

Regulatory case report for the Open University – specific ongoing condition BA

Summary

This case report explains why we have decided to impose a specific condition of registration on the Open University.

In May 2022, the OfS used its validation powers to commission the Open University (OU) to operate the OU Validation project. Validation is where one established higher education provider validates courses provided by another that may not otherwise have the expertise and resources to create new courses itself. The OU Validation project will offer a partnership option to further education colleges and other providers interested in providing high quality vocational and technical (Level 4 and 5) courses that will give more choice to students.

We have imposed a specific condition of registration on the OU to set out the commissioning arrangements and terms and conditions for the OU Validation project.

The specific condition requires the OU, through its validation project, to enter into validation arrangements with other higher education providers registered with the OfS.

The specific condition does not relate to the OU's compliance with its ongoing conditions of registration with the OfS.

This programme of work allows the OfS to make progress towards strategic commitments set out in the regulatory framework and in the current OfS strategy on consideration of the current validation system. It also supports the government's intention to enable delivery of Level 4 and 5 courses in areas where they are not widely available, benefitting both students and local employers.

Reasons for the specific condition of registration

We consider it is appropriate to apply terms and conditions through a specific condition because of the powers given to the OfS under section 6 of the Higher Education and Research Act 2017 (HERA), and the intent of the regulatory framework which sets out that conditions of registration are the primary tool that the OfS will use to regulate individual higher education providers.

The specific condition will place certain requirements upon the OU to ensure that the objectives of the OU Validation Project are met. The objectives are to explore new ways for higher education providers to enter the sector and to increase the availability of high quality courses across England. There will be a particular focus in areas where there is low attainment of qualifications at Level 4 and above, lack of local higher education provision and significant demand for new provision that meets local skills needs.

Relevant OfS conditions of registration

The OU's implementation of the commissioning arrangements for this programme of work will be most relevant to the following OfS conditions of registration¹ that relate to quality and standards:

- Condition B1: Academic experience
- Condition B2: Resources, support and student engagement
- Condition B4: Assessment and awards
- Condition B5: Sector-recognised standards.

The specific condition will therefore be applied as 'Specific ongoing condition BA (Open University)'.

The programme of work agreed with the OU is in line with our powers set out in section 50 of the Higher Education and Research Act 2017 (HERA). The arrangements also allow us to pilot how the section 50 arrangements could work in practice, which will support future work in considering whether to apply these arrangements on a wider scale, for example in order to protect students studying under New degree awarding powers (DAPs) arrangements.

In taking this decision we have had regard to the OfS's general duties as specified in section 2 of HERA.

Specific ongoing condition BA: Provision of validation and other services

The purpose of this specific condition is to set out commissioning arrangements that have been put in place between the Office for Students (OfS) and the Open University (OU), in order to promote the availability of validation services in line with the OfS's strategic objectives. It should not be taken to infer anything in relation to the OU's compliance with its ongoing conditions of registration.

Requirements to offer and supply relevant services

BA.1 Within 56 calendar days after receiving a Valid Request from a Relevant Provider for Relevant Services, the Provider must offer to enter into a contract with the Relevant Provider for the provision of the requested services.

BA.2 If the Relevant Provider accepts the terms of the contract offered to them under paragraph BA.1, the Provider must supply the Relevant Services in accordance with that contract and the requirements of this condition [hereafter 'Relevant Contract'].

Other requirements

BA.3 The Provider must ensure (including, but not limited to, by including express terms and conditions as part of the Relevant Contract) that:

- (a) unless the OfS otherwise directs and without prejudice to any other contractual arrangement the Provider may wish to offer on a voluntary basis, the Relevant Services only apply to Eligible Cohorts of Students on Eligible Courses;
- (b) unless the OfS otherwise directs, Relevant Services will continue to be provided until all the students within the Eligible Cohorts of Students complete their Eligible Courses;
- (c) unless the OfS otherwise directs, that the Relevant Provider can meet Future Sustainability Criteria;
- (d) all contractual rights and obligations will terminate following a period of notice (which will not be less than 90 calendar days) if a direction is issued by the OfS to terminate the Relevant Contract;
- (e) in the event of a conflict between the requirements of this condition, the requirements of this condition take precedence and override the terms and conditions of the Relevant Contract.

BA.4 The Provider must not in any way encourage, or seek to encourage, any higher education provider to terminate an existing contractual arrangement with another higher education provider in respect of services that are the same as, or similar to, the Relevant Services.

Exception for compliance with certain requirements

BA.5 The Provider is not required to comply with paragraphs BA.1 and BA.2 in the following circumstances;

- (a) to the extent OfS directs the Provider not to comply;
- (b) to the extent the Provider can demonstrate on the balance of probabilities that there are exceptional circumstances beyond its control which mean that it would be unreasonable for it to comply with its obligations in a particular case.

Definitions

BA.6 For the purposes of this condition:

- (a) “Eligible Cohort of Students” means students who commenced an Eligible Course at any time during the period starting on 1 September 2023 and ending on 30 August 2025.
- (b) “Eligible Courses” means courses which are at a “Relevant Level” and which meet two or more of the following criteria:
 - i. The course, or similar courses, are not available within the same travel to work area as the Relevant Provider.
 - ii. The Provider has reasonable evidence that similar courses that are available within the same travel to work area of the Relevant Provider do not meet the needs of local employers.
 - iii. The Relevant Provider has sought validation for the course, or similar courses, within the last three calendar years and has not been able to secure this.

- iv. The Relevant Provider is located in an “Education Investment Area”.
 - v. The Provider has reasonable evidence that the Relevant Provider is able to provide teaching in a geographical area in which the proportion of the local population with qualifications at Level 4 or above is lower than the national average for England.
 - vi. The Provider has reasonable evidence that the Relevant Provider is able to provide courses aligned with Higher Technical Qualification (HTQ) routes, or likely to be aligned in the future.
- (c) “Prior Experience Criterion means that the Relevant Provider has not attained the sufficient experience of creating or delivering higher education courses to deliver the Eligible Course independently of the Provider and has been assessed as eligible for one or more of the Relevant Services.
- (d) “Relevant Provider” means a provider that that is registered with the Office for Students.
- (e) “Relevant Services” means one of the following categories of services:
- (i) **Category A Services – Delegated Validation:** where the Relevant Provider has experience of higher education curriculum development and delivery and is responsible for developing its own higher education curriculum, policies and processes. The Provider support where needed (dependent on the requirements of the Relevant Provider) includes:
 1. Development of Relevant Provider policies and processes to prepare the Relevant Provider for the OU approval process. Training of staff and support for building expertise in higher education quality assurance.
 2. Ongoing support and monitoring of higher education quality assurance, post the OU approval process.
 - (ii) **Category B Services – Enabled Validation:** where the Relevant Provider has some experience of higher education curriculum development and delivery. The Provider support where needed (dependent on the requirements of the Relevant Provider) includes:
 1. Creating and implementing quality assurance policies and processes to prepare the Relevant Provider for the OU approval process.
 2. Consultancy in higher education programme design.
 3. Training of staff for building quality assurance and academic expertise in higher education delivery.
 4. Ongoing support and monitoring of higher education quality assurance post the OU approval process.
 - (iii) **Category C Services – Collaborative Provision:** where the Relevant Provider has little experience of higher education curriculum development or delivery and the Relevant Provider delivers courses developed by the Provider. The Provider support where needed (dependent on the requirements of the provider) includes:

1. OU Programme/s.
2. Registration of students.
3. Training staff to prepare the Relevant Provider for the OU approval process.

(f) “Valid Request” means that all of the following requirements are satisfied:

- (i) the Relevant Provider does not have degree awarding powers that could be relied on to provide awards for the course or courses the request relates to;
- (ii) in respect of the course or courses the request relates to, the Relevant Provider does not have an existing contractual arrangement with another higher education provider for services that are the same as, or similar to, the Relevant Services;
- (iii) the request only relates to one or more Eligible Courses;
- (iv) the request meets the Prior Experience Criterion;
- (v) the request meets the Future Sustainability Criteria;
- (vi) that the request will lead to the delivery of programmes linked to skills required by employers in the local area;
- (vii) further, that the OfS has confirmed the Provider’s recommendation that all of the requirements are satisfied.

(g) “Relevant Level” means courses at Level 4 or level 5 as set out in the sector-recognised standards.²

(h) “Future Sustainability Criteria” means that the Relevant Provider has agreed a plan with the Provider that sets out how:

- (i) eligible cohorts of students will be able to access student finance for the duration of their study;
- (ii) the Relevant Provider will ensure adequate staff time to undertake the necessary training and development provided by the Provider relevant to higher education delivery;
- (iii) how Eligible Courses will be financially sustainable over a period of at least three years;
- (iv) the Relevant Provider is able to demonstrate support and commitment, affirmed in writing by its “accountable officer” (as defined in ongoing condition E3 in the OfS regulatory framework), to continue delivery of the Eligible Courses to Eligible Students.

² The sector-recognised standards in England form part of the OfS’s regulatory framework: www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.