

## Initial condition of registration E9: Individuals

### Part 1: Knowledge and expertise

#### Requirements relating to knowledge and expertise

E9.1 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**.

E9.2 For the purposes of the requirement in E9.1, "**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**.

E9.3 For the purposes of the requirement in E9.1, "**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 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 but not limited to 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 broad characteristics and academic needs of the cohort(s) of students the provider has recruited and/or intends to recruit for its planned higher education provision, 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 but not limited to 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
    - 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;

- 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;
- c. 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, 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 the individual to act on behalf of the provider;
- d. 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 but not limited to 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 broad characteristics and academic needs of the cohort(s) of students the provider has recruited and/or intends to recruit for its planned higher education provision, 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**.

## Part 2: Fit and proper persons

### Requirements relating to fit and proper persons

E9.4 **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.

E9.5 In judging whether an individual is a fit and proper person for the purposes of E9.4, 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 E9.7):

- 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 any jurisdiction) 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);
- g. 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;
- h. 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);
- i. an organisation that the individual is or has been **involved in** went into insolvency, liquidation or administration (in any jurisdiction);
- j. 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;
- k. the individual has previously been disqualified as a company director under the Company Directors Disqualification Act 1986 or an equivalent overseas regime;
- l. 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;
- m. the individual has previously been declared bankrupt (or equivalent) in any jurisdiction.

E9.6 If any of the matters listed in E9.7 apply to an individual, that individual will be deemed not to be a fit and proper person for the purposes of E9.4, unless there are **exceptional circumstances**.

E9.7 The matters referred to in E9.6 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.

E9.8 The provider must have in place policies and processes 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 processes to provide reasonable adjustments or other support for **relevant individuals** where required under equality law).

E9.9 The provider must:

- a. have robust policies and processes in place to check that its **relevant individuals** are fit and proper for the purposes of E9.4; and
- b. demonstrate that it has conducted checks for each of the **relevant individuals** in accordance with these policies and processes (before applying for registration).

## Definitions

E9.10 For the purposes of this condition E9:

- a. '**business objectives and targets**' has the meaning given in condition E7;

- b. **'business plan'** means a business plan as required under Part 2 of condition E7;
- c. **'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;
- d. **'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;
- e. **'exceptional circumstances'** means compelling circumstances which demonstrate, in the OfS's judgement, that the individual is nevertheless fit and proper for the purposes of E9.4;
- f. **'fraud and public money arrangements'** means the arrangements as required under condition E8.2;
- g. **'governing body'** has the meaning given by section 85 of the Higher Education and Research Act 2017;
- h. **'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 individual or organisation's eligibility to receive the funding are not satisfied;
- i. **'independent member'** means an external member of the provider's **governing body** who is independent of the provider;
- j. **'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;
- k. **'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**;
- l. **'parent undertaking'** has the meaning given in section 1162 of the Companies Act 2006;
- m. **'public authority'** has the meaning given in section 6(3) of the Human Rights Act 1998;
- n. **'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;
- o. **'relevant fraud offence'** has the meaning given in condition E8;
- p. **'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 of registration 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 per cent of the shares in the provider;
- vii. where the provider has a **parent undertaking**, any individual who holds more than 25 per cent of the shares in that **parent undertaking**; and
- viii. any individual who would have significant overarching responsibility for ensuring that the provider complies with the ongoing conditions of registration (if registered);

q. '**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. the Student Loans Company Limited;
- x. any professional body; and
- xi. any other **public body**;

r. '**relevant public funds**' means any sums of money obtained or otherwise derived from a **relevant person or body**, including but 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;

s. **‘set of governing documents’** means the set of documents as required under condition E7.1;

t. **‘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

## Condition E9 guidance

### Part 1: Knowledge and expertise

#### Condition E9.1

1. Paragraph E9.1 sets out that key individuals must meet minimum knowledge and expertise requirements. The minimum requirements differ depending on the individual’s role and responsibilities.
2. Throughout this guidance, for brevity, the below terms will be used:
  - a. ‘Chair’ to mean the individual(s) proposed as the chair(s) of the provider’s governing body;
  - b. ‘accountable officer’ to mean the individual proposed as the accountable officer for the purposes of ongoing condition of registration E3;
  - c. ‘Finance Senior Manager’ to mean the individual(s) proposed to hold overarching responsibility for the management of the provider’s financial affairs; and
  - d. ‘Independent Member’ to mean 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.
3. These terms include people currently in that role if the provider intends to keep them on once registered.

#### Key individuals

4. The Finance Senior Manager will usually hold a role such as the Director of Finance or Chief Financial Officer. In a smaller provider, it may be the accountable officer or another senior staff

member. The OfS expects that this responsibility should be clearly assigned to a suitable individual or individuals who hold a position within the provider's senior leadership team.

5. The individual(s) assigned this responsibility must have necessary 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 financial arrangements, and to provide assurance that they are adequate.
6. An individual may fulfil more than one of the roles listed under the 'key individuals' definition in E9.2. For example, the accountable officer may also be the Finance Senior Manager. Where one individual holds multiple roles, the OfS will assess them against the knowledge and expertise requirements for both roles. In these cases, we will normally assess that individual against the knowledge and expertise requirements relevant to each role.
7. A provider applying for registration in the Approved (fee cap) category must ensure that its governing documents require there to be at least one independent member of its governing body (under 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.
8. While individuals may not have been appointed at the point of application, the OfS expects individuals will normally be appointed before the completion of the application assessment period. This is because ongoing E conditions of registration require an accountable officer, chair, and in the case of a provider applying in the Approved (fee cap) category, an independent member, to be in place at the point the provider is registered.
9. If a provider completes the appointment of a key individual during the period that the OfS is assessing the application for registration, it will normally interview the individual once they have been appointed (even if they were not in post at the time of the application) and may pause the assessment of the registration application until this can be done.
10. Similarly, if during the application process an individual who has been recruited to one of the roles defined as a 'key individual' leaves the provider, the OfS will normally expect to interview any new individual appointed to the role and may pause the assessment of the registration application until this can be done.
11. When the individual would not be appointed until after the completion of the application assessment period the OfS may consider the lack of a key individual or individuals when assessing whether the provider has the capacity and resources to deliver the business plan in practice (E7.5).

## Condition E9.3

### Definitions of 'sufficient awareness' and 'sound understanding'

12. The requirement for an individual to have 'sufficient awareness' of a subject sets a minimum threshold for the level of knowledge they should have. 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.
13. 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. It would include the broad, high-level knowledge described above, as well as 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.
14. 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, this would include an 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

15. One of the responsibilities of a provider's governing body is to ensure the provider's compliance with all its conditions of registration. A provider's accountable officer is the person responsible to the governing body for providing the OfS with clear assurances about compliance. 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.
16. Other individuals are only expected to be aware of the parts of the OfS's requirements which are relevant to their role. The Finance Senior Manager is required to have sound understanding only of the OfS's requirements relating to financial matters. 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.
17. Further information about what must be included in a provider's set of governing documents, its business plan and its fraud and public money arrangements, are set out in E7 and E8 respectively. Key individuals are required to demonstrate sufficient awareness or sound understanding of these specific documents, as defined for the purposes of those conditions. For example, the requirements relating to sound understanding and sufficient awareness of the provider's set of governing documents relate only to the specific set of documents required for the purposes of E7 Part 1 and of the content that E7 Part 1 specifies that those documents need to include.
18. 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. As is set out in the guidance for the business plan requirement (E7 Part 2), 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. Similarly, 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. 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.
19. The OfS is unlikely to consider that the proposed chair or independent member 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. For example, if the individual could not 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. For example, if the individual did not understand restrictions on the use of university title or degree awarding powers, or the differences between OfS funding and student support funding provided by the Student Loans Company, and the associated rules relating to fee limits.
  - c. The individual could not answer the question at all.
20. 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 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 inadequate 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.
21. Where a provider interacts with any public authority or government body, an accountable officer must have sufficient awareness of the body's role. As a minimum, this awareness would include the following:
- a. 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.
  - b. A provider intending to access student support funding must also be aware of the role of the Student Loans Company in distributing student finance.
  - c. 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.
22. Sufficient awareness of 'the nature of possible interactions' with these public authorities includes awareness of any financial or reporting requirements these bodies would 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.
23. For the chair, 'effective' leadership of the governing body means guiding it in a way that positively affects the provider's decision making. This should result in better outcomes for students and taxpayers while helping to avoid the potential adverse consequences of poor decisions.
24. To lead in this way, a chair would need a combination of the knowledge and expertise, such as:

- a. Previous experience of organisational governance and how boards operate, gained through similar positions on governing bodies or chairing 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.
25. For 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, this should result in better outcomes for students and taxpayers and avoid the potential adverse consequences of poor decisions.
26. 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 an understanding of how organisations operate.
27. The independent member must have the knowledge and expertise to enable scrutiny and challenge of the activities of the provider and its governing body. This is likely to include a combination of knowledge and expertise, such as:
- a. Previous experience of holding senior management of an organisation to account, through 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.
28. 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**

29. The OfS will assess whether 'key individuals' have the required knowledge and expertise. The OfS will normally do this through interviews with the key individuals.
30. For a provider's submitted governing documents and business plans to be deliverable in practice, it is necessary to have the required expertise and experience within the provider. The OfS may also use evidence from interviews conducted when determining whether these documents are deliverable in practice.

## Part 2: Fit and proper persons

### Condition E9.4 and E9.5

31. If one or more matters listed in E9.5 apply to an individual, this will normally weigh against them when determining whether they satisfy the fit and proper test in E9.4.
32. If a provider declares any indicative matters, the OfS will consider any relevant information submitted by the provider when assessing the matters listed in E9.5, (in addition to other relevant information).
33. Relevant submitted information could include, but is not limited to:
  - a. Information about the nature of the matter as set out in E9.5. For example, the topic or subject of the matter, or whether the matter is recent, serious, repeated or sustained. For example, if a civil proceeding relates to a civil planning dispute with a neighbour is less likely to be relevant to the fit and proper test in E9.4.
  - b. Information to explain why the matter is not relevant to the fit and proper test in E9.4 given the individual's activity and role at the provider. For example, the provider may decide that the relevant individual would not be part of any decision-making committee, or may not be able to make payments on behalf of the provider.
34. In considering the matters listed in E9.5, the OfS will normally place more weight on matters that are:
  - a. 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).
  - b. 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 relevant 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.
  - c. 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.
  - d. Indicative of dishonesty, negligence, financial mismanagement, or unwillingness or inability to comply with legal or regulatory requirements.
35. These factors would 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 twenty years ago, it may not necessarily be 'recent', but it is 'serious' and 'relevant' and therefore the OfS is more likely to judge that the individual is not a fit and proper person under E9.4.

36. Where adverse findings that are comparable to those listed in E9.5 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.
37. Where a matter falls under the list contained in E9.5 as well as the list contained in E9.7, the OfS will treat such a matter as falling within E9.7 (such that the individual will be deemed not to be a fit and proper person for the purposes of E9.4 unless there are exceptional circumstances as defined in the condition).
38. The OfS may judge that an individual is not a fit and proper person for reasons that are not explicitly listed in E9.5 when assessing whether a relevant individual is fit and proper for the purposes of E9.4.

### **Condition E9.5a**

39. 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 and those findings relate to the individual operating in a business or professional capacity.
40. These proceedings must be serious and relevant to the role that the individual performs, or would 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 or protect the interests of students (for example, an adverse finding in a civil fraud case).
41. The OfS will place more weight on adverse findings in civil proceedings relating to financial misconduct, fraud or related matters.
42. 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 E9.5b**

43. 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, Education and Skills Funding Agency, 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.
44. If an individual is currently the subject of disciplinary proceedings by any relevant person or body, the OfS would place less weight on this matter than an adverse finding. The OfS may decide to delay any registration decision until such time as the disciplinary proceedings are concluded.



### **Condition E9.5c-d**

45. The OfS may consider 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 in its judgement about whether that individual is a fit and proper person.
46. The OfS will place more weight on adverse findings that concern a relevant 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.
47. 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.
48. 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. The OfS is likely to find that an individual is not fit and proper even if the finding is old.
49. 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 E9.5e**

50. If an individual, or an organisation in which they are or have been involved, is currently the subject of an investigation by any relevant person or body in relation to the inappropriate use of relevant public funds, the OfS would place less weight than a formal (adverse) finding arising from an investigation. The OfS may delay any registration decision until the investigation is concluded.

### **Condition E9.5f**

51. The OfS is likely to consider an individual not to be fit and proper in situations where a refusal, revocation, withdrawal or termination of registration, authorisation, membership, or licence has occurred for reasons 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.
52. Reasons which are not relevant to OfS regulation are likely to include, but are not restricted to:

a. Reasons of health.

b. Failure to comply with continuing professional development requirements.

53. 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.

54. 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 E9.5g**

55. In completing its assessment of whether an individual is fit and proper, the OfS will place more weight on situations where an individual is or has been 'involved in' an organisation found guilty of an offence under section 199 of the Economic Crime and Corporate and Transparency Act 2023 (failure to prevent fraud) or any relevant fraud offence, or a similar offence in an overseas jurisdiction. 'Involved in' in this context means in situations where the individual held significant managerial responsibility or influence at the time when the issues giving rise to the relevant offence occurred. 'Significant managerial responsibility or influence' in this context includes (but is not limited to) serving on a board or governing body, having voting rights, or employment in a senior management position.

56. 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 role unrelated to the issues, the OfS is likely to place less weight on this matter.

### **Condition E9.5h**

57. 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.

58. The OfS will place more weight, in its assessment of whether an individual is a fit and proper person, on situations 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 responsibility or influence' is defined in the condition.

59. 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 less likely to place more weight on this matter.

### **Condition E9.5i**

60. The OfS will place more weight on situations 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 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.
61. The OfS will consider the individual's role at the organisation and the extent (if any) of their personal involvement in the issues leading to the organisation's insolvency, liquidation or administration. The OfS is likely to place less weight on the matter where the relevant individual was in a position unrelated to the issues that caused the organisation's financial failure.
62. In completing its assessment of whether an individual is fit and proper, the OfS will place more weight on situations 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).
63. 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 E9.5j**

64. The OfS is likely to place more weight on dismissal or resignation (where an individual was asked to resign and did resign) from a role while operating in a business or professional capacity, and while holding significant managerial responsibility and influence, particularly where this relates to fraudulent behaviour, theft, financial mismanagement, gross misconduct, harassment and/or sexual misconduct, or academic misconduct.
65. An individual is less likely to be judged not to be fit and proper for the purposes of E9.4 if their resignation or dismissal was for reasons irrelevant to the regulation of the OfS, for example due to ill health or a company re-organisation.

### **Condition E9.5k**

66. 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, as set out in paragraph 33b above, 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.

67. The OfS will consider disqualifications under the Company Directors Disqualification Act 1986 regardless of whether these were effected by court order or undertaking.
68. 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 E9.6. The individual will be deemed not to be a fit and proper person for the purposes of E9.4, unless there are exceptional circumstances as defined in the condition.

### **Condition E9.5l**

69. The OfS may place more 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. 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.
70. 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 E9.6. The individual will be deemed not to be a fit and proper person for the purposes of E9.4, unless there are exceptional circumstances as defined in the condition.

### **Condition E9.5m**

71. 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.
72. The OfS may place more 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.
73. 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 relevant individual at the provider. The OfS will also consider the professional actions of the individual since the relevant bankruptcy was discharged.
74. 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 E9.6. The individual will be deemed not to be a fit and proper person for the purposes of E9.4, unless there are exceptional circumstances as defined in the condition.

### **Conditions E9.6 and E9.7**

75. 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 E9.4, unless there are exceptional circumstances.

76. This would be the case regardless of whether the period of the disqualification expires during the period of the registration application.
77. The OfS will consider disqualifications under the Company Directors Disqualification Act 1986 regardless of whether these were effected by court order or undertaking.
78. 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.
79. 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 E9.4, unless there are exceptional circumstances. This will be the case regardless of whether the bankruptcy is due to become discharged during the period of the registration application.
80. Unless there are 'exceptional circumstances', the OfS will judge an individual not to be fit and proper for the purposes of E9.4 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. The exception to this is minor offences, as defined in regulation E9.10.
81. With respect to all the matters set out in E9.7 if a provider declares any indicative matters, the OfS will consider any relevant information submitted by the provider when assessing E7D3. More information on what constitutes relevant submitted information is set out in paragraph 31 above.
82. When considering such information, the OfS will deem an individual not to be fit and proper for the purposes in E9.3 unless there are exceptional circumstances.

### **Condition E9.8**

83. The OfS requires policies and processes to be in place to ensure that individuals are able, by reason of their mental or physical health, to properly perform the tasks of their office or position. This should include policies and processes to provide reasonable adjustments or other support for those individuals where required under equality law.
84. While it would be for each provider to determine the most appropriate policies and processes for its own organisation, these may include:
- a. An appropriate means of determining whether a relevant 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.

85. 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 E9.9**

86. This requirement relating to a provider's processes sits alongside the requirement that relevant 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 relevant individuals to the OfS as part of the registration application.

87. The provider 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 E9.5 and E9.7 for any relevant individuals. The OfS will draw on this information in making its judgements about both E9.4 and E9.9.

88. While it will be for each provider to decide on the manner of policies and process and the specific checks it would undertake, providers must ensure that its key individuals are fit and proper in the OfS's judgement.

89. The following is a non-exhaustive list of examples of the type of checks that providers may undertake:

- a. UK criminal record checks via a DBS check and, where relevant, a similar check in relevant overseas jurisdictions.
- b. References from previous organisations with which an individual has been involved.
- c. Checks made against Companies House disqualified directors register (and where relevant its equivalent overseas regimes).
- d. Checks made against the individual Insolvency Register in the UK (and where relevant its equivalent overseas regimes).
- 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.

90. The following is a non-exhaustive list of support policies and processes a provider may develop:

- a. A code of conduct which sets out expected behaviour and a process for dealing with breaches of the code.

- b. 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

- 91. Providers should also request an individual's self-declaration in relation to the matters listed in this condition.
- 92. 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 E9.4, the provider's application for registration will be refused.
- 93. Where a provider has not undertaken a check for a relevant individual, its policies and processes for such checks are not robust, or it has not undertaken a check in accordance with those policies and processes, the OfS may refuse the provider's application for registration.

### **Condition E9.10**

- 94. The definition of 'relevant persons' includes an 'individual who would have significant overarching responsibility for ensuring that the provider complies with the ongoing conditions of registration (if registered)'.
- 95. The OfS recognises that a number of individuals may be responsible for the day-to-day compliance with ongoing conditions of registration. However, the term 'significant overarching responsibility' refers specifically to those in senior roles with ultimate accountability for ensuring compliance across the organisation. This is likely to be executive leaders or nominated compliance officer(s) and while more than one individual may meet these criteria in large providers, it should not extend to the broader staff base or operational teams.