered provider is involved in their higher education course, regardless of the type of course they choose, or who delivers that course. We propose that this principle would apply to the use of fees paid directly by students as well as public funding. Our initial view is that it is not appropriate for a lead or delivery provider to seek to generate income, or gain other benefits, through partnership arrangements while evading responsibility for protecting the public funds or funds received direct from students.
161. Our initial view is that a provider that meets the two requirements set out in the proposed condition would provide us with assurance that there is a low risk of a relevant fraud offence or the inappropriate use of public funds from taking place at the provider.

Alternative options considered

162. We have considered the following alternative options for achieving our overarching aims, which are set out in Annex B. For Proposal 6, these are:
- a. Smaller or larger collection of documents to demonstrate arrangements.
 - b. Use a different time period to assess track record.

- c. Automatic assumption of non-compliance or full discretionary approach for the track record requirement.

Question 6f

Do you have any additional comments on this proposal?

Other questions about this consultation

Question 7

How clear are the requirements of proposed condition E7 as drafted at Annexes C to G? If any elements of the proposed condition are unclear, please specify which elements and provide reasons.

Question 8

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

Question 9

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.

Question 10

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

Question 11

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?

Question 12

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

Annex A: List of consultation questions

Question 1a

Do you agree with the proposal to introduce a new initial condition that would require a provider to have effective governance arrangements for the purpose of being a registered higher education provider?

Question 1b

Do you agree that this new initial condition should replace the current initial conditions E1 (public interest governance) and E2 (management and governance)?

Question 2a

Do you agree with the proposal that there would not be a direct reference to the OfS's public interest governance principles in initial condition E7?

Question 2b

Do you agree with the proposal that initial condition E7 should include a requirement for a provider to have a set of documents which would enable the effective governance of the provider in practice? Please give reasons for your answer.

Question 2c

Do you agree with proposals for the governing documents that would be considered as part of the proposed requirement, and the information these should contain? These are:

- Governing body documents
- Any other documents that contain rules administering the operation of the provider's governing body
- Risk and audit documents
- A conflict of interests policy.

Question 2d

Do you agree with the proposed requirements for each of the governing documents that would be considered in relation to this requirement? These are:

- Arrangements should be 'appropriate' to the size, shape and context of the provider
- Documents should be clear and consistent
- Documents should be deliverable in practice.

Question 2e

Do you have any additional comments on this proposal?

Question 3a

Do you agree with the proposal that initial condition E7 should include a requirement for a provider to have a business plan which describes the provider's business, sets out its objectives over the medium term, and its strategy for achieving them?

Question 3b

What is your view of the proposed requirements of the plan?

Question 3c

Do you agree with the proposal that the business plan should cover a five-year time period?

Question 3d

If you think another time period is more appropriate, please explain what this time period is and why.

Question 3e

Do you agree with the proposed approach to considering a provider's ability to deliver its business plan in practice?

Question 3f

Do you agree with the proposal that the business plan should include significant consideration of the interests of students? Please give reasons for your answer.

Question 3g

Do you agree that requiring a provider set out its plans for ensuring compliance with the OfS's ongoing conditions of registration would provide assurance that the provider is adequately prepared to deliver higher education and has an understanding of the regulatory requirements?

Question 3h

Do you agree with the proposed information that would need to be included in the business plan?

Question 3i

Is there any additional information you think should be included as part of the business plan?

Question 3j

Do you have any further comments about this proposal?

Question 4a

Do you agree with the proposal that initial condition E7 should include a requirement for key individuals to have sufficient knowledge and expertise to ensure the provider, if registered, would be able to:

- deliver its business plan,
- comply with the OfS's conditions of registration, and

- deliver its arrangements for preventing fraud and protecting public money?

Please give reasons for your answer.

Question 4b

Do you agree with the proposed knowledge and expertise requirement for each of the individuals that would be covered by this test?

If you think there are any requirements that should be added or removed, please explain your reasons.

Question 4c

Do you agree that holding interviews with key individuals would be the most efficient and effective way of testing this requirement?

Question 4d

Do you have any additional comments in relation to this proposal?

Question 5a

Do you agree that the overarching test should be based on an assessment of relevant individuals' track record in relation to the protection of public money, the maintenance of the good reputation of the higher education sector and the protection of the interests of students?

If you agree, please explain why. If you disagree, please explain why and any alternative approach you would recommend.

Question 5b

Do you agree that a provider should retain responsibility for appointing relevant individuals against a published fit and proper test and related criteria?

Question 5c

Do you agree that the non-exhaustive list of matters in the proposed condition are matters which should be considered in the fit and proper test?

If you agree, please explain why. If you disagree, please indicate which matters you believe are not matters that should be considered and why, or which other matters should be included.

Question 5d

Do you agree with the proposed factors to which we will give weight?

If you agree, please explain why. If you disagree, please indicate which other matters you believe should be included in this approach.

Question 5e

Do you agree that the list of matters in Table 3 and draft condition E7D.4 are matters which should be considered as meaning an individual is more likely to not meet the fit and proper test, except in exceptional circumstances?

If you agree, please explain why. If you disagree, please indicate which matters you consider should not be considered and why, or which other matters should be included.

Question 5f

Do you agree that the fit and proper test should be applied to a specific list of relevant individual roles and interests, rather than a more general definition such as 'beneficial owners' or 'senior managers'? Please explain the reasons for your answer.

Question 5g

Do you agree that the list of roles contained in the definition of relevant individuals in the proposed condition is appropriate?

If you agree, please explain why. If you disagree, what roles would you remove or add and why?

Question 6a

Do you agree that initial condition E7 should include the two proposed tests (relating to arrangements a provider would need to have in place and evidence that the provider has a satisfactory track record in relation to fraud and public funds) in its requirements?

Question 6b

Do you have any comments about the proposed requirements for the arrangements that a provider would need to have in place to prevent, detect and stop fraud and the inappropriate use of public funds?

Question 6c

Do you think we have identified the correct minimum requirements to be considered as 'comprehensive arrangements'? What else should be included?

Question 6d

Do you agree that a provider should have a satisfactory track record in relation to receiving or accessing public funds in order to be registered with the OfS?

Question 6e

Do you agree with the proposed factors that the OfS would use to establish a provider's track record?

Question 6f

Do you have any additional comments on this proposal?

Question 7

How clear are the requirements of proposed condition E7 as drafted at Annexes C to G? If any elements of the proposed condition are unclear, please specify which elements and provide reasons.

Question 8

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

Question 9

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.

Question 10

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

Question 11

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?

Question 12

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

Annex B: Alternative options considered

Proposal 1: Introduce a new initial condition E7 which would replace initial conditions E1 and E2

Retaining current initial conditions in their current form

1. We have considered whether we need to make changes to the initial conditions for management and governance, or we could continue to use the existing requirements to assess providers at registration.
2. The current climate in the higher education sector means that providers are under more financial pressure than ever, and we need to be able to assure ourselves that the providers we register have effective governance arrangements that are ready to respond to these challenges. Taking account of the providers that we now see applying for registration, we think that we can most effectively achieve this with more focused, rules-based, initial requirements – for this, we need to introduce a new initial condition.
3. We considered whether we should retain existing initial conditions E1 and E2 alongside introducing new requirements through initial condition E7. However, as there are overlaps between the coverage of the proposed and current requirements, this would create undue burden for providers. Our initial view is that replacing initial conditions E1 and E2 with our proposed initial condition E7 would allow us to avoid duplication of requirements in this area. It also means we could remove the requirement for providers to produce self-assessments as part of their application, helping to manage the volume of documentation providers are required to submit as part of their registration application.
4. As we are proposing to introduce E7 as an initial condition only, there would be no impact on the requirements for registered providers. It is therefore important to retain ongoing conditions E1 and E2 to ensure we continue have management and governance requirements in place for registered providers.

Making changes to the existing conditions but not replacing them

5. We considered if we could achieve our aims by making changes to the existing conditions. This could be through changes to the wording of requirements in the conditions, or by issuing revised guidance to accompany the existing conditions. This could have the advantage of introducing fewer substantive changes for providers.
6. Our initial view is that a more substantial change is required in how we assess governance arrangements at entry, to provide assurance about the governance of new providers given the current context. We also think that presenting our requirements in a more focused and rules-based way would be helpful to providers. The tests are designed to make sure that those with effective governance arrangements can easily evidence that they meet these requirements.

Proposal 2: Direct assessment of a set of governing documents at registration

Retaining current arrangements

7. We have considered not making any changes in relation to the assessment of governing documents. This would involve retaining the requirement for a provider to complete a self-assessment of its arrangements against the public interest principles, alongside the submission of all governing documents referenced in the self-assessment, and the additional evidence needed to satisfy the new requirements in the proposed condition E7. However, for the reasons set out in this document, it is our initial view that changes to this approach are necessary and can be delivered without imposing undue additional burden.

Assessing the public interest governance principles without reference to a self-assessment

8. We have considered whether we should retain a detailed assessment of a provider's governing documents at registration, in relation to the risk of breach of ongoing condition E1. This would mean continuing to require the provider to submit a self-assessment of its governing documents.
9. We also considered whether there might be a slimmed down option for the provider submission, such as requiring a provider to submit details of where each principle is upheld in its governing documents but removing the need for a self-assessment. This would allow us to conduct a detailed assessment of the public interest governance principles at registration, even if they were not one of the focus areas of initial condition E7.
10. Retaining an assessment in relation to the public interest governance principles at registration, even if this were not part of an additional condition, would necessarily mean an additional submission requirement for providers. It is likely that providers would need to submit a wide range of governing documents in support of their submission and that OfS assessors would need dedicate significant time to review all these documents to confirm the provider's submission. Taken alongside our other proposals, this is unlikely to represent an efficient use of OfS resources.
11. There are various routes by which the OfS could become aware of concerns about a provider's approach to the public interest governance principles, including through third party notifications. Our initial view is that there are sufficient mitigations in place to ensure that a provider will comply with its ongoing conditions if registered and that concerns around their ability to do so would be flagged during registration.
12. On balance, our initial view is that a direct assessment of whether the governing documents uphold the public interest governance principles at registration, whether it is in relation to the initial conditions of registration, or the risk of breach of an ongoing condition, would result in additional burden for providers at the point of registration that is not outweighed by the value of this. This is because we think that the additional work this would require from providers in preparing their registration applications, and for the OfS to assess them, is not appropriate given the other requirements that are in place and the other options available for monitoring and intervention of these requirements.

13. Our initial view is that the proposed requirements for condition E7 would, if adopted, collectively help ensure that a provider's arrangements would uphold the 'governing body', 'risk management' and 'fit and proper' public interest governance principles. By doing so, we think that – combined with the other proposals set out in this document – we would have assurance in the governance arrangements and the key individuals responsible for operating those arrangements. As such, we would be assured (to the extent appropriate at the point of registration) that the governing body would be effective at meeting its ongoing obligations in E1 and E2, and so additional checks at registration would be disproportionate.

Assessing a more comprehensive range of governing documents

14. We have considered whether to include more governing documents within the set of governing documents required for our proposed new assessment. This could include an assessment of the terms of reference for other committees, a full suite of policy and process documents and, where applicable, evidence that these have been followed in practice (demonstrated by minutes of meetings, or records of decisions made). As above, this would require substantially expanding the proposed condition to define the wider set of documents required (or functions for which we wanted to see the corresponding governing documents) and what we expected each document to contain. While this would ensure we had a comprehensive understanding of a provider's arrangements on paper, our initial view is that requesting more than we are proposing would unnecessarily increase the burden on smaller providers and on providers that had not started operating at the point of application. In practice, the weight we would be able to place on additional documents, and the level of meaningful scrutiny we would be able to give them, would be unlikely to justify the additional burden.
15. For instance, one of several areas where there might be a strong case for a more comprehensive review of governing documents is in relation to the academic governance public interest governance principle, given the high priority of quality and standards within our regulation. Information we could seek to assess in this area might include the structures, terms of reference and membership for any academic boards, or key academic policies such as those in relation to admissions, assessment and feedback, academic appeals, or misconduct. However, our initial view is that this would duplicate the assessments of conditions B7 and B8, which both provide opportunities to seek further information about a provider's academic governance arrangements where necessary.

Assessing a narrower range of governing documents

16. We also considered whether we could require a narrower set of governing documents than we have proposed in the new condition, particularly from providers that had not yet started operating. Alternative options could potentially remove document requirements, to avoid duplication, in the following areas:
 - Elements of a provider's 'risk and audit functions' are assessed by the requirements in the fraud and inappropriate use of public funds requirement.
 - Assessment of senior leaders' skills and expertise are the proposed focus of the knowledge and expertise requirement (although this assessment is much more limited in terms of the number of individuals it covers and the coverage of matters beyond the governing body's knowledge and expertise).

17. Our initial view is that any acceptable version of an initial effective governance condition must, as a minimum, seek to look closely at the operation of a provider's governing body and the documents that govern it. Therefore, we have not considered alternative options that would remove requirements for governing body documents. We have sought to allow some flexibility on the exact documents needed to facilitate assessment but envisage it would always involve the governing body's terms of reference and a provider's articles of association (or equivalent documents) as a minimum. We consider that these are both things that should be available at the point of registration if a provider were to be considered ready to be registered. Our view is that a provider without either of these documents could not realistically be considered to have determined how it plans to operate.
18. In contrast to our views about governing body documents, we have considered alternative options that involved removing the assessment of risk and audit functions, and the documents that govern them. This is partly because of the potential for duplication, and because this is the only area in which we have proposed to scrutinise governance at a more granular level than the governing body's overarching authority and oversight. We explored whether we could consider a provider's risk and audit functions purely through the proposed fraud requirement. It would therefore not be included as part of the governing documents requirement and would streamline our assessment. However, we think it would be unlikely to have a significant impact on submission requirements for providers as they are likely to need to provide the same documents in relation to the proposed fraud requirement. We think the severity of the risks that a provider's risk and audit functions would need to manage, and the potential serious impacts on students and taxpayers, mean that it is important to apply scrutiny to this area. Additionally, we think the duplication between the two requirements will be minimal because of their different focus. The governing documents requirement is intended to ensure a provider has appropriate structures in place to oversee risk and audit; the fraud requirement looks at the arrangements a provider has in place to detect, prevent and stop fraud and the inappropriate use of public funds.
19. At this stage, it is our view that – given our strategic priorities and the issues we have encountered in more recently registered providers – it is important to take a slightly more prescriptive approach in these areas. We need to ensure that we have a mechanism to scrutinise the provider's arrangements – for both discharging its risk and audit functions, and for managing conflicts of interests – before that provider has any access to public money. Our initial view is that these documents would represent the minimum necessary to assess the appropriateness of a provider's arrangements for effective governance in practice.

Proposal 3: Include requirement to have a clear and comprehensive business plan

Retaining current arrangements

20. We have considered not requiring a provider to submit additional information in its business plan. This would mean instead retaining the existing requirements for a new provider (that has been in operation and delivering higher education for fewer than three years) to submit a business plan showing how it will achieve financial viability and sustainability, to inform the OfS's assessment of condition D. There are also other proposals in this consultation that would require the provider to undertake planning prior to registration. Proposal 2a in Part 3 of

this consultation²² would require providers to submit contextualised financial scenario planning, assessing specific risks, such as changes in student enrolment, funding fluctuations, or unexpected economic downturns.

21. This consultation also proposes other requirements related to a provider's set of governing documents and arrangements for protecting fraud and public money, which could provide some assurances about the approach a provider is taking to risk management. However, these requirements relate more to a provider's overarching processes, rather than a consideration of specific risks and whether a provider has clearly identified risks and has plans to mitigate them.
22. The primary benefits of retaining the current arrangements would be to reduce burden, by removing an additional submission requirement for providers and removing the need for the OfS to assess business plans. Our initial view is that this would provide some evidence of a provider's understanding of the higher education recruitment market, but it would not require a provider to demonstrate their understanding of the wider operation of the higher education sector. It would also not require them to demonstrate plans for meeting regulatory requirements after registration or how they have considered the interests of students in its strategy and ensured that risks of harm to students were identified and mitigated.
23. It is therefore our initial view that the current approach does not allow us to focus our attention on the most commonly identified issues in the providers recently seeking registration. As the primary benefit of maintaining our current approach would be to reduce burden, we have therefore proposed ways of limiting the additional burden associated with the proposed requirement instead.

Adopting the proposed approach but considering different 'relevant requirements'

24. We have considered various options for alternative ways of defining 'relevant requirements' within the condition, which represents the substantive test that the OfS will apply to the information a provider submits.
25. We do not envisage any version of this requirement which would not include some minimum standards for the quality of the documents submitted. Therefore, the alternative options we have considered will always require documents to be clearly written, consistent and comprehensive as a minimum. Our initial view is that provider's plans which do not meet these requirements would raise serious questions about the credibility of their contents, and of a provider's approach to compiling them, and so would not be satisfactory in any circumstances.

Setting a lower threshold than 'sound understanding'

26. We have considered whether our expectation that a provider's plans demonstrate 'sound understanding' of the higher education sector, relevant risks, and ongoing conditions of registration, sets the right threshold at the right level, and whether it is applied to the right elements of a provider's plans.

²² See [Proposal 2: Information about financial viability and sustainability and corporate structure - Office for Students](#).

27. Rather than a ‘sound understanding’, we have considered whether a provider’s plans should just be required to demonstrate ‘consideration’ of the context of the higher education sector, relevant risks, and ongoing conditions of registration. This lower bar would partly meet our aim of ensuring a provider had undertaken prior planning, by requiring that a provider had at least thought through these issues as part of compiling its application. However, simply requiring ‘consideration’ would not allow us to protect the interests of students by addressing circumstances where a provider’s lack of knowledge or understanding could lead to unrealistic plans or assumptions, or the provider making poorly informed decisions once registered.
28. In terms of the scope of issues which judgements about ‘sound understanding’ should be applied to, our initial view is that the most important areas for a provider to understand prior to registration are its business plan, potential risks, and the ongoing conditions of registration. We have therefore primarily considered alternatives which would not require a provider to demonstrate a ‘sound understanding’ of the higher education sector in its plan. We increasingly receive registration applications from small, specialist, often newly established higher education providers, where any expectation that those in charge of a provider necessarily have a background in higher education may be disproportionate. In many cases, these individuals may be experts in their field, but new to higher education delivery. We do not expect all of a provider’s staff to be higher education experts nor a small, specialist provider with a very narrow course offering to have the same in-depth understanding of all elements of the higher education sector as a large multi-faculty university. Our initial view is that if a provider demonstrates a sound understanding of the context it is operating in, and draws on this to create its plans, then we can have confidence that it will be able to deliver its plans in practice.

Adopting alternative approaches for assessing a provider’s plans to ensure ongoing compliance

29. We have considered alternative options for ensuring that a provider has robust plans for complying with the ongoing conditions of registration, if registered, which do not require a provider to set this out as part of the business plan. We considered a separate, standalone requirement for providers to submit a ‘compliance plan’ document. This would be similar to the ‘quality plan’ required in relation to condition B7, and would include a similar qualitative assessment of whether, in the OfS’s judgement, the plan was likely to ensure the provider’s ongoing compliance. This would represent a higher bar than the proposed approach, which only requires a provider to set out its compliance plans clearly and coherently (as per the general requirements of information in the business plan), alongside consideration of whether it has the ability to deliver these plans in practice. However, we are initially proposing that – rather than a separate, more substantial requirement – it would be more efficient to ask providers to summarise compliance arrangements within a business plan and to undertake a less comprehensive assessment. We consider that the aims around ensuring providers are adequately prepared for future regulatory requirements can be sufficiently satisfied by a more limited description of a provider’s plans, focusing on key areas. While a more substantial requirement would be more robust, we consider there are limits to the amount of assurance that can be gained from such plans and, therefore, that a standalone requirement is a less proportionate option.

30. We also considered not proposing any requirements in the initial condition relating to a provider's ability to comply with ongoing conditions of registration; instead, we would rely on the existing ongoing conditions to ensure compliance. Once registered, ongoing condition E2 requires a provider's management and governance arrangements to continue to ensure compliance with all relevant conditions of registration. Although this would reduce burden at the point of registration, it is our experience that such an approach is unlikely to sufficiently address the issues of under-preparedness that we often see in newer providers. We find that providers are often unaware of the ongoing conditions, or may be unrealistic about the resource commitments needed to comply with them. Condition E2, and the other ongoing conditions, provide a mechanism to deter and address non-compliance of providers once they are registered. However, the most common areas of non-compliance which this requirement is seeking to address (mandatory reporting and data returns, in particular) are generally difficult to identify until after harm has already occurred. It is therefore our initial view that an upfront requirement, rather than reactive approach to enforcing condition E2 once a provider is registered, would represent a more efficient and effective approach – which would better protect students.
31. We considered an approach where we would examine a provider's plans, looking at its objectives, targets, strategy for achieving them and its own assessment of risk. If we judged that provider to pose a higher risk, we would seek further information about responsibilities and processes for ensuring compliance. Elements of the business plan require a provider to identify the most substantial risks arising from its chosen approach, which should include risks of non-compliance. These elements of the requirement alone would partially address our aims by allowing us to consider whether a provider had managed to identify the most significant non-compliance risks arising from its business model. It would not, however, provide assurances that a provider had fully considered all of the regulatory requirements it would be subject to once registered. Nor would it ensure that the provider had allocated appropriate resources to fulfilling those requirements. If a provider is underprepared, it may still successfully identify risks around quality and standards, or high profile issues related to financial viability. However, it may be unaware of some elements of our requirements, such as statutory data returns, reportable events and specific requirements of our accounts direction. These lower profile areas are those which we most commonly see non-compliance in relation to, and those which we are seeking to address through this requirement. It is therefore our initial view that there is a need for a more thorough consideration of all areas than is covered by the ongoing conditions of registration.

Adopting the proposed approach with alternative information requirements

32. It is our initial view that each of the detailed information requirements listed in requirement E7B.5 represent the minimum necessary in order to meet our different policy objectives. However, we invite respondents' views on whether there are other pieces of evidence that might be typically included in a provider's business plan or strategy that we should ask for, in order to fully understand a provider's business model and the potential risks it might face. We also invite views on whether there are things that we should avoid requesting, or alternative sources of evidence that we should ask for to achieve the same ends.
33. Some example areas where we have considered there to be scope for alternative information requirements are already mentioned in the sections above, in relation to the information a

provider might submit about its risk identification and management, and its plans for ongoing compliance.

Alternative means of collecting information about a provider's provision

34. The other aspect of the information requirements where we consider there to be alternative options is in relation to the descriptions of a provider's courses and students. E7B.5 sets out a number of information requirements relating to descriptions of a provider's range of higher education courses and the characteristics of its students, both current and planned, over the period of the business plan. We have proposed that providers should give an overarching description of a provider's courses and students rather than an exhaustive catalogue, but could consider more or less detail.
35. In particular, we recognise that a provider is already required to provide a list of courses it offers or plans to offer as part of the information submitted in relation to condition B8, and to provide forecasts of student numbers as part of condition D. These requirements are slightly different to the information that would be requested as part of the proposed business plan. The description of a provider's courses under condition B8 is exhaustive, but does not cover the entire period in scope of the business plan, as would be necessary to give a full picture of how a provider's offer might change over the medium term. The student number forecasts do cover the same period (for providers that are unable to provide full audited financial statements), but do not require providers to give any commentary on typical characteristics of those students – this information would be necessary to understand challenges or risks which might be associated with the provider's plans.
36. For both condition B8 and condition D, detail on courses and students is requested as part of the business plan to form a wider narrative description of the provider's aims and objectives and its strategies for achieving them. As such, an overarching description – which allows a provider to draw out distinctive details of focus on specific traits which may not be immediately obvious from more exhaustive sources – may be more effective in supporting assessment. We also do not consider descriptions of this nature would be particularly burdensome to provide, as part of a much broader description of a provider's plans. It would reduce effort for both providers and the OfS in cross-referring to other evidence included in the provider's application. We would be open to considering alterations to the requirements if any of these were considered overly burdensome, but it is our initial view that this would be the most efficient way of receiving the information we need.

Introducing a survey as an alternative submission requirement.

37. We have considered whether it would be possible to identify and assess the risks posed by a provider's particular business model without requiring submission of a business plan. For example, an alternative approach could attempt to categorise a provider as higher or lower risk by factors drawn from other aspects of its application, such as its size, course characteristics or corporate form. This approach could be supported by asking providers to complete a short survey as part of its application, which asked questions about common areas of risk, such as whether the provider intended to recruit international students, was planning to expand its partnerships, or was planning to use recruitment agents. Although such an approach would likely help reduce burden, we believe it would also likely be less effective at providing an in-depth understanding of a provider's approach, or associated risks. It is not our experience that provider risks can be effectively judged on such broad categories

as large versus small, or charitable versus for-profit. Some of these characteristics are not static and may change significantly after registration, depending on the provider's plans. It is our initial view that the specific risks and challenges a provider is likely to encounter can only be sufficiently understood through a more detailed understanding of its plans over the medium term. Gaining assurance of a provider's approach to managing these specific risks is also an important aim of this proposal. We do not consider that confidence about a provider's approach to managing risks could be achieved without asking for direct evidence of how this will be done. This is why we plan to request detail about how a provider will manage the specific risks arising from its approach as part of the business plan requirement.

Adopting the proposed approach but considering a different time period

38. We have considered requiring that a plan needs to cover only a three-year period. This would still provide a sense of a provider's future plans, but may require less detail, so result in less burden. However, where providers planned to significantly change the size and shape of their business, which is more likely to be the case for newly established providers not yet offering higher education, a three-year plan would be unlikely to capture the full extent of this change. Therefore, it would fail to meet our aims about ensuring plans are underpinned by a sound understanding of the sector and that associated risks would be appropriately managed. On balance, we consider that, as many providers need to produce financial forecasts for the entirety of this period, they will have already undertaken some degree of planning over the same timeframe. Therefore, there are limited benefits related to reducing burden by shortening the time period.

Adopting the proposed approach with an alternative submission format.

39. We have considered different structure and format requirements that could apply to the submission of a business plan as a further means of minimising burden. Set out earlier in this consultation (see Format of the information submitted), we have proposed a flexible approach which would allow providers to make use of documents they already have, rather than necessitating the creation of business plans from scratch.
40. We considered alternative options to require all providers to submit a single document, following a uniform template instead. There would be benefits to this more directive approach. It would reduce ambiguity for providers about what information to include, and in what order, and a uniform template could mandate that providers follow our preferred structure. Also, it is likely that a uniform template would be easier for OfS officers to assess, and less likely we would need to ask additional queries or for clarifications during the assessment process. However, for providers that already have business plans or strategic documents that largely fulfil our requirements, it would result in additional, unnecessary work to reformat existing material.
41. At this stage, we have chosen the more flexible option. If we were to take this proposal forward, we would expect to produce additional guidance about structure and formatting of information within the plan, but our initial intention is that any such guidance would be optional. Additional guidance could also include the production of a template for providers to follow. We recognise that, even where providers have documents readily available, they might find it helpful to follow a prescriptive template which gives certainty that all content requirements and considerations are being met.

Proposal 4: Include requirement that key individuals at the provider have sufficient knowledge and expertise

Retaining current arrangements

42. We have considered alternative options which would maintain the current approach in relation to the assessment of knowledge and expertise. The reasons for proposing a change to this are set out in Proposal 4.

Applying knowledge and expertise requirements to a different subset of individuals

43. We are not proposing to apply these requirements to all of a provider's governing body and senior management team. We consider this would result in an overly burdensome and disproportionate process, and it would be difficult to directly assess broader, less specific expectations (as in the current condition).

44. We have considered whether there are additional, specific roles that should be subject to minimum knowledge and expertise requirements. Given the importance of timely, accurate data returns in informing our regulation and determining funding, we have considered including knowledge and expertise requirements for the person responsible for compiling statutory data returns, as an additional 'key individual'. The knowledge and expertise requirements for this individual would need to include a detailed understanding of the various data returns a provider was required to submit, and some evidence of expertise in the compilation and validation of student data.

45. It is our initial view that the knowledge and expertise of other staff, such as those responsible for data management functions, would be adequately tested by the business plan requirement. For this, we would seek assurance from the provider's plan about its awareness of ongoing regulatory requirements, and evidence that it had made appropriate plans for suitably skilled and resourced people to fulfil them. We recognise that, depending on the provider's arrangements, this role could be spread across a number of individuals – which could make testing difficult.

Using alternative means of testing knowledge and expertise of key individuals

46. We have considered various alternative ways of testing whether key individuals have the relevant knowledge and expertise to fulfil their duties, such as setting an exam, asking for references, reviewing CVs and qualifications, or carrying out our own research on publicly available information on individuals. We also considered making visits to providers' premises and speaking to other staff to assure ourselves of how key individuals work in reality. However, it is our initial view that the most practical and least intrusive way of testing this would be through interviews with the chair of the governing body, the accountable officer and, where necessary, with other people meeting the definition of 'key individuals'. We propose that, in most cases, these interviews would be held online using video conferencing software with appropriate adjustments made where these are needed.

Proposal 5: Include the requirement that the individuals responsible for running the provider must be ‘fit and proper’

Retaining current arrangements

47. We have considered maintaining our current approach to assessment of a provider’s policies and processes in relation to a fit and proper test (as set out in Annex F). The reasons for why we think this is not the right option is set out in the main document (see Proposal 5).

Adopting an approach where the OfS is required to approve each appointment of a key individual as fit and proper before their appointment by a provider

48. Our proposal is that the fit and proper test should continue to be applied by providers directly using the test or criteria that are set out in paragraph E7D.6 of the draft requirement.

49. We have considered whether we should instead adopt a fit and proper test whereby the provider would submit key individuals they have appointed to the OfS for approval. Under this model, a key individual could not be confirmed in their role until they had been judged as being a fit and proper person by the regulator. The benefits of this would be that the provider could rely on the OfS to undertake appropriate checks and therefore be confident they would meet the test once key individuals had been approved.

50. However, we think such an approach would add additional burdens, costs and delays to appointments of key individuals, creating uncertainty for providers when recruiting to these roles and thereby adding risks to ongoing oversight of management and governance at providers. It is also doubtful whether this would reduce the regulatory burden on providers, as they are likely to ‘pre-check’ key individuals to manage the risks to recruitment and appointment delays.

51. We maintain that a more efficient and less intrusive process is to continue to review the provider’s policies and processes in this area, to assess whether they are robust, and to validate the outcomes of the checks undertaken for those key individuals currently in post.

Adopting the proposed approach but restricting matters to which the OfS will have regard when determining if an individual is fit and proper (sections E7D.2 and E7D.4) to those occurring in the UK only

52. The matters that the OfS will consider when assessing whether an individual is fit and proper are listed in Table 2 and Table 3. We propose that these matters include events that have occurred in the UK and overseas, however, we considered the option of restricting these matters to those which occurred in the UK only. Our initial position is that events that occur outside of the UK are equally relevant when assessing an individual's track record to determine whether they are fit and proper. Restricting the scope of these matters to the UK would, in our opinion, pose a risk to the aims of ensuring protection against the misuse of public funding, protection of the interests of students and maintaining the good reputation of the higher education sector.

Adopting ‘honesty, integrity and reputation’ as the test, rather than the fit and proper test as proposed

53. We have considered whether more general concepts of good character in the guise of honesty, integrity and reputation would be a more appropriate test. However, we consider

such matters to be too broad in scope and open to differing interpretations. They also may not always be relevant to the purposes of the fit and proper test in relation to higher education. A test based on these matters alone would be difficult to assess and enforce in a consistent manner. Our initial view is that the fit and proper test should be based on the natural, ordinary meaning of 'fit and proper' and assessment of verifiable actions of key individuals that translate to risks to the protection of the interests of students, protection of public funds and the continuing good reputation of the higher education sector in England.

Proposal 6: Include requirement for provider to have comprehensive arrangements in place to prevent, detect and stop fraud and inappropriate use of public funds

Smaller or larger collection of documents to demonstrate arrangements

54. We are proposing that providers must submit, at a minimum, a specified set of documents to demonstrate that it has comprehensive arrangements in place to prevent, detect and stop fraud and inappropriate use of public funds. Where there are specific risks posed by a provider's business plan it must also have arrangements in place to address those risks.
55. When reflecting on this approach, we considered specifying a very small range of documents (for example, conflict of interests policy, internal control process and whistleblowing policy). However, our initial view is that OfS oversight of only a limited range of documents may be insufficient to identify where providers are not adequately prepared to receive or access public funds and therefore pose significant risk to those funds.
56. We also considered the option of specifying a much larger suite of documentation to be submitted. We considered that a larger specified list of documentation may provide more assurance. However, our initial view is that this approach would be significantly higher burden for providers as it is likely that they would have to produce new documentation specifically for the purpose of registration with the OfS, despite having a different range of documents that may already be fit for purpose. We also considered it likely that the arrangements in place at providers, and how these were documented, would rightly differ between providers based on their characteristics. For example, a provider that intends to grow rapidly by subcontracting provision and using recruitment agents is likely to require different arrangements to a small provider delivering one course to directly enrolled students.

Use a different time period to assess track record

57. When assessing a provider's track record in relation to receiving and/or accessing public funds, we are proposing to consider any relevant matters that have occurred within the past 60 months of the date the provider applied for registration. Our initial proposal is that if any of the circumstances outlined in section E7E.3.a of the proposed condition have occurred in the past 60 months, the provider will be deemed not to have a satisfactory track record unless there are exceptional circumstances. We currently consider that this time period represents the best balance between the need to consider past offences and decisions to minimise the risk to students and the sector, and ensuring it is not overly burdensome for providers. Our view is that an obligation to report the matters in section E7E.3.a from the preceding 60

months would enable the OfS to observe if there are systemic issues that could still be relevant to the operation of the provider whereas any older matters could lose relevance.

58. We also took into account that other regulatory bodies such as the Financial Conduct Authority, Ofqual and the Charity Commission use a five-year threshold for similar disclosures and our initial view is that the proposed timeframe is appropriate for our purposes in balancing fairness with risk management.
59. In developing the proposals, we have considered whether we should only consider more recent matters and therefore shorten the time period in which we assess a track record (for example 36 months) as a lower burden and more risk tolerant approach. However, our view is that a time period longer than 36 months would give us greater assurance that, at the point of registration, any weaknesses in a provider's arrangements had not only been fully addressed, but that any students previously recruited under weaker arrangements would be unlikely to still be engaged in their studies. This would reduce the risk that registering the provider and granting access to the student loans system would lead to the inappropriate use of public funds. Furthermore, we do not anticipate that a longer time period for the track record test should preclude providers that have otherwise resolved historic issues as we have proposed a mechanism for a provider to demonstrate the changes it has made.

Automatic assumption of non-compliance or full discretionary approach for the track record requirement

60. As outlined above, our initial proposal is that if any of the circumstances outlined in section E7E.3.a of the proposed condition have occurred in the past 60 months, the provider will be deemed not to have a satisfactory track record unless there are exceptional circumstances. We have considered the option of not including the opportunity for providers to overturn the initial presumption through submission of exceptional circumstances. While we consider that, in most cases, these scenarios should result in a provider failing to satisfy the condition, our initial view is that we should not completely restrict our ability to apply judgement in exceptional circumstances by creating conditions under which a provider would always automatically fail to satisfy the condition. We consider that this approach may prevent the OfS from registering providers that are otherwise suitable to receive public funds and therefore reduce student choice and diversity in the higher education market.
61. We have also considered whether it would be better to take a fully discretionary approach to these circumstances by removing any initial presumption and considering every scenario on a case-by-case basis. However, our initial view is that the circumstances listed in section E7E.3.a of the proposed condition are serious enough and strongly indicative of future risks to public funds that it is likely that the OfS will consider any provider affected by these matters to have an unsatisfactory track record.

Annex C: Part A of proposed condition E7 and related guidance

Initial condition of registration

Condition E7A: A set of governing documents

Requirements

E7A.1 The provider must have a set of documents which will enable the effective governance of the provider in practice.

E7A.2 The set of documents referred to in E7A.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:

- **governing body documents**;

- **risk and audit documents**;

- **decision making documents**;

b. a **conflict of interests policy**; and

c. any other documents (including **shareholder agreements**) which contain rules which govern the operation of the provider's **governing body**;

E7A.3 The requirement in E7A.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 **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 audit 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 **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. is clearly drafted, including in respect of English language, spelling, grammar and formatting, such that the contents of the documents are properly understandable;

- g. is coherent both within documents and between documents, with no material inconsistencies, contradictions or discrepancies either within or between documents.

Further definitions

E7A.4 For the purposes of this condition E7A:

- a. “**business plan**” means a business plan as required under condition E7B;
- b. “**conflict of interests 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;
- c. “**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**;
- d. “**governing body**” has the meaning given by section 85 of the Higher Education and Research Act 2017;
- e. “**governing body documents**” means documents which set out the following information in relation to the **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;

- f. “**independent member**” means an external member of the provider’s **governing body** who is independent of the provider;
- g. “**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;
- h. “**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;
- i. “**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

Proposed guidance

Conditions E7A.1 and E7A.2

1. The range of documents a provider will need to submit to satisfy E7A.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 'conflict of interests' policy to satisfy the condition.
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 E7A.4.e. 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 'conflict of interests policy' may be a standalone document or covered by content of a 'code of conduct' for members of the governing body, or similar. To satisfy the requirement, the document must cover all the content described in E7A.4.b.

Condition E7A.3

6. E7A.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, or elsewhere within a provider's application.
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. E7A.3a 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 is unlikely to 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 – the provider may not have appointed the independent member, but the OfS expects the relevant governing documents to set out the requirement and process for appointing them (for a provider seeking registration in the Approved (fee cap) category). 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.
 - 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 ensures it can receive timely information, scrutinise relevant reports on activity that it oversees, and make timely decisions. The frequency should not impede efficient operation or conflict with reasonable competing commitments of members.
8. E7A.3.a.ii. requires that the relevant governing documents include clear mechanisms and processes that make sure the governing body as a whole has appropriate expertise and skills. When the OfS assesses the mechanisms and processes 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. E7A.3.b requires documents which demonstrate how the provider discharges delegated decision making responsibilities. When the OfS assesses whether the provider has delegated decision making arrangements to suitable individuals to enable effective governance of the provider in practice, this 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 to enable the effective governance of the provider in practice, 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. E7A.3.c sets out requirements for documents which describe how a provider will discharge its risk and audit functions. E7A.3.d sets out requirements for documents which govern the operation of any committee with responsibility for any risk and audit functions.
12. A provider must clearly set out in its documents:
- which individuals or committees have responsibility for risk and audit functions
 - what those responsibilities are
 - how the provider will ensure that these functions are undertaken by suitable persons
 - 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 provider's arrangements for securing independent auditing of its financial statements
 - auditing of a provider's internal controls
 - 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 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 suitable individuals hold responsibilities for risk and audit functions 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 meetings of any committee discharging risk and audit functions 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. The OfS will consider any

available information from the provider's application about other positions to which an individual has been appointed, or responsibilities the individual holds.

18. The OfS's assessment of whether risk and audit documents contain appropriate mechanisms to ensure the governing body has appropriate oversight of the committee's activities, to enable the effective governance of the provider in practice, 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. Processes the governing body follows to review whether the committee's work and decision making is effective.

19. When the OfS assesses whether the documents contain appropriate mechanisms that make sure the committee 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. 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.²³
 - c. 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.

²³ See [Regulatory advice 9: Accounts direction - Office for Students](#).

Annex D: Part B of proposed condition E7 and related guidance

Initial condition of registration

Condition E7B: Business plans

Scope

E7B.1 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

E7B.2 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 four future years; and
- b. in the OfS's judgement, the ability to deliver the business plan in practice.

E7B.3 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.

E7B.4 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.

E7B.5 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. the provider's 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

E7B.6 For the purposes of this condition E7B:

- 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. "**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;
- c. "**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;
- d. "**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 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**;

e. "**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;

f. "**staff**" includes, but is not limited to, employees and contractors.

Summary

Applies to: all providers seeking registration

Initial or general ongoing condition: initial condition

Legal basis: section 5 of HERA

Proposed guidance

Condition E7B.2

Business plan

1. 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 E7B.3. 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.

Relevant requirements

2. The 'relevant requirements' a provider's plan must meet are listed in E7B.6.

Comprehensive plans

3. 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.
4. '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).
5. 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 E7B.5. 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

6. 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

- 7. 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.
- 8. 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

- 9. 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 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.
- 10. The most substantial 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 that may arise from a business model which recruits a significant proportion of students from underrepresented groups. Examples are the increased risk that these students may not receive sufficient personalised academic or personal support to achieve a positive outcome, or the risk that cost pressures may disproportionately affect such students' ability to complete their course or obtain a good grade.
11. 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

12. 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

13. 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.
14. 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 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.

Ability to deliver the business plan in practice

15. Guidance on the OfS's approach to assessment of whether a provider can deliver its business plan in practice is set out in relation to E7B.3 below.

Condition E7B.3

Capacity and resources

16. The OfS's assessment of a provider's ability to deliver its business plan 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.
17. 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.
18. 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.
19. 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.
20. The OfS will also assess whether a provider can deliver its plans for how it would comply with all the ongoing conditions of registration that would apply to it. The OfS will consider the provider's capacity and resources for delivering its plans in these areas, and whether information in the rest of its registration application supports or contradicts those plans. The OfS would consider that a provider is unlikely to be able to deliver its plans to comply with the ongoing condition of registration where:
- a. The plan does not set out robust processes for collating and validating student data, including by failing to demonstrate that IT systems are sufficient for this purpose, or failing to identify sufficiently skilled individuals who will be responsible.
 - b. The plan (alongside financial forecasts) suggests that the provider has not planned for, or does not have the financial resources to meet, mandatory subscription requirements.
 - c. During any communication with the OfS, the chair of a provider's governing body demonstrates an insufficient understanding of the governing body's responsibility for interactions with the OfS and its designated bodies and for ensuring compliance on an ongoing basis. For example, the chair is unaware of the requirements to submit information, including data returns and reportable events as required, or cannot explain the provider's arrangements for fulfilling these responsibilities.
 - d. The provider's set of governing documents submitted in relation to E7A do not contain what is needed to comply with the ongoing conditions of registration. This includes, but is not limited to, where the documents of a provider seeking registration in the Approved (fee cap) category do not provide for appointing an independent board member.
21. The OfS is likely to draw on any additional evidence from discussions with the provider's senior staff about its plans for compliance with the ongoing conditions. The OfS will use this evidence to assess whether the provider's claims are credible.

Past performance

22. 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.
23. 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, that the business plan does not address appropriately, such that risks remain relevant and insufficiently mitigated.
 - 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.
24. 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.
25. 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

26. 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

27. 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.
28. 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 E7B.4

29. A provider would be unlikely to satisfy this requirement if its business plan:

- 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:
- f. 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.
- g. 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.
- h. 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 E7B.5

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

30. A provider needs to provide a description of the courses it plans to offer.
31. 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.
32. 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.

33. 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.
34. 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:
- whether students are primarily young or mature
 - whether they are recruited from the local area or nationally
 - their typical level of prior qualification, particularly their typical level of technical proficiency in the English language
 - reasons for study
 - any other information about the student population which could be considered particularly distinctive, or pertinent to understanding its shared characteristics.
35. 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:

- identifying the provider's most relevant competitors and showing that it understands their offer
- 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

36. The 'business objectives and targets' included in the business plan will vary by provider. E7B.6.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.
37. In deciding the information to include about objectives and targets, a provider should especially consider including:
- a. Details of any business-critical goals (financial or otherwise) which if not met might jeopardise the provider's ability to deliver its plan. For example, if the courses a provider plans to offer depend on achieving professional accreditations or its own degree awarding powers, or if the provider's financial sustainability depends on any short-term recruitment or turnover targets, these business-critical goals would need to be highlighted as such in the provider's plan.
 - 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.
38. 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.

39. 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 for 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.
40. The plan should provide information about any planned strategies which will require:
 - additional investment
 - a significant change to the size and shape of the provider or the way it currently operates
 - approaches which carry a risk that the provider needs to manage.

Annex E: Part C of proposed condition E7 and related guidance

Initial condition of registration

Condition E7C: Knowledge and expertise

E7C.1 The provider must have **key individuals** who have **sufficient knowledge and expertise** to facilitate the provider to:

- a. comply with the ongoing conditions of registration applicable to it (if registered);
- b. deliver, in practice, the provider's **business plan**; and
- c. deliver, in practice, the provider's **fraud and public money arrangements**.

E7C.2 For the purposes of the requirement in paragraph E7C.1, "**key individuals**" means all of the following:

- a. the individual(s) proposed as the chair(s) of the provider's **governing body**;
- b. the individual proposed as the accountable officer for the purposes of ongoing condition of registration E3;
- c. the individual(s) proposed to hold overarching responsibility for the management of the provider's financial affairs; and
- d. where the provider is applying for registration in the Approved (fee cap) category, the individual proposed as the **independent member** of the provider's **governing body**.

E7C.3 For the purposes of the requirement in paragraph E7C.1, "**sufficient knowledge and expertise**", in relation to the **key individuals**, includes (but is not limited to) that, in the OfS's judgement:

- a. the individual(s) proposed as the chair(s) of the provider's **governing body** has:
 - i. a sound understanding of:
 - A. the following matters set out in the provider's **business plan**:
 - a. the provider's business objectives and targets;
 - b. the provider's strategy for achieving its business objectives and targets;
 - c. any risks arising from assumptions made by the provider in the formation of its business plan which could affect its ability to achieve its business objectives and targets; and
 - d. how the provider plans to manage those risks.

- B. the provider's **set of governing documents**, including any provisions which authorise or obligate the individual to act on behalf of the provider; and
 - C. the regulatory requirements imposed by ongoing condition of registration E3 and associated guidance;
- ii. sufficient awareness of:
- A. the characteristics of the cohorts of students the provider has recruited and/or intends to recruit for its planned higher education provision and the academic needs of those students, as set out in its **business plan**;
 - B. how the higher education system in England functions and the context of the sector in which the provider plans to operate;
 - C. regulatory requirements imposed by the OfS and associated guidance (beyond ongoing condition of registration E3 and associated guidance);
 - D. action that the OfS can take to address a breach of its regulatory requirements or an increased risk of breach; and
 - E. the provider's **fraud and public money arrangements** and any obligations these place on how the individual carries out their duties, including, but not limited to any obligations to act if they find evidence of fraud or misuse of public money;
- iii. sufficient knowledge and expertise to enable the individual to provide effective leadership of the provider's **governing body**;
- b. the individual proposed as the accountable officer for the purposes of ongoing condition of registration E3 has:
- i. a sound understanding of:
- A. all elements of the provider's **business plan**;
 - B. how the higher education system in England functions and the context of the sector in which the provider plans to operate;
 - C. the provider's **set of governing documents** including any provisions which authorise or obligate the individual to act on behalf of the provider;
 - D. action that the OfS can take to address a breach of its regulatory requirements or an increased risk of breach; and
 - B. the provider's **fraud and public money arrangements** and any obligations these place on the individual, including but not limited to how the individual carries out their duties, or any obligations to act if they find evidence of fraud or misuse of public money;
- ii. sufficient awareness of:

- A. regulatory requirements imposed by the OfS and associated guidance; and
 - B. the role of any other **public authority** or government body with which the provider may interact if registered (including but not limited to the Office of the Independent Adjudicator for Higher Education and, if relevant, the Student Loans Company Limited and the Home Office), and the nature of possible interactions;
- iii. sufficient knowledge and expertise to enable the individual to provide effective leadership and management of the provider and its activities.
- b. the individual(s) proposed to hold overarching responsibility for the management of the provider's financial affairs has:
- i. a sound understanding of:
 - A. the financial elements of the provider's **business plan**;
 - B. any **business objectives and targets** (where these could relate to financial matters, including but not limited to the provider's financial targets) and the provider's strategy for achieving those objectives and targets, as set out in the provider's **business plan**;
 - C. regulatory requirements imposed by the OfS and associated guidance in relation to financial matters (including, but not limited to requirements for reportable events and financial reporting and data returns); and
 - D. the provider's **fraud and public money arrangements** and any obligations these place on how the individual carries out their duties, including but not limited to any obligations to act if they find evidence of fraud or misuse of public money;
 - ii. sufficient awareness of:
 - A. how the higher education system in England functions and the context of the sector in which the provider plans to operate; and
 - B. the provider's **set of governing documents**, including but not limited to any provisions which authorise or obligate this individual to act on behalf of the provider;
- c. the individual proposed as the **independent member** of the provider's **governing body** has:
- i. a sound understanding of:
 - A. the following matters set out in the provider's **business plan**:
 - a. the provider's business objectives and targets;
 - b. the provider's strategy for achieving its business objectives and targets;

- c. any risks arising from assumptions made by the provider in the formation of its business plan which could impact its ability to achieve its business objectives and targets; and
 - d. how the provider plans to manage those risks;
- B. the provider’s **set of governing documents** including any provisions which authorise or obligate the individual to act on behalf of the provider; and
 - C. the provider’s **fraud and public money arrangements** and any obligations these place on how the individual carries out their duties, including but not limited to any obligations to act if they find evidence of fraud or misuse of public money, and the individual’s role in providing scrutiny over, and challenge of, these arrangements;
- ii. sufficient awareness of:
 - A. the characteristics of the cohort of students the provider has recruited and/or intends to recruit for its planned higher education provision and the academic needs of those students, as set out in its **business plan**; and
 - B. the regulatory requirements imposed by ongoing condition of registration E3 and associated guidance;
 - iii. sufficient knowledge and expertise to enable the individual to provide effective scrutiny over, and challenge of, activities of the provider and its **governing body**.

Further definitions

E7C.4 For the purposes of condition E7C:

- a. “**business objectives and targets**” has the meaning given by E7B.6;
- b. “**fraud and public money arrangements**” means the arrangements as required under condition E7E.2;
- c. “**governing body**” has the meaning given by section 85 of the Higher Education and Research Act 2017;
- d. “**independent member**” means an external member of the provider’s **governing body** who is independent of the provider;
- e. “**business plan**” means a business plan as required under E7B;
- f. “**public authority**” has the meaning given in section 6(3) of the Human Rights Act 1998;
- g. “**set of governing documents**” means the set of documents which govern the operation of the provider as required under E7A.1.

Proposed guidance

Conditions E7C.1 and E7C.2

1. Paragraph E7C.1 sets out that key individuals must meet minimum knowledge and expertise requirements. The minimum requirements differ depending on the individual's role and responsibilities.

Key individuals

2. The individual or individuals proposed to hold overarching responsibility for the management of the provider's financial affairs would typically be the person holding a role such as the Director of Finance or Chief Financial Officer, where such a role exists within the provider. In a smaller provider, it may be the person proposed as the accountable officer or another senior staff member. The OfS expects that the provider's senior leadership team will have an individual or individuals with this overarching responsibility.
3. A provider must have an individual in this role with the knowledge and expertise to exercise overarching financial oversight and strategic financial decision making. The individual is not required to have the practical financial skills to, for example, prepare the provider's financial statements. The individual with overarching responsibility for the management of the provider's financial affairs would be expected to understand the provider's arrangements, and to gain assurance that they are adequate, but does not necessarily need to be the person who produces financial statements in practice.
4. An individual may fulfil more than one of the roles listed under the 'key individuals' definition in E7C.2. For example, the person proposed as the provider's accountable officer may fulfil the financial management role. In these cases, the OfS will assess that individual against all the knowledge and expertise requirements relevant to each role.
5. A provider applying for registration in the Approved (fee cap) category must make provision for at least one independent member on its governing body in its set of governing documents (under the governing documents requirement of initial condition E7). The relevant independent member must demonstrate sufficient knowledge and expertise to fulfil the role. Where a provider has more than one independent member of its governing body, only one must meet the relevant knowledge and expertise requirements. The provider may choose which independent member to nominate for this purpose. This requirement does not apply to a provider applying for registration in the Approved category.
6. Where a provider intends to establish one of the roles defined as a 'key individual' but has not yet recruited an individual, the provider will need to demonstrate how it will make sure that the individual it appoints has the required knowledge and expertise.

Condition E7C.3

Definitions of 'sufficient awareness' and 'sound understanding'

7. The requirement for an individual to have 'sufficient awareness' of a subject sets a minimum threshold for the level of knowledge they should have about a subject. Sufficient awareness is limited to broad, high-level knowledge of requirements, plans, policies, or other listed matters rather than in-depth knowledge of the relevant subject matter. It would not need to include

knowledge of the practical, operational steps necessary to ensure compliance or deliver plans.

8. The requirement for an individual to have 'a sound understanding' of a subject sets a higher threshold. In this case the individual should have a more in-depth knowledge of a subject. It would include the broad, high-level knowledge described above, and also include a more detailed knowledge of the most important elements of a requirement, plan, policy or other listed matter. It would include, where relevant, some understanding of the practical, operational steps that the provider has in place to meet a requirement, or ensure a policy or process is consistently followed. It would not, however, necessarily require the individual to have comprehensive knowledge of all the detail, or hands-on expertise in delivering a policy or process themselves.
9. For example:
 - a. In relation to the regulatory requirements imposed by the OfS:
 - i. 'Sufficient awareness' may be demonstrated by an individual showing awareness that the OfS has a range of initial and ongoing conditions of registration, and a high-level awareness of the areas to which those conditions relate.
 - ii. 'Sound understanding' would include more detailed (though not necessarily exhaustive) knowledge of the conditions of registration that apply to the provider. This would include enough knowledge of the processes within the provider for complying with these conditions. The individual would, therefore, have confidence that the provider's arrangements for meeting those requirements, and the people responsible for fulfilling them in practice, were likely to be sufficient. 'Sound understanding' would not necessarily include in-depth knowledge of the precise details or wording of individual conditions.
 - b. In relation to the business objectives and targets set out in a provider's business plan:
 - i. 'Sufficient awareness' may be demonstrated by an individual who can articulate, in broad terms, key aims of the provider which are consistent with those set out in the business plan, particularly awareness of any significant milestones within the period of the business plan (such as the creation of a new campus or significant changes to the provider's portfolio of courses).
 - ii. 'Sound understanding' would include more detailed and comprehensive knowledge of the provider's objectives and targets across different business areas, and an ability to explain why these objectives are being pursued, and the strategies the provider has adopted for achieving them. 'Sound understanding' would not necessarily require detailed knowledge of every single objective and target, nor would it necessarily include exhaustive knowledge of the practical steps the provider is taking to achieve each objective.

Specific knowledge and expertise requirements

10. A provider's governing body is responsible for the provider complying with all its conditions of registration. A provider's accountable officer is the person accountable to the OfS on behalf of

the governing body. As such, both the chair of the governing body and the accountable officer should have sufficient awareness of all the OfS's regulatory requirements and associated guidance.

11. Other individuals are only expected to be aware of the parts of the OfS's requirements which are relevant to their role. The individual proposed to hold overarching responsibility for the management of the provider's financial affairs is only required to have sufficient awareness of the OfS's requirements relating to financial matters. The individual proposed as the independent member of the provider's governing body is only required to have sufficient awareness of condition E3 and the responsibilities it places on the provider's governing body.
12. Further information about what must be included in a provider's set of governing documents, its business plan and its fraud and public funds arrangements, are set out in E7A, E7B and E7E respectively. Key individuals are required to demonstrate an awareness or understanding of these specific documents, as defined for the purposes of those conditions. For example, the requirements relating to understanding and awareness of the provider's set of governing documents relate only to the specific set of documents required for the purposes of E7A, and of the content that E7A specifies that those documents need to include.
13. Key individuals are required to demonstrate knowledge (either sufficient awareness or sound understanding) of how the higher education system in England functions and the context of the sector in which their provider plans to operate. The OfS would not expect an individual to have exhaustive knowledge of every element of the higher education sector. Neither would an individual be expected to demonstrate knowledge of elements of the higher education system, or context of the sector, which were not relevant to the planned activities of the provider. For example, an individual at a provider that was not planning to engage in any research activities would not be expected to demonstrate knowledge about this aspect of the higher education system. As is set out in the guidance for the business plan requirement, the OfS's assessment would consider whether a key individual demonstrated significant misunderstandings, or made statements which were materially factually inaccurate, about the operation of the higher education system or context of the sector.
14. The OfS is unlikely to consider that an individual proposed as chair of a provider's governing body, or as the independent member of the governing body, has sufficient awareness of how the higher education system functions, or the context of the sector, if, for example:
 - a. The individual did not demonstrate awareness of key features of the higher education landscape or the provider's segment of the higher education market. The individual might not, for example, be able to identify comparable providers that might be considered the provider's realistic competitors.
 - b. The individual was unaware of key rules and processes governing the higher education system which would affect the activities of the provider. The individual might not know, for example, about restrictions on the use of university title or degree awarding powers, or the differences between OfS funding and student support funding provided by the SLC, and the associated rules relating to fee limits.
15. A provider's accountable officer is required to demonstrate a higher threshold of knowledge or 'sound understanding' of the higher education system and context of the sector. The OfS is

unlikely to consider that an individual proposed as a provider's accountable officer has this level of knowledge if, for example:

- a. They could not articulate in detail how the provider's offer to students differed from close competitors, or the degree of competition for its target students, when discussing its recruitment strategy.
 - b. They demonstrated insufficient awareness about the eligibility of its students and courses to receive different types of funding, or of the processes and organisations involved in distributing funding.
16. Where a provider interacts with any public authority or government body, an individual proposed as an accountable officer must have sufficient awareness of the body's role. As a minimum, this awareness would include the following:
- To co-operate with the requirements of the student complaints scheme and comply with ongoing condition of registration C2, a provider should be aware of the Office of the Independent Adjudicator for Higher Education and its role.
 - A provider intending to access student support funding must also be aware of the role of the Student Loans Company in distributing student finance.
 - A provider holding or intending to apply for a student sponsor licence should also be aware of the role of UK Visas and Immigration (UKVI) and the Home Office.
17. Sufficient awareness of 'the nature of possible interactions' with these public authorities includes awareness of any financial or reporting requirements these bodies will impose, the frequency and reasons for any ongoing engagement, and the awareness of the associated time, resource and financial costs. These requirements focus on the most significant public authorities or government bodies with which a provider may typically interact rather than an exhaustive list. The requirements do not extend to knowledge of professional, statutory and regulatory bodies (PSRBs) that are responsible for regulation of specific courses or subject areas that a provider may or may not choose to offer.
18. For the individual proposed as chair of the governing body, 'effective' leadership of the governing body means leadership that has a positive impact on provider's decision making. This should result in better outcomes for students and taxpayers and avoid the potential adverse consequences of poor decisions.
19. To lead in this way, the knowledge and expertise that a chair of the governing body needs is likely to include a combination of matters such as:
- a. Previous experience of organisational governance and how boards operate, gained through similar positions on governing bodies or charring committees.
 - b. Sufficient seniority and confidence, derived from business leadership experience and understanding of how organisations run, to enable the individual to lead and advise others.

- c. Knowledge and understanding of the provider's business activities and the external environment to a level of detail that would allow the individual to effectively chair discussions and facilitate decision making.
20. For the individual proposed as the accountable officer, 'effective' leadership and management of the provider and its activities means leadership and management that has a positive impact on the provider's decision making and enables a provider to deliver its plans in practice. As with the chair of the governing body, this should result in better outcomes for students and taxpayers, and avoid the potential adverse consequences of poor decisions.
 21. The knowledge and expertise an accountable officer is likely to need for this purpose includes, but is not limited to, previous business or non-profit leadership experience and understanding of how organisations run.
 22. Any person proposed as the independent member of the provider's governing body must have the knowledge and expertise to scrutinise and challenge the activities of the provider and its governing body.
 23. The knowledge and expertise they would need is likely to include a combination of matters such as:
 - a. Previous experience of holding senior management of an organisation to account, though similar positions on boards or committees.
 - b. Sufficient seniority and confidence, derived from this experience, to enable the individual to challenge opinions, question information presented, hold leaders accountable for success and failure, and champion issues of concern on behalf of taxpayers and students.
 - c. Knowledge and understanding of the principles of good governance.
 - d. Knowledge and understanding of the provider's business activities and the external environment to a level of detail that would allow the individual to make material contributions into discussions and decision making.
 24. In determining whether any previous professional experience of key individuals demonstrates that they have sufficient knowledge and expertise for their role, the OfS will consider the relevance, length, and seniority of that experience.

Assessment

25. The OfS will assess 'key individuals' for the knowledge and expertise they require. The OfS will normally do this through interviews with the key individuals.

Annex F: Part D of proposed condition E7 and related guidance

Initial condition of registration

Requirements

E7D.1 **Relevant individuals** at the provider must, in the OfS's judgement, be fit and proper persons 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; and
- c. the provider is suitable to protect the interests of students.

E7D.2 In judging whether an individual is a fit and proper person for the purposes of E7D.1, the OfS will give particular consideration to the following matters (where any of these matters apply and insofar as the matter does not fall under E7D.4):

- a. the individual has been subject to any adverse findings in civil proceedings (in any jurisdiction), and those findings relate to that individual operating in a business or professional capacity;
- b. the individual has been subject to any adverse findings in disciplinary proceedings by any relevant person or body (in any jurisdiction), or is currently the subject of such disciplinary proceedings;
- c. the individual, or an organisation they are or have been **involved in** that is or has been connected to the education sector, has been subject to any adverse findings by any relevant person or body (in any jurisdiction);
- d. the individual, or an organisation they are or have been **involved in**, has been subject to any adverse findings by any relevant person or body (in any jurisdiction) in relation to the **inappropriate use of relevant public funds**;
- e. the individual, or an organisation they are or have been **involved in**, is currently the subject of an investigation by any relevant person or body in relation to the **inappropriate use of relevant public funds**;
- f. the individual, or an organisation they are or have been **involved in**, has (in any jurisdiction):
 - i. been refused a registration, authorisation, membership or licence to carry out a trade, business or profession (including any licences which relate to student visas); and/or
 - ii. had a registration, authorisation, membership or licence to carry out a trade, business or profession revoked, withdrawn or terminated (including any licences which

relate to student visas); an organisation that the individual is or has been **involved in**, has been convicted of the offence provided for in section 199 of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud) or any **relevant fraud offence**, or a similar offence in an overseas jurisdiction;

- g. an organisation that the individual is or has been **involved in**, has been convicted of any criminal offence in relation to tax matters (in any jurisdiction);
- h. an organisation that the individual is or has been **involved in** went into insolvency, liquidation or administration (in any jurisdiction);
- i. the individual was dismissed, or was asked to resign and did resign, from a role at an organisation (in any jurisdiction) where the individual held **significant managerial responsibility or influence**, while operating in a business or professional capacity;
- j. the individual has previously been disqualified as company director under the Company Directors Disqualification Act 1986 or an equivalent overseas regime;
- k. the individual has previously been disqualified from being a charity trustee or trustee for a charity under s 178(1) of the Charities Act 2011 or an equivalent overseas regime;
- l. the individual has previously been declared bankrupt (or equivalent) in any jurisdiction.

E7D.3 If any of the matters listed in E7D.4 apply to an individual, that individual will be deemed not to be a fit and proper person for the purposes of E7D.1, unless there are **exceptional circumstances**.

E7D.4 The matters referred to in E7D.3 are as follows:

- a. at any point during the course of the provider's application to register with the OfS (and the OfS's consideration of that application):
 - i. the individual was disqualified as a company director under the Company Directors Disqualification Act 1986 or an equivalent overseas regime;
 - ii. the individual was disqualified from being a charity trustee or trustee for a charity under s 178(1) of the Charities Act 2011 or an equivalent overseas regime;
 - iii. the individual was an undischarged bankrupt (or equivalent) in any jurisdiction;
- b. the individual has been convicted of a criminal offence (excluding **minor offences**) in any jurisdiction, if the following apply:
 - i. the conviction is not:
 - A. spent for the purposes of the Rehabilitation of Offenders Act 1974; or
 - B. subject to equivalent protections in an overseas jurisdiction; and
 - ii. where the conviction relates to an offence in an overseas jurisdiction, a similar criminal offence exists in the United Kingdom.

E7D.5 The provider must have in place policies and procedures to ensure that **relevant individuals** are able, by reason of their physical and mental health, to properly perform the tasks of the office or position to which they are appointed (including policies and procedures to provide reasonable adjustments or other support for **relevant individuals** where required under equality law).

E7D.6 The provider must have robust policies and processes in place to check that its **relevant individuals** are fit and proper for the purposes of E7D.1; and the provider must demonstrate that it has conducted checks for each of the **relevant individuals** in accordance with these processes and policies (before applying for registration).

Definitions

E7D.7 For the purposes of this condition:

“**company director**” means any individual that a company would be required to include in its register of its directors under section 162(1) of the Companies Act 2006;

“**company secretary**” means any individual that a company would be required to include in its register of its secretaries under section 275(1) of the Companies Act 2006;

“**exceptional circumstances**” means compelling circumstances which demonstrate, in the OfS’s judgement, that the individual is nevertheless fit and proper for the purposes of E7D.1;

“**inappropriate use**” means, in respect of **relevant public funds**, any of the following:

- i. not complying with legally binding terms and conditions that specify or restrict how funding can be used;
- ii. obtaining, or continuing to receive, funding in circumstances where any conditions or criteria that determine an organisation’s eligibility to receive the funding are not satisfied;

“**involved in**”, in relation to an individual’s involvement in an organisation, means that the individual held **significant managerial responsibility or influence** at the time when the issues giving rise to the relevant matter occurred;

“**governing body**” has the meaning given by section 85 of the Higher Education and Research Act 2017;

“**relevant individuals**” means all of the following:

- i. any member of the provider’s **governing body**;
- ii. the individual proposed as the accountable officer for the purposes of ongoing condition E3;
- iii. the individual(s) proposed to hold overarching responsibility for the management of the provider’s financial affairs;

- iv. any **company director** of the provider;
- v. any **company secretary** of the provider;
- vi. any individual who holds more than 25% of the shares in the provider;
- vii. where the provider has a parent company, any individual who holds more than 25% of the shares in that parent company; and
- viii. any individual who would have significant overarching responsibility for ensuring that the provider complies with the ongoing conditions of registration (if registered);

“minor offences”:

- i. include, but are not limited to, offences dealt with by fixed penalty notice or where the main offence is unlawful parking of a motor vehicle;
- ii. do not include **relevant fraud offences**;

“parent company” has the meaning given in section 1162 of the Companies Act 2006;

“public body” includes any person certain of whose functions are functions of a public nature, but excluding a person exercising functions in connection with proceedings in parliament;

“relevant fraud offence” has the meaning given in condition E7E;

“relevant person or body” means:

- i. any court or tribunal;
- ii. the Chancellor of the Exchequer;
- iii. any Secretary of State or Minister;
- iv. the OfS;
- v. UKRI;
- vi. Research England
- vii. Education and Skills Funding Agency;
- viii. a local authority
- ix. Student Loans Company;
- x. any professional body; and
- xi. any other **public body**;

“relevant public funds” has the meaning given in condition E7E;

“significant managerial responsibility or influence” includes, but is not limited to, serving on a board or governing body, having voting rights, or employment in a senior management position.

Summary

Applies to: all providers seeking registration

Initial or general ongoing condition: initial condition

Legal basis: section 5 of HERA

Proposed guidance

Condition E7D.1 and E7D.2

1. The presence of one or more matters listed in E7D.2 will usually weigh against an individual when determining whether they satisfy the fit and proper test in E7D.1. However, the OfS will consider relevant contextual information submitted by the provider when assessing the individual.
2. In considering the matters listed in E7D.2, the OfS will normally place particular weight on matters that are:
 - Recent – The more recent a matter is, the more weight the OfS will place on it (apart from matters which are spent for the purposes of the Rehabilitation of Offenders Act 1974 or subject to equivalent protections in an overseas jurisdiction).
 - Serious – matters that the OfS considers to be serious. This includes but is not limited to matters involving financial mismanagement or impropriety, matters relating to a key individual that could be seen as bringing the higher education sector into disrepute and matters that have had a detrimental impact on students at a higher education provider.
 - Repeated or sustained – matters that occurred repeatedly or continuously over time (as opposed to a one-off incident). A combination of multiple matters that, individually, would not be sufficient for the OfS to judge that an individual is not a fit and proper person may nevertheless be sufficient when considered together. Indicative of dishonesty, negligence, financial mismanagement, or unwillingness or inability to comply with legal or regulatory requirements.
3. These factors will normally indicate that a relevant individual is not a fit and proper person. The OfS will consider these factors in combination. For example, if a serious and relevant matter occurred six years ago, it may not necessarily be ‘recent’, but it is ‘serious’ and ‘relevant’ and therefore the OfS would be more likely to judge that the individual is not a fit and proper person under E7D.1.
4. Where comparable adverse findings to those listed in E7D.2 take place outside the UK, the OfS will treat them in the same way as if such findings or proceedings had taken place within the UK.

5. Where a matter listed in E7D.2 is also listed in E7D.4, the OfS will treat such a matter as falling within E7D.4 and so subject to the initial assumption that the individual is not a fit and proper person (see below).
6. The OfS reserves the right to judge that an individual is not a fit and proper person for reasons that are not explicitly listed in E7D.2 when assessing whether a relevant individual is fit and proper for the purposes of E7D.1.

Condition E7D.2a

7. The OfS is likely to consider that an individual is not a fit and proper person if they have been subject to an adverse finding in civil proceedings, either in the UK or overseas. These proceedings must be serious and relevant to the role that the individual performs, or will perform, at the provider. 'Serious' means they could affect whether the provider is suitable to access and receive public funds, maintain public trust and confidence in the higher education sector and/or protect the interests of students (for example an adverse finding in a civil fraud case).
8. The OfS will give particular weight to adverse findings in civil proceedings relating to financial misconduct, fraud or related matters.
9. If the adverse finding is not serious or relevant to the role that the individual performs, or will perform, at the provider (for example if it relates to a civil planning dispute with a neighbour), the OfS is less likely to place weight on this matter.

Condition E7D.2b

10. The OfS is likely to consider that an individual is not a fit and proper person if they have been subject to any adverse findings in disciplinary proceedings by any relevant person or body (regardless of whether those proceedings occurred in the UK or overseas). 'Relevant person or body' is defined in the condition as any court or tribunal, the Chancellor of the Exchequer, any Secretary of State or Minister, the OfS, UKRI, Research England, a local authority, Student Loans Company, any professional body, or any other public body. 'Public body' includes any person who has some functions of a public nature (for example, statutory functions), but does not cover a person exercising functions in connection with parliamentary proceedings. Examples of disciplinary proceedings that may be relevant include but are not limited to fines, suspensions, expulsions or other sanctions imposed by a regulator or professional body. The OfS is likely to place more weight on disciplinary proceedings against an individual than an organisation or firm.
11. If an individual is currently the subject of disciplinary proceedings by any relevant person or body, this would carry less weight than an adverse finding. The OfS will take contextual information submitted by the provider into account when assessing information relating to an ongoing investigation and may decide to delay any registration decision until such time as the disciplinary proceedings are concluded.

Condition E7D.2c-d

12. Adverse findings by a relevant person or body (in any jurisdiction) against an individual or an organisation with which they are, or have been, involved and which is connected to the education sector may be relevant to the OfS's judgement about whether that individual is a fit and proper person.

13. The OfS will pay particular attention to adverse findings that concern a key individual's involvement in the higher education sector. This might mean, for example, where an individual has a finding of malpractice against them by a registered qualification awarding body.
14. The OfS will consider adverse findings which relate to organisations where an individual held significant managerial responsibility or influence at the time when the issues giving rise to the relevant matter occurred (see definition of 'involved in'). 'Significant managerial responsibility or influence' is defined to include (but is not limited to) serving on a board or governing body, having voting rights, or employment in a senior management position. The OfS will consider the individual's role at the organisation and the extent (if any) of their own personal involvement in the issues giving rise to the adverse finding. Where their own involvement at the organisation is not connected to the issues giving rise to the adverse finding, the OfS will take this into account.
15. Adverse findings related to the inappropriate use of relevant public funds are likely to be highly relevant to whether the OfS considers an individual to be a fit and proper person.
16. The OfS is likely to find that an individual is not fit and proper even if the finding is old.
17. If an individual has been found to have committed fraud offences at any time, it is highly likely that the OfS will not consider that the individual is a fit and proper person.

Condition E7D.2e

18. If an individual, or an organisation in which they are or have been involved, is currently subject to a regulatory investigation (in any jurisdiction), this would carry less weight than a formal (adverse) finding arising from an investigation. The OfS will consider contextual information submitted by the provider and may delay any registration decision until the investigation is concluded.

Condition E7D.2f

19. The OfS is likely to consider an individual not to be fit and proper where a refusal, revocation, withdrawal or termination of registration, authorisation, membership, or license for reasons which are relevant to OfS regulation. Reasons relevant to OfS regulation may include but not be limited to:
 - a. Refusal, revocation, withdrawal or termination due to dishonesty, lack of willingness or ability to comply with regulatory requirements, mismanagement of public funds, or financial mismanagement.
 - b. Refusal, revocation, withdrawal or termination to practice in a business connected to the education sector.
20. Reasons which are not relevant to OfS regulation are likely to include, but are not restricted to:
 - a. Reasons of health.
 - b. Deficient professional performance in unrelated sectors.

- c. Failure to comply with continuing professional development requirements.
21. The OfS will consider findings that relate to organisations at which an individual held significant managerial responsibility or influence at the time when the issues giving rise to the relevant matter occurred (see definition of ‘involved in’). ‘Significant managerial responsibility or influence’ is defined to include, but not be limited to, serving on a board or governing body, having voting rights, or employment in a senior management position.
 22. The OfS will consider the individual’s role at the organisation and the extent (if any) of their personal involvement in the issues giving rise to the adverse finding. Where their own involvement at the organisation is not connected to the issues giving rise to the adverse finding, the OfS will take this into account.

Condition E7D.2g

23. The OfS will give particular weight in its assessment of whether an individual is a fit and proper person where the individual held significant managerial responsibility or influence within an organisation at the time when issues giving rise to the organisation being found guilty of an offence under section 199 of the Economic Crime and Corporate and Transparency Act 2023 occurred (see definition of ‘involved in’). ‘Significant managerial experience or influence’ is defined to include (but is not limited to) serving on a board or governing body, having voting rights, or employment in a senior management position. Conversely, the OfS is likely to place less weight on the offence where the key individual was in a role at the organisation in question which was unrelated to the matters that led to the conviction under section 199 of the Economic Crime and Corporate Transparency Act 2023.
24. The OfS will consider the individual’s role at the organisation and the extent (if any) of their personal involvement in the issues giving rise to the adverse finding. For example, where an individual held a senior role within the finance or compliance team of the organisation at the time when matters leading to the conviction took place, the OfS is likely to place more weight on this matter and find that the individual is not a fit and proper person. Whereas, if the individual held a junior position or a role unrelated to the issues the OfS is unlikely to place weight on this matter.

Condition E7D.2h

25. Organisations can commit criminal offences in relation to tax matters. For example, in the Criminal Finances Act 2017, two corporate criminal offences were introduced in relation to the facilitation of UK and non-UK tax evasion.
26. The OfS will give particular weight in its assessment of whether an individual is a fit and proper person where the individual held significant managerial responsibility or influence within an organisation at the time when issues giving rise to the organisation being found guilty of an offence in relation to tax matters occurred. ‘Significant managerial experience or influence’ is defined in the condition.
27. The OfS will consider the individual’s role at the organisation and the extent (if any) of their personal involvement in the issues giving rise to the organisation being found guilty of an offence in relation to tax matters. For example, where the individual held a senior role in the finance department or was responsible for signing off the organisation’s financial statements at the time the matters that led to the criminal conviction took place, the OfS is likely to place

considerable weight on this factor and find the individual is not a fit and proper person. Whereas, if the individual held a role such as Head of Human Resources and had no oversight of the matters that led to the criminal conviction, the OfS is unlikely to give weight to this matter.

Condition E7D.2i

28. The OfS will give particular weight in its assessment of whether an individual is a fit and proper person where the individual held significant managerial responsibility or influence within an organisation at the time when issues giving rise to the organisation going into insolvency, liquidation or administration (in any jurisdiction) occurred. 'Significant managerial experience or influence is defined to include (but is not limited to) serving on a board or governing body, having voting rights, or employment in a senior management position. Conversely, the OfS is likely to place less weight on the offence where the key individual was in a role at the organisation in question which was unrelated to the matters that led to the organisation going into insolvency, liquidation or administration.
29. The OfS will consider the individual's role at the organisation and the extent (if any) of their personal involvement in the issues giving rise to the organisation going into insolvency, liquidation or administration.
30. The OfS will give significant weight in its assessment of whether an individual is a fit and proper person where the organisation that went into insolvency, liquidation or administration was a higher education provider or organisation that delivered higher education and where the impact of going into insolvency, liquidation or administration harmed students' interests (or would have done so but for the involvement of external public funding assistance).
31. Where an individual was a director of the organisation that went into liquidation, the OfS will consider whether the individual was subsequently disqualified as a director under regulation E7D2.k (see below).

Condition E7D.2j

32. The OfS is likely to place weight on dismissal or resignation from a role while operating in a business or professional capacity, particularly where this relates to fraudulent behaviour, theft, financial mismanagement, gross misconduct or academic misconduct.
33. An individual is less likely to be judged not to be fit and proper for the purposes of E7D.1 if their resignation or dismissal was for reasons irrelevant to the regulation of the OfS, for example due to ill health, a company re-organisation or redundancy.

Condition E7D.2k

34. The OfS may place weight on the fact that an individual has previously been disqualified as a company director under the Company Directors Disqualification Act 1986 or an equivalent overseas regime, despite such disqualification having ended. When considering such matters the OfS will consider whether the reasons for such disqualification were serious and/or relevant to the role now being held, or to be held, by the key individual at the provider. The OfS will also take into account the professional actions of the individual since the relevant disqualification as a company director.

35. The OfS will consider disqualifications under the Company Directors Disqualification Act 1986 regardless of whether these were effected by court order or undertaking.
36. Where an individual was disqualified as a company director at any point during the provider's application to register with the OfS (and the OfS's consideration of that application), the OfS will apply the test set out in E7D.3. The individual will be deemed not to be a fit and proper person for the purposes of E7D.1, unless there are exceptional circumstances as defined in the condition.

Condition E7D.2l

37. The OfS may place weight on the fact that an individual has previously been disqualified from being a charity trustee or trustee for a charity under section 178(1) of the Charities Act 2011 or an equivalent overseas regime, despite such disqualification having ended.
38. When considering such matters the OfS will consider whether the reasons for such disqualification were serious and/or relevant to the role now being held, or to be held, by the relevant individual at the provider. The OfS will also consider the professional actions of the individual since the relevant disqualification as a charity trustee or trustee for a charity.
39. Where an individual was disqualified from being a charity trustee or trustee for a charity at any point during the provider's application to register with the OfS (and the OfS's consideration of that application), the OfS will apply the test set out in E7D.3. The individual will be deemed not to be a fit and proper person for the purposes of E7D.1, unless there are exceptional circumstances as defined in the condition.

Condition E7D.2m

40. Bankruptcy is a legal process which allows individuals to deal with debts they cannot pay. In some circumstances it may indicate financial mismanagement or fraudulent activity.
41. The OfS may place weight on the fact that an individual has previously been declared bankrupt (or equivalent, such as sequestration in Scotland) in any jurisdiction, despite such bankruptcy having now been discharged.
42. When considering such matters, the OfS will consider whether the reasons for bankruptcy were serious and/or relevant to the role now being held, or to be held, by the key individual at the provider. The OfS will also consider the professional actions of the individual since the relevant bankruptcy was discharged.
43. Where an individual was an undischarged bankrupt (or equivalent) in any jurisdiction at any point during the provider's application to register with the OfS (and the OfS's consideration of that application), the OfS will apply the test set out in E7D.3. The individual will be deemed not to be a fit and proper person for the purposes of E7D.1, unless there are exceptional circumstances as defined in the condition.

Condition E7D.3 and E7D.4

44. If an individual is disqualified from acting as a company director, charity trustee or trustee for a charity at any point during the course of the provider's application to register with the OfS (and the OfS's consideration of that application), the OfS will judge that the individual is not fit and proper for the purposes of E7D.1, unless there are exceptional circumstances.

45. This will be the case regardless of whether the period of the disqualification expires during the period of the registration application.
46. The OfS will consider disqualifications under the Company Directors Disqualification Act 1986 regardless of whether these were effected by court order or undertaking.
47. Where a comparable disqualification that falls under this regulation has taken place outside of the UK in an equivalent regime, it will be treated by the OfS in the same way as if such a disqualification had taken place within the UK.
48. The OfS will consider any mitigating information submitted with the provider's registration application before reaching this judgement. When considering such mitigation, the OfS will judge an individual as being fit and proper for the purposes of E7D.1 only if it is satisfied that there is evidence of an exceptional circumstance as defined in E7D.7.
49. If an individual is currently an undischarged bankrupt (or its equivalent in another jurisdiction, for example, sequestration in Scotland) or becomes an undischarged bankrupt (or its equivalent in another jurisdiction) during the application process up to the OfS's final registration decision, the OfS will judge that the individual is not fit and proper for the purposes of E7D.1, unless there are exceptional circumstances.
50. This will be the case regardless of whether the bankruptcy is due to become discharged during the period of the registration application.
51. The OfS will consider any mitigating information submitted with the provider's registration application before reaching this judgement. When considering such mitigation, the OfS will judge an individual as being fit and proper for the purposes of E7D.1 only if it is satisfied that there is evidence of an exceptional circumstance as defined in E7D.7.
52. Unless there are 'exceptional circumstances', the OfS will judge an individual not to be fit and proper for the purposes of E7D.1 if they have been convicted of a criminal offence (in any jurisdiction) and that conviction is unspent for the purposes of the Rehabilitation of Offenders Act 1974 (or not otherwise subject to equivalent protections in an overseas jurisdiction) and, in the case of overseas convictions, a similar offence also exists in the United Kingdom.
53. The exception to this is minor offences, as defined in regulation E7D.7.
54. The OfS will consider any mitigating information submitted with the provider's registration application before reaching this judgement.

Condition E7D.5

55. The OfS requires policies and procedures to be in place to ensure that individuals are able, by reason of their mental or physical health and after reasonable adjustments, to properly perform the tasks of their office or position. While it will be for each provider to determine the most appropriate policies and procedures for its own organisation, these may include:
 - a. An appropriate means of determining whether a key individual is unable to properly perform their role and a way to raise concerns.

- b. Clear authority for a certain individual to delegate authority on behalf of another who is unable to act for any reason.
 - c. A process for the delegation of authority and the identification of suitable individuals to whom authority may be delegated.
 - d. The length of the period that an individual is unable to properly perform their role, after which authority must be delegated.
56. The OfS expects a provider to develop and implement these policies in a manner which is compliant with equality law, for example, by ensuring that reasonable adjustments or other support is offered to individuals where required under equality law.

Condition E7D.6

57. This requirement relating to a provider's processes sits alongside the requirement that key individuals are fit and proper persons. A provider will be required to provide information about its policies and processes and the results of the checks it has undertaken for key individuals to the OfS when applying for registration. It will also be required to submit information that allows the OfS to complete its own checks where appropriate, including details relating to the provider's relevant individuals and a declaration stating whether the provider is aware of any indicative matters as listed in E7D.2 and E7D.4 for any relevant individuals. The OfS will draw on this information in making its judgements about both E7D.1 and E7D.6.
58. While it will be for each provider to decide on the manner of the checks it will undertake, providers must ensure that its key individuals are fit and proper in the OfS's judgement. The following is a non-exhaustive list of examples of the type of checks that providers may undertake:
59. UK criminal record checks via a DBS check and, where relevant, a similar check in relevant overseas jurisdictions.
- a. References from previous organisations with which an individual has been involved.
 - b. Checks made against Companies House disqualified directors register (and where relevant its equivalent overseas regimes).
 - c. Checks made against the individual Insolvency Register in the UK (and where relevant its equivalent overseas regimes).
 - d. An individual's self-declaration in relation to the matters listed in this condition.
 - e. Credit reference checks.
 - f. Regulatory body lists of non-compliant individuals and companies, for example the Solicitor's Regulation Authority's list of intervened companies and sole practitioners.
 - g. General background checks using other publicly available sources.
 - h. A code of conduct which sets out expected behaviour and a process for dealing with breaches of the code.

- i. Policies that relate to good conduct and encourage individuals at the provider to raise relevant concerns in relation to matters such as anti-bribery and fraud.
- 60. Regardless of whether a provider has undertaken a check for a relevant individual, if the OfS decides that a relevant individual is not a fit and proper person for the purposes of condition E7D.1 in accordance with this guidance, the provider's application for registration will be refused.
- 61. Where a provider has not undertaken a check for a relevant individual or has undertaken a check that that the OfS decides is not appropriately robust, the OfS may refuse the provider's application for registration.

Annex G: Part E of proposed condition E7 and related guidance

Initial condition of registration

Scope

E7E.1 This condition applies to higher education 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 arrangements

E7E.2 The provider must have in place comprehensive arrangements in relation to the higher education it plans to provide if registered (including, but not limited to, processes, policies, training and the deployment of staff and financial resources) which could reasonably be considered as being adequate and effective for the purposes of detecting, preventing and stopping any form of conduct (including a failure to act) that could potentially amount to a **Relevant Fraud Offence** or the **Inappropriate Use of Relevant Public Funds**.

Other requirements

E7E.3 The provider must have a satisfactory track record in relation to receiving and/or accessing public funds. For the purposes of this requirement:

- a. unless there are **Exceptional Circumstances**, the provider will be deemed not to have a satisfactory track record in relation to receiving and/or accessing public funds if, within the past 60 months of the date the provider applied for registration with the OfS:
 - i. the provider was convicted of the offence provided for in section 199 of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud);
 - ii. a **Relevant Person** has made a final decision which directly or indirectly revokes the provider's access to, or directly or indirectly requires the provider to repay, **Relevant Public Funds** on grounds relating to a **Relevant Fraud Offence** and/or the **Inappropriate Use** of such funds; and/or
 - iii. a conviction described in E7E.3.a.i, and/or a decision described in E7E.3.a.ii, has been made in relation to another legal entity that the OfS considers to have been operating substantially the same higher education business as the provider;
- b. if none of the matters listed in E7E.3.a.i-iii apply, the provider will be deemed to have a satisfactory track record in relation to receiving and/or accessing public funds.

Definitions

E7E.4 For the purposes of condition E7E:

- a. “**Exceptional Circumstances**” means compelling circumstances which demonstrate, in the OfS’s judgement, that the provider nevertheless has a satisfactory track record in relation to receiving and/or accessing public funds;
- b. “**Inappropriate Use**” means, in respect of **Relevant Public Funds**, any of the following:
 - i. not complying with legally binding terms and conditions that specify or restrict how funding can be used;
 - ii. obtaining, or continuing to receive, funding in circumstances where any conditions or criteria that determine a provider’s (or, as the case may be, its students’) eligibility to receive the funding is not satisfied (but excluding circumstances to the extent that the legal framework relating to the relevant funding permits the provider to make any form of estimation or projection in respect of information that is used to calculate the funding to which it may be entitled);
- c. “**Public Authority**” has the meaning given in section 6(3) of the Human Rights Act 1998;
- d. “**Relevant Fraud Offence**” means any of the following:
 - i. an offence under any of the following provisions of the Theft Act 1968:
 - A. section 17 (false accounting);
 - B. section 19 (false statements by company directors etc);
 - ii. an offence under any of the following provisions of the Fraud Act 2006:
 - A. section 1 (fraud);
 - B. section 2 (fraud by false representation);
 - C. section 3 (fraud by failing to disclose information);
 - D. section 4 (fraud by abuse of position)
 - E. section 9 (participating in fraudulent business carried on by sole trader);
 - F. section 11 (obtaining services dishonestly);
 - iii. the common law offence of conspiracy to defraud as preserved by section 5(2) of the Criminal Law Act 1977;
- e. “**Relevant Person**” means:
 - i. the Chancellor of the Exchequer;
 - ii. any Secretary of State or Minister;
 - iii. the OfS;
 - iv. UKRI;

- v. the Student Loans Company Limited;
 - vi. Research England;
 - vii. a local authority;
 - viii. any other **Public Authority** in the United Kingdom with statutory functions to give grants or loans;
- f. “**Relevant Public Funds**” means any sums of money obtained or otherwise derived from a **Relevant Person**, and includes, but is not limited to, the following:
- i. funding provided to a registered higher education provider by the Student Loans Company Limited on behalf of a student;
 - ii. any form of payment made by a registered higher education provider (‘the relevant provider’) to another registered higher education provider or unregistered English higher education provider in connection with the provision of higher education to students who are the beneficiaries of funding provided to the relevant provider by the Student Loans Company Limited.

Summary

Applies to: all providers seeking registration

Initial or general ongoing condition: initial condition

Legal basis: section 5 of HERA

Proposed guidance

Condition E7E.1

1. This condition applies to the arrangements relating to the delivery of higher education that the provider plans to offer when it is registered.
2. The reference to higher education provided ‘in any manner or form’ includes any higher education course (whether or not that course is recognised for OfS funding purposes, or any other purpose), at any level, and with any volume of learning. This means, for example, that postgraduate research courses, the study of modules or courses leading to micro credentials, and apprenticeships are included within the scope of this condition. It also includes courses provided face-to-face, by distance learning, or a combination of delivery approaches.
3. This condition applies to any higher education provided ‘by, or on behalf of, a provider’. This includes higher education provided to all the students who are registered with a registered provider, taught by a registered provider or studying for an award of a registered provider (or where these services are provided on a registered provider’s behalf). This includes UK-based and non-UK-based students, and courses delivered through partnership arrangements both within the UK and internationally.

4. The reference to 'including, but not limited to, circumstances where a provider would be responsible only for granting awards for students registered with another provider' means that a provider is required to comply with the provisions of this condition where it would be the awarding body for a course, whether or not that provider would have any other role in the design or delivery of that course.
5. Where a provider would not be the awarding body for a course, this condition applies to a course the provider itself would deliver, or which would be delivered on its behalf, regardless of the identity of the awarding body, whether or not that awarding body is registered with the OfS, or the nature of any partnership agreement. For the avoidance of doubt, this means for example, that a provider that would deliver, or allow another provider to deliver, courses leading to a qualification awarded by Pearson is responsible for compliance with this condition in relation to those courses. Similarly, a provider that would deliver, or allow another provider to deliver, courses leading to a qualification awarded by another higher education provider, whether that awarding provider is located in England or elsewhere, is responsible for compliance with this condition in relation to those courses.
6. In practice, these provisions may result in more than one provider being responsible for compliance with this condition in relation to the same course.

Condition E7E.2

7. Comprehensive arrangements are arrangements that are of broad scope and cover a range of scenarios that could potentially amount to a relevant fraud offence or the inappropriate use of public funds. Comprehensive arrangements may include, but are not limited to, a combination of processes, policies, training and the deployment of staff to include as a minimum:
 - a. conflict of interests policy
 - b. internal control processes relating to the prevention of fraud and protection of public funds, including in relation to the submission of accurate data
 - c. a risk register (or entry) and corresponding mitigations, relating to the prevention of fraud and protection of public funds
 - d. a whistleblowing policy
 - e. an anti-bribery policy
 - f. fraud awareness and prevention training
 - g. provision for staff (and reporting structures) responsible for oversight of the arrangements listed above.
8. A provider that can evidence a set of written policies but which does not have the operational arrangements such as processes or deployment of staff in place required to implement and deliver those policies in practice, is unlikely to be considered to have 'comprehensive' arrangements in place. A provider that has arrangements to prevent and stop, but not

proactively detect conduct of this nature, is also unlikely to be considered to have comprehensive arrangements in place.

9. An arrangement is 'adequate' if it can deliver its stated or implied objective. An arrangement is 'effective' if it is operated to deliver its stated or implied objective, and those objectives are delivered as a result.
10. For arrangements to reasonably be considered adequate and effective, the OfS will expect to see clear documentation that addresses individual risks that could potentially amount to a relevant fraud offence or inappropriate use of public funds as posed by the provider's business model. The OfS will use information submitted in relation to the requirements in E7A, E7B and E7E to understand the provider's business model, individual context and any risks that are specific to its operation. The OfS will consider any risks the provider identifies and mitigates in its risk register or business plan in relation to detecting, preventing and stopping fraud and inappropriate use of public funds as well as any additional risks that the OfS has identified.
11. Where a provider fails to identify significant risks in its business model in relation to the protection of public funds, or where arrangements do not reduce the risk of fraud or inappropriate use of public funds, the OfS will consider that the arrangements are not adequate or effective.
12. Arrangements that could reasonably be considered adequate and effective could include, but are not limited to:
 - a. Where a provider uses recruitment agents to recruit students, the provider has robust registration and enrolment processes to ensure that students hold the required academic and language qualifications and have a genuine intention to study on the course.
 - b. Where a provider intends to subcontract courses for delivery by another provider, it has policies, processes, governance structures and staff in place to monitor the quality, standards and protection of public funds at its teaching partners.
 - c. The provider's internal control arrangements are regularly reviewed with external input to ensure they are effective.
 - d. The provider's risk register identifies significant areas of risk in relation to the conduct described in E7E.2 and the provider has identified and implemented appropriate mitigations to reduce risk.
 - e. The provider's conflicts of interest policy has identified any conflicts of interest between its members of staff and any third party involved in recruitment of students.
 - f. The provider has controls in place to confirm the validity of data submitted to relevant bodies such as the OfS, the Student Loans Company and UCAS (where a provider chooses to upload data on students behalf)

- g. The provider has clear and impartial arrangements for staff, students, and third parties to report concerns regarding the provider. Arrangements should enable individuals to report concerns with safety and confidence.
- h. The provider has a clear understanding of where financial transactions are taking place, including fair and transparent tender procedures and audit trails for any transactions which directly or indirectly benefit staff at the provider.

Condition E7E.3

- 13. E7E.3 requires the provider to have a satisfactory track record in relation to receiving and/or accessing public funds. This requirement is separate to that described in E7E.2. In this provision, receiving public funds may include but is not limited to payments from the Student Loans Company relating to students' tuition fees, maintenance payments made to students or funding from the OfS. Accessing public funds may include but is not limited to receiving payment of tuition fees, maintenance payments made to students or funding paid by the Student Loans Company or the OfS through a lead provider that awards qualifications to the provider seeking registration.
- 14. A provider's conviction of the offence of failure to prevent fraud²⁴ includes but is not limited to circumstances where a person associated with a body, or an employee of the body commits a fraud offence which is intended to benefit the relevant body.
- 15. A final decision under E7E.3.a.ii does not include provisional decisions, pauses or suspensions of funding. A final decision may include, but is not limited to, a decision by the Department for Education to cease payments of Student Loans Company funding to a provider or a decision by the Department for Education or the OfS that a provider must repay money previously paid out to it.
- 16. A direct revocation of access to funds may include, but is not limited to suspension of funding, tuition fee payments and any other relevant public funds to the provider. An indirect revocation of funds may include, but is not limited to, suspension of funding, tuition fee payments, and any other relevant public funds paid to a provider's lead provider for the students taught at the provider.
- 17. A direct repayment of public funds may include, but is not limited to, circumstances where a provider must repay a set sum directly to the relevant body from which it was originally obtained. Indirect repayment of public funds may include where a relevant body offsets the sum due to be repaid by the provider against future payments or where a provider is required to repay funds through its lead provider for students taught by the provider.
- 18. When determining whether a provider is operating substantially the same higher education business as another legal entity the OfS will place particular weight on similarities between the provider and the other legal entity, including but not limited to:

²⁴ The offence of failure to prevent fraud is provided for in section 199 of the Economic Crime and Corporate Transparency Act 2023.

- a. Relevant individuals, where a significant proportion of the relevant individuals (as defined in E7D) are the same, even where those individuals are in different managerial roles.
- b. Premises, for example, campuses, offices, location of company registration.
- c. Key identifiers, for example, UKPRN,¹ company number, regulatory licences.
- d. Marketing, for example, name, branding, or public statements of affiliation (e.g. using the name of the other legal entity to market the provider).
- e. Academic community, for example, staff and student bodies.
- f. Ownership and company structure.
- g. Transfer of assets, business and/or liabilities – where assets, business and/or liabilities have been transferred from one legal entity to another.

Exceptional circumstances

19. A provider must submit a full and complete account of any exceptional circumstances it wishes the OfS to consider if any circumstances set out in paragraph E7E.3 apply to the provider.
20. When considering whether exceptional circumstances apply, the OfS will focus on whether the provider has demonstrated that it has a satisfactory track record in relation to receiving and/or accessing public funds. A satisfactory track record is evidence that a provider is nonetheless considered to be suitable to access and receive public funds. Examples of compelling circumstances which may, depending on the facts, be capable of demonstrating that the provider nevertheless has a satisfactory track record include:
 - a. Specific circumstances which show the provider was not at fault.
 - b. Where substantial changes in a provider's policies and processes have been implemented since which could reasonably be considered sufficient to prevent reoccurrence.
 - c. Where the provider could not have reasonably prevented, detected or stopped the event from occurring.
21. The OfS will not consider a provider's intention to detect, prevent or stop fraud or inappropriate use of public funding as an exceptional circumstance. For example, where a final decision has been made in relation to one or more of the circumstances listed in E7E.3.a.i-iii it is not sufficient that the provider intended to prevent fraud. It must also demonstrate that it had comprehensive arrangements in place that were adequate and effective for the purposes of preventing, detecting and stopping fraud but that there were exceptional circumstances that the provider could not reasonably have foreseen or prevented, detected or stopped.
22. Where a provider has accidentally submitted incorrect data that amounts to an inappropriate use of public funds, the OfS will consider the materiality of the error and whether the error

was an isolated instance, to determine if the circumstances are exceptional and the provider nevertheless has a satisfactory track record.

Inappropriate use

23. Non-exhaustive examples of scenarios that the OfS would consider amount to inappropriate use are set out below:
 - a. Where a provider uses funding that is restricted for a specific purpose such as building a new campus for other purposes such as paying creditors. This example would amount to inappropriate use through the provider's breach of terms and conditions attached to the funding.
 - b. Where a provider submits incorrect student data to the Student Loans Company, directly or through its lead provider and claims more funding than its actual student numbers would permit. This example would amount to inappropriate use as the provider would be considered to have obtained funding where criteria are not satisfied.
24. Any such scenarios would indicate to the OfS that a provider does not have a satisfactory track record in relation to receiving and/or accessing public funds.
25. The OfS recognises that some types of funding in the higher education sector may be distributed on the basis of forecasts of future student numbers or activity. There may be a material difference between a provider's initial forecast and the final student numbers and this may result in a recalculation of funding. Funding recalculations and repayments that are routine and do not exceed the normal tolerance set out by the relevant funder should not be captured by the definition of 'inappropriate use of public funds' set out in this initial condition.
26. Where relevant public funds have been reclaimed by a relevant person because of a material difference between forecast and actual student numbers beyond the tolerance of the relevant funder, such circumstances will fall within the definition of inappropriate use of public funds. Where these circumstances apply, a provider's failure to reasonably forecast student numbers indicates that it may not have the overall management and governance capabilities in place to receive and manage public funds. A provider may submit information about exceptional circumstances relating to such a judgement, but the OfS will not place weight on any argument that a large difference between forecast and actual student numbers was not intentional. When considering these issues, the OfS will place greater weight on behaviours that are repeated, and where reclaimed funding represents a larger percentage of the overall amount awarded.

Public funds

27. Relevant public funds include, but are not limited to, any funding that has been received in relation to students taught by the provider, whether that funding has been paid to a student or the provider. It includes circumstances where funds have been paid to a provider indirectly, through a subcontractual arrangement with another provider, which is the direct recipient of the funding.

Assessing compliance

28. In assessing whether a provider has comprehensive, adequate, and effective arrangements for preventing fraud or the inappropriate use of public funds, the OfS will consider documents submitted as part of the provider's registration application, including:
 - a. Governing body documents which set out where high level responsibilities for managing risks to public money sit within the provider's governance framework, including any relevant delegations from the governing body, and its mechanisms for retaining ongoing oversight.
 - b. The provider's business plan.
 - c. Policies or procedures that the provider follows to prevent fraud or inappropriate use of public funds.
 - d. Any additional relevant information submitted by the provider.
29. When assessing a provider's arrangements for the purposes of E7E.2, the OfS will consider whether the provider has policies and processes in place to adequately and effectively manage risks relating to fraud and the inappropriate use of public funding identified within its business plan. For example, the OfS would focus particularly on the management of risks related to third-party agents or courses delivered through partnership arrangements, where a provider's business plan had indicated these would be part of its approach.
30. In assessing whether a provider has comprehensive, adequate and effective arrangements for detecting, preventing or stopping fraud or the inappropriate use of public funds, the OfS's judgement will apply to the arrangements the provider will have in place if it is registered. However, the OfS's judgement may be informed by other relevant evidence of the provider's conduct where this relates to inappropriate use of public funds, or relevant fraud offences. This means that for a provider seeking registration that has previously delivered, or is currently delivering, higher education, the OfS will consider relevant evidence relating to the provider's record in preventing fraud or the inappropriate use of public funds. This includes where these funds are paid to another provider through a subcontractual arrangement or similar partnership. This is also the case where a provider seeking registration has previously delivered or is currently delivering education or training other than higher education, for example further education.
31. The OfS will draw on any relevant evidence or intelligence available to it, including information obtained through its own regulatory activity, third party notifications, or publicly available information, including action taken by other regulators, or media reporting. In cases where the OfS has concerns about a provider based on information it already holds, it may decide to undertake further investigation in order to establish the facts before reaching a final judgement about whether this initial condition is satisfied.
32. A provider will be required to submit a declaration as part of its application for registration confirming whether any of the circumstances in E7E.3.a apply. A provider must ensure that the information submitted in relation to this requirement is accurate and complete. If a provider submits false, inaccurate or incomplete information the OfS may determine that the requirement set out in [section 3(5) determination] is not met.



© The Office for Students copyright 2025

This publication is available under the Open Government Licence 3.0 except where it indicates that the copyright for images or text is owned elsewhere.

www.nationalarchives.gov.uk/doc/open-government-licence/version/3/