Financial sustainability and market exit cases

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Introduction

The OfS monitors the financial sustainability of registered providers, identifies instances where a provider is at risk of market exit, and may intervene to protect the interests of students who would be affected if the provider could no longer operate. This document contains examples of cases where a provider has been at risk of ceasing the provision of higher education, including one case where a market exit occurred. It includes the key issues, the actions we took, and the legislative basis for our decisions.

This document is not formal regulatory advice. Its purpose is to show how we make judgements about financial risks facing providers and actions we have taken where there has been an increased risk of market exit. We expect these case studies to be helpful to providers, offering reassurance to those without significant financial risk that they are unlikely to be subject to increased regulation, and showing those facing increased risk how we would use our powers in a targeted and proportionate way.

About market exit and the role of the OfS

Providers register with the OfS to access the benefits of registration, including student finance and funding. Some registered providers face challenges that could mean they are unable to remain financially viable and need to exit the market. Sometimes these circumstances evolve over a long period of slow decline, but they can also happen quickly in response to an unexpected event.

The OfS does not intervene to prevent a provider exiting the market. We do, however, intervene to protect students from the consequences of a disorderly exit, as far as possible. A disorderly exit would mean that a provider closed in an unplanned way, perhaps in the middle of an academic year, and without arrangements in place to help students to complete their courses. We intervene to minimise the impact of these events on students.

These case studies are from the period from 2017 to 2022. We have anonymised the cases that relate to providers currently registered with the OfS. The case studies provide a snapshot of relevant events and there may have been further regulatory engagement with a provider since the events described in its case study.

We regularly report on the overall aggregate financial position of universities, colleges, and other registered higher education providers. We are renewing our analysis with the most recent financial data from providers, taking into account the impact of inflation among other factors. Nevertheless, the financial performance and strength of individual providers varies significantly and financial challenges could affect individual providers differentially.

We expect all providers to identify the financial risks they face, particularly those that could lead to a disorderly market exit, and to take action to mitigate these risks. A provider facing more significant risk should consider at an early stage the steps it would take to ensure its students could complete their course.

Where a provider is at increased risk of market exit, we can use a range of regulatory tools, including student protection directions, to protect students and ensure they can continue on their

courses where possible. Some of our interventions are described in the case studies. We are more likely to intervene where we consider market exit could happen in the short-term or the negative impact on students would be greater. When we decide to intervene, we consider the circumstances of an individual case, the intervention factors set out in our regulatory framework,[1] and our statutory duties.

In 2021, we introduced a new ongoing condition of registration, condition C4,[2] to allow us to intervene more quickly and effectively where we consider a provider to be at material risk of market exit. It is a focused tool which allows us to direct the actions of a provider to make and implement detailed plans to protect its students if that becomes necessary.

Condition C4: Student protection directions

From 1 April 2021 we imposed a new ongoing condition on registered providers 'Condition C4: Student protection directions'. In part, this was because we were concerned that the pandemic increased the risk of market exit for some providers. We had also identified issues with the approach some providers had taken to the development and implementation of their student protection plans, required under condition C3. This meant that where a provider was at risk of market exit, its plans (and resulting actions) may not have protected the interests of students.

Some providers have struggled to understand what good student protection planning entails; others have been unwilling or unable to recognise that market exit was a possible consequence of their situation.

In a small number of instances where we decided to intervene, as case studies A, B and C demonstrate, our regulatory tools had not allowed us to act as quickly and effectively as we would have liked. Having condition C4 in place now ensures that – when there is a material risk of exit – we can act swiftly to ensure that the interests of students can be protected.

Condition C4 requires a provider to comply with any Student Protection Direction we issue, where we reasonably consider there is a material risk that the provider will fully or substantially cease higher education provision.

Condition C4 allows us to require a provider to produce and implement a special type of plan (a market exit plan) setting out student protection measures. These measures aim to minimise the negative impact of market exit on students and could include requiring a provider to:

a. Put in place arrangements for teach out and / or student transfer arrangements.

b. Provide students with a formal record of their achievement at a provider.

[1] Paragraph 167 of the regulatory framework at www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

[2] Regulatory notice 6: Condition C4: Student protection directions at www.officeforstudents.org.uk/publications/regulatory-notice-6-condition-c4-student-protection-directions/.

c. Provide students with information, advice, support and guidance in relation to their options if the provider closes.

d. Ensure robust arrangements are in place for handling student complaints.

e. Plan for any refunds or compensation.

f. Put in place arrangements to archive records to ensure students can access evidence of their academic achievements in the future.

In addition to being able to require a provider to put in place practical student protection measures, we can also require it to take other actions, such as publishing information, deploying human resources, or consulting a registered insolvency practitioner.

Key messages for providers:

It is important that all providers have effective monitoring arrangements to oversee their financial viability and sustainability and to identify and mitigate risks that could result in market exit.

Where we become aware of financial sustainability or viability issues, we are likely to have a conversation with the provider in the first instance. When a provider brings issues to our attention and engages openly with us from the outset, this results in more targeted and efficient exchange of information and better protection for students.

We would be likely to request further information to understand a provider's financial position. If there are concerns, we expect the provider to tell us what mitigating actions it has available.

We are more likely to intervene where there is a material risk of insolvency. We may put more extensive or frequent monitoring requirements in place or we may require a provider to submit a plan that explains how it would enable students to complete their course or transfer to another provider. The provider may need to set out arrangements for certification of exit awards, for refunds and compensation, and for information, advice and guidance for students.

We expect a provider to act quickly in these circumstances and apply the necessary resources to plan for market exit alongside any other mitigating actions it is pursuing.

Case study 1

Key regulatory questions the OfS considered in this case:

- Does Provider 1's student protection plan provide adequate protection for current students now it is making significant changes to its courses?
- Is it appropriate to impose a specific condition of registration to require Provider 1 to undertake additional student protection planning because of a material risk of market exit?

This case study is not a detailed case report. It provides a summary of key issues rather than a comprehensive detailed account of the case.

What was the issue?

Provider 1 is registered in the Approved (fee cap) category. It is subject to general ongoing condition D of registration which relates to financial viability and sustainability. Condition C4 was not in effect when the provider faced financial difficulty.

Provider 1's financial performance weakened over recent years because income from student fees has not kept up with staff costs. Its operating cashflow was negative in the most recent years.

Legal powers:

Section 5 of Higher Education and Research Act 2017 ("HERA") gives the OfS the power to impose general ongoing conditions.

Condition D says: The provider must:

i. Be financially viable.

ii. Be financially sustainable.

This underlying financial performance was compounded by the expiry of a revolving credit facility (similar to an overdraft) and the provider was forecasting a cash low point equivalent to liquidity days in single figures.

The OfS had imposed increased reporting requirements to monitor the delivery of in-year weekly cashflow forecasts and the development and implementation of a plan to improve the provider's underlying financial performance. We had also engaged closely with the provider's accountable officer and their team to test the provider's understanding of the situation and the credibility of its plans.

The provider had identified mitigating actions that included the sale of an asset, increased student recruitment, and a programme to deliver significant cost savings. The cost savings programme included substantial changes to its course portfolio. The provider needed to deliver these mitigating actions to the timescales in its recovery plan to maintain a positive cash position during that year.

The OfS had doubts about the ability of the provider to deliver its recovery plan, including because of the provider's position in the student recruitment market and the scale and complexity of cost savings set out in its plan. We considered that these uncertainties meant that there was a significantly increased risk of a breach of condition D and a material risk of insolvency if the provider could not deliver its recovery plan.

During our engagement with the provider, it was cooperative and open about its financial position and plans for recovery.

What action did we take?

In addition to our increased monitoring activity, we intervened in two ways. First, to ensure that students were protected from the impact of the provider's changes to its courses and, second, to ensure that students would be protected if the provider could no longer operate.

We required the provider to update its student protection plan to ensure that effective protection was in place for students likely to be affected by course changes and that this was communicated to them.

Legal powers:

Section 13 of HERA gives the OfS the power to impose a condition relating to a student protection plan.

This is enacted through the initial and ongoing **condition C3**:

The provider must:

i. Have in force and publish a student protection plan which has been approved by the OfS as appropriate for its assessment of the regulatory risk presented by the provider and for the risk to continuation of study of all of its students.

Our requirements for student protection plans are imposed through general ongoing condition C3.

Our view was that the provider's existing plan did not contain sufficient detail about the actions it would take to ensure continuation of study for its students as it made changes to its course portfolio. We did not think that a student would easily understand the options available and how their interests would be protected in these new circumstances.

We approved a revised student protection plan and ensured it was published and drawn to the attention of students.

We did not consider it appropriate to require the provider to include in its student protection plan the actions it would take if it could not continue to operate as a result of its financial difficulties. We took the view that public statements about the provider's financial position would have affected its ability to implement its recovery plan and could have made market exit more likely. At that time, we considered that the risk to continuation of study for current students outweighed other factors, such as the interests of prospective students, that might have suggested that publication of this information in a student protection plan was appropriate.

We therefore made a provisional decision to impose a specific condition of registration on Provider 1 that required it to produce and submit to the OfS an orderly exit plan setting out the arrangements that it would implement to secure continuity of study for its current and future students if it were unable to continue to operate. The proposed specific condition also gave the OfS powers to direct the provider to publish and implement its orderly exit plan if we judged that appropriate in future because exit was likely to happen, and information needed to be provided to current and future students.

Our interventions for Provider 1 took place before the introduction of condition C4. Before the introduction of condition C4, to address an increased risk of market exit, we needed to use other regulatory tools. The most appropriate of these was often the imposition of a specific ongoing condition of registration.

What was the legal basis for our decision?

In reaching this provisional decision, we had regard to our general duties as set out in section 2(1) of HERA, in particular general duties (a), (e) and (g) which relate to institutional autonomy, equality of opportunity, and the principles of best regulatory practice. We also had regard to the intervention factors set out in paragraph 167 of the regulatory framework.

We considered, in particular, whether the imposition of a specific condition would be a proportionate response to the regulatory risk presented by the provider. Section 7 of HERA requires us to consider proportionality in this way and so we also considered whether there were other, less intrusive, ways that we could achieve the intended outcome.

Legal powers:

Section 6 of HERA gives the OfS the power to impose a specific ongoing condition of registration.

Section 7 of HERA places a duty on the OfS to ensure that conditions are proportionate to regulatory risk.

Section 2 of HERA places a duty on the OfS to have regard to its general duties as it performs its functions.

We wrote to the provider setting out our intention to impose the specific condition. Our letter contained our detailed assessment of the provider's financial position and recovery plan, and the reasons for our provisional conclusions and the proposed specific condition. As required by section 6(4) of HERA we invited the provider, to make representations about our provisional decision to impose a specific condition – we are required to allow no less than 28 days for a response. In its representations a provider is able to provide further evidence, point out any inaccuracies in the OfS's assessment, and make arguments about the proportionality of the proposed action.

How did the provider respond?

The provider asked us to extend the deadline for its representations because it considered that it would have been able to demonstrate increased certainty about delivery of important elements of its recovery plan if additional time were made available. We agreed to this extension because our

view was that the provider had made credible progress in delivering its plan and the risk to students in allowing more time was low.

The provider's representations set out evidence of student recruitment that was better than its budget assumptions for that year and a forecast to achieve increased fee income. The provider's revised cashflow forecast for that year suggested a liquidity low point that would not be of concern. The provider was able to demonstrate significant progress in achieving its target for cost savings by the dates in its recovery plan. Because of the delivery of these elements of the recovery plan the provider was no longer reliant on the sale of assets to maintain a positive cash position.

What did we do next?

The OfS considered the provider's representations. We also modelled a cumulative worst-case scenario for the provider to determine the extent to which it would have been able to withstand potential adverse financial events. Our view was that the provider's cash position would have been likely to remain reasonable, with over 30 days' expenditure even in that scenario. We also took confidence from the provider's track record of delivering its recovery plan because that suggested that it would have taken credible action if there were further adverse circumstances.

Our assessment was therefore that the delivery of the recovery plan had improved the provider's financial position and likely future performance. This meant that the risk of a breach of condition D had substantially reduced. We therefore made a final decision not to impose the specific condition because our view was that detailed planning for a market exit was not necessary at that time.

However, our view was that there remained increased risk of a breach of condition D because the provider needed to continue to meet its student recruitment targets in subsequent years. We therefore imposed increased reporting requirements to allow us to monitor the provider's in-year cash position on a regular basis. Closer monitoring would allow us to intervene quickly to protect students if the provider's financial position looked likely to deteriorate.

Legal powers:

Section 8 of HERA gives the OfS the power to compel the production of information.

This is enacted through the first branch of ongoing **condition F3**:

For the purpose of assisting the OfS in performing any function, or exercising any power, conferred on the OfS under any legislation, the governing body of a provider must:

i. Provide the OfS, or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified.

Our reporting requirements are imposed through general ongoing condition F3 which enacts the power set out in section 8(1)(b) of HERA.

We set out the specific reporting requirements in a Notice issued to the provider. That listed the documents we required, the dates on which they were due, and the way the provider needed to submit them. Information requirements imposed in this way are legally binding.

We also continued to engage closely with the provider’s accountable officer.

Following these interventions, the provider improved its financial position and is now subject to the same general monitoring and associated regulatory requirements as other registered providers.

Case study 2

Key regulatory question the OfS considered in this case:

- Is Provider 2 able to deliver a business recovery plan to prevent market exit?

This case study is not a detailed case report. It provides a summary of key issues rather than a comprehensive detailed account of the case.

What was the issue?

Provider 2 is registered in the Approved (fee cap) category. It is subject to general ongoing condition D which relates to financial viability and sustainability. Condition C4 was not in effect when the provider faced financial difficulty.

Provider 2 had notified the OfS that it would have had insufficient cash to meet its immediate costs, including paying its staff, within the next three months if it could not secure new or revised borrowing or other funding. It did not hold cash reserves because these had been used to deliver a planned capital project and manage the impact of a recent shortfall in student recruitment.

During engagement with the provider and its lenders, it became clear that there had been significant weaknesses in the provider's financial management and governance arrangements. Some of the provider's senior management team had recently changed.

Legal powers:

Section 5 of the Higher Education and Research Act 2017 ("HERA") gives the OfS the power to impose general ongoing conditions.

Condition D says: The provider must:

i. Be financially viable.

ii. Be financially sustainable.

Legal powers:

Section 5 of HERA gives the OfS the power to impose general ongoing conditions.

Condition E2 says: The provider must have in place adequate and effective management and governance arrangements to:

i. Operate in accordance with its governing documents.

ii. Deliver, in practice, the public interest governance principles that are applicable to it.

iii. Provide and fully deliver the higher education courses advertised.

iv. Continue to comply with all conditions of its registration.

Legal powers:

Section 5 of HERA gives the OfS the power to impose general ongoing conditions.

Condition E3 says: The governing body of a provider must:

i. Accept responsibility for the interactions between the provider and the OfS and its designated bodies.

ii. Ensure the provider's compliance with all of its conditions of registration and with the OfS's accounts direction.

iii. Nominate to the OfS a senior officer as the 'accountable officer' who has the responsibilities set out by the OfS for an accountable officer from time to time.

The OfS engaged with the provider and its lenders to ensure that there was a clear plan to secure sufficient additional funding to meet its immediate costs. We put significant monitoring requirements in place to allow us to check that this plan was being delivered in practice. The immediate risk of market exit was resolved as the provider delivered this short-term plan.

However, the funding from lenders relied on a recovery plan that included improvements in student recruitment, effective cashflow management and sales of capital assets. We commissioned an independent organisation to review the provider's plan and its management and governance arrangements.

We had extensive engagement with Provider 2 over the course of a year as it implemented its recovery plan. At the end of that period, our view was that the provider faced three challenges.

First, it needed to strictly adhere to its cashflow forecasts to ensure it remained within its approved overdraft facility. Failure to do so would mean it would be unable to continue to operate.

Second, it needed to implement its recovery plan which was largely based on improving student recruitment and asset sales to ensure the business was sustainable on a longer-term basis. We took the view that reversing the negative trends in student recruitment would have been difficult and that the provider's existing approach had not yet demonstrated that it was able to achieve this.

Third, it needed to demonstrate that it had adequate and effective management and governance arrangements to address the challenges it faced.

What action did we take?

The provider had a clear financial plan in place that, if delivered, would have secured its financial viability and sustainability but there was little margin for error.

We decided to impose bespoke regulatory requirements to monitor the provider's financial performance and allow us to identify any milestones at which the risk to students of a disorderly exit had increased.

We also decided that the provider's student protection plan was insufficiently detailed and did not set out the steps it would have taken if the risk of disorderly exit crystalised.

We therefore made a provisional decision to impose a specific ongoing condition of registration on Provider 2 that required it to produce and submit to the OfS a market exit plan setting out the arrangements it would have implemented to secure continuation of study for its current and future students if it were unable to continue to operate.

The proposed condition also gave the OfS powers to require publication and implementation of the market exit plan if we judged that necessary in the future because it was likely that the risk of market exit would have crystalised and information needed to be provided to current and future students. The proposed condition would also allow~~ed~~ us to direct the provider to take specific actions, including making revisions to its market exit plan, engaging with other providers about arrangements for students to continue their courses, and deploying staff to implement the market exit plan.

Our interventions for Provider 2 took place before the introduction of condition C4. Before the introduction of condition C4, to address an increased risk of market exit, we needed to use other regulatory tools. The most appropriate of these was often the imposition of a specific ongoing condition of registration.

The specific condition also imposed further information requirements that compelled the provider to supply the OfS with regular financial information, student recruitment data, details of the progress of asset sales and other key milestones in the recovery plan. This information would have allowed us to identify an increased risk of disorderly exit.

Finally, because there had been changes to the membership of the provider's governing body, we included in our proposed specific ongoing condition a requirement for the chair to share with us the outcomes of an independent review of the effectiveness of the governing body and the performance of the senior management team.

What was the legal basis for our decision?

In reaching this provisional decision, we had regard to our general duties as set out in section 2(1) of HERA, in particular general duties (a), (f) and (g) which relate to institutional autonomy, using OfS resources in an efficient, effective and economic way, and the principles of best regulatory practice. We also had regard to the intervention factors set out in paragraph 167 of the regulatory framework.

We considered, in particular, whether the imposition of this specific condition would have been a proportionate response to the regulatory risk presented by the provider. Section 7 of HERA requires us to consider proportionality in this way and so we also considered whether there were other, less intrusive, ways that we could have achieved the intended outcome.

Legal powers:

Section 6 of HERA gives the OfS the power to impose a specific ongoing condition of registration.

Section 7 of HERA places a duty on the OfS to ensure that conditions are proportionate to regulatory risk.

Section 2 of HERA places a duty on the OfS to have regard to its general duties as it performs its functions.

We wrote to the provider setting out our intention to impose the specific condition. Our letter contained our detailed assessment of the provider's financial position and recovery plan, and the reasons for our provisional conclusions and the proposed specific condition. As required by section 6(4) of HERA, we invited the provider to make representations about our provisional decision to impose a specific condition – we are required to allow no less than 28 days for a response. In its representations a provider is able to provide further evidence, point out any inaccuracies in the OfS's assessment, and make arguments about the proportionality of the proposed action.

What else did we consider?

We considered whether we should intervene to require the provider to make further changes to its governing body or management team. We decided not to do so because our engagement with the provider had prompted significant changes to the membership and structure of its governing body and the arrangements in place to ensure effective management.

We also considered whether the provider needed to update its existing student protection plan to ensure that effective protection was in place for students likely to be affected by any changes to the provider's courses resulting from its recovery plan.

Legal powers:

Section 13 of HERA gives the OfS the power to impose a condition relating to a student protection plan.

This is enacted through the initial and ongoing **condition C3**:

The provider must:

i. Have in force and publish a student protection plan which has been approved by the OfS as appropriate for its assessment of the regulatory risk presented by the provider and for the risk to continuation of study of all of its students.

Our requirements for student protection plans are imposed through general ongoing condition C3.

We decided that the provider's existing plan contained sufficient detail about the actions it would take to protect students as it made changes to its courses.

We did not consider it appropriate to require the provider to include in its student protection plan the actions it would have taken if it could not continue to operate as a result of its financial difficulties. This was because the proposed specific condition would have provided a more effective mechanism to protect the provider's students without exacerbating its financial challenges. We did not therefore require the provider to amend and seek approval for a revised student protection plan.

How did the provider respond?

The provider's representations set out two main arguments against the proposed specific condition. First, it claimed that the imposition of the condition was unnecessary because it had secured funding and developed a recovery plan. Second, it argued that the OfS's concerns about management and governance were misplaced because, in its view, the provider's performance since it had entered a period of financial crisis demonstrated the quality of management and governance. The provider gave us additional information about its recent financial performance and the steps it had taken to improve its financial position.

The provider accepted that there was a risk of market exit if it did not deliver its recovery plan. It considered that the requirements in the proposed specific condition were too burdensome and could create perverse incentives, for example, forcing the provider to sell assets by a particular date set in the specific condition when a more favourable market rate might have been available at a later date.

What did we do next?

The OfS considered the provider's representations, assessing each argument and the evidence to determine the weight that could be placed on them.

We noted that progress had been made in delivering the recovery plan, but that there remained significant milestones to be delivered in relation to student recruitment and asset sales before financial viability and sustainability was assured. Other evidence about the provider's financial position was unchanged since we had taken the provisional decision to impose the specific condition.

We placed limited weight on the provider's suggestion that it was unnecessary to require a market exit plan because a recovery plan was in place. This was because we did not have sufficient assurance that the recovery plan would have been delivered in practice. We considered that the specific condition would have still been necessary to allow us to direct the provider to take further action to protect students should it have failed to deliver its recovery plan.

We considered the evidence submitted by the provider about its management and governance arrangements. We noted the changes the provider had made to its governance arrangements and the more limited changes that had been made to its management arrangements.

We decided that the representations did not materially change our assessment that the specific condition was appropriate to address the provider's financial position and the risks to students if the provider could not address its financial difficulties. We therefore made a final decision to impose the specific condition because our view was that detailed planning for a market exit remained necessary to protect students in the event that the provider could no longer operate.

However, we recognised that the way the specific condition had been drafted could have created unintended consequences in relation to meeting targets for asset sales. We therefore introduced a power for the OfS to vary targets and to direct the provider not to comply with certain aspects of the specific condition in those certain circumstances. This was designed to allow us to engage with the provider about any unintended consequences and amend the requirements of the specific condition if we concluded that the effect of meeting the requirements would be negative for students.

Our view was that the representations contained information that reduced the risk in relation to the provider's ability to satisfy conditions E2 and E3. This included evidence of changes made to its management and governance arrangements and the sustained delivery of positive student outcomes in areas of previous weakness. However, we concluded that there remained an increased risk of a future breach of these conditions. As such, we decided that it was still appropriate to require an independent report from the governing body on management and governance arrangements.

Legal powers:

Section 6 of HERA gives the OfS the power to impose a specific ongoing condition of registration.

For this case, the **specific condition** required the provider to:

i. Produce and submit a market exit plan for approval.

And, in certain circumstances:

ii. Publish the market exit plan.

iii. Implement the market exit plan.

iv. Comply with a direction issued by the OfS to take specified steps.

The specific condition also imposed further information requirements. This allowed us to collect more extensive information than would normally be available through our general monitoring approach. In this case it included requirements to submit cashflow forecasts, details of asset sales, frequent updates on student recruitment and an independent report from the governing body on the provider's management and governance capacity and capabilities.

The provider was therefore required to submit a market exit plan that set out the detailed actions, with milestone dates, that it would have taken to preserve continuation of study for students. The plan needed to explain how the provider would have enabled students to complete their course at the provider or transfer to another provider. It also needed to set out arrangements for certification of exit awards, for refunds and compensation, and for information, advice and guidance for students.

We did not publish information about the imposition of the specific condition because we took the view that public statements about the provider's financial position would have affected its ability to implement its recovery plan and could have made market exit more likely. At that time, we considered that the risk to continuation of study for current students outweighed other factors, such as the interests of prospective students, that might have suggested that publication of this information in a student protection plan was appropriate.

The specific condition did, however, contain a provision that would have allowed us to require publication of the plan in future if we judged that to be in the interests of current or future students.

What happened next?

The provider submitted its market exit plan by the due date, and we considered whether it satisfied the requirements set out in the specific condition. We decided that we could not approve the plan because it did not contain sufficient detail to show how the provider's current students would have been able to complete their courses if the provider were unable to continue to operate.

We therefore decided to activate the power of direction contained in the specific condition to require the provider to amend the plan to address these issues. In doing so, we provided detailed feedback to the provider and specified those areas of its plan that needed to be improved. The provider submitted a revised version of its market exit plan that we were able to approve because it satisfied the requirements of the specific condition and the direction.

The specific condition remained in place because we may have needed to use the power of direction again if the provider were not able to deliver its recovery plan. For example, it may have been necessary to direct the provider to implement its market exit plan, or to take other actions to protect the interests of students.

As required by the specific condition, the provider submitted detailed financial information and an independent report on the effectiveness of its management and governance arrangements. We also continued to engage closely with the provider's accountable officer.

Over the next eighteen months, the information submitted by the provider demonstrated that it had delivered its recovery plan, including by increasing student recruitment and delivering asset sales. We conducted several more assessments of regulatory risk and concluded that the risk was reducing. We therefore reduced the monitoring requirements in place. We ultimately concluded that the provider was no longer at increased risk of breaching conditions D, E2 or E3 and the specific ongoing condition elapsed because the milestones contained in it had specific dates and the requirements had been met or were no longer relevant.

Following these interventions, the provider improved its financial position and is now subject to the same general monitoring and associated regulatory requirements as other registered providers.

ALRA (UKRPN 10000248)

Key regulatory questions the OfS considered in this case:

- Is it necessary to impose a student protection direction because of a material risk of market exit?
- Should we consult the provider before imposing a student protection direction?
- Should we require the provider to publish its market exit plan?
- What is the role of a validating body in cases of market exit?

This case study is not a detailed case report. It provides a summary of key issues rather than a comprehensive detailed account of the case.

What was the issue?

ALRA was registered in the Approved category in October 2018. It closed in April 2022 as a result of financial difficulties. When it closed, it had 284 higher education students studying on a range of undergraduate and postgraduate drama courses taught in two locations in London and Wigan. The majority of its courses were validated by St Mary's University, Twickenham (SMU), with one course validated by the Arts University Bournemouth (AUB).

When it was registered, ALRA was subject to the OfS's general ongoing conditions of registration, including condition D which relates to financial viability and sustainability, and condition F3 which relates to the provision of information to the OfS.

Condition F3 requires a provider to tell the OfS about any event or matter that, in the reasonable judgement of the OfS, negatively affects or could negatively affect a provider's ability to comply with its conditions of registration, including condition D.

Condition C4 was in effect when ALRA's financial difficulties came to light.

Legal powers:

Section 5 of Higher Education and Research Act 2017 ("HERA") gives the OfS the power to impose general ongoing conditions.

Condition D says: The provider must:

i. Be financially viable.

ii. Be financially sustainable.

Condition F3(i) says: A provider must provide the OfS, or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified.

Towards the end of 2021 ALRA reported a significant change in its financial position. There had been a substantial increase in its deficit for 2020-21 compared with what it had reported previously to the OfS. Its forecast deficit for 2021-22 had also increased significantly. This was due to the termination of a partnership with an American university which would have resulted in a loss of significant forecast income. The information submitted by ALRA also highlighted a number of long-term financial issues, including poor debt recovery, limited investment in back-office functions and overstaffing, such that its income did not cover the cost of course delivery.

ALRA reported that it was taking action in relation to its deficit, including reducing the number of senior staff and restructuring its back-office functions. In addition, its trustees had begun to explore merger and acquisition options.

We asked for further information and engaged with the chair of the provider's governing body and its interim accountable officer to test the credibility of ALRA's plans to manage its financial position and its plans to be acquired by another provider.

We also met separately with the registered provider that was undertaking due diligence in relation to its potential acquisition of ALRA to test the credibility of the proposal and to inform our decisions about possible interventions for ALRA. We shared information about ALRA with this provider on the basis of section 63 of HERA.

Legal powers:

Section 63 of HERA gives the OfS the power to provide information to any person if the disclosure is made for the purposes of the performance of a function of the OfS.

We had doubts about ALRA's ability to deliver an acquisition by another provider because of the complexities of reaching agreement in the timescale required by its financial position. ALRA had forecast a negative cash balance in July 2022 that would not have been covered by its existing credit arrangements. In addition, we were concerned about the ability of ALRA's senior team to deliver the plan because the interim accountable officer and interim finance director had been appointed only recently and were on short-term contracts.

What action did we take?

We considered the risk of a disorderly market exit to be significant and so required ALRA to provide further information to help us understand the nature and timing of the risk posed to students. This included a requirement for ALRA to submit each week a detailed weekly cashflow forecast and to provide further information about the arrangements for its senior leadership team.

Our requirement for ALRA to provide this information was imposed through general ongoing condition F3 which enacts the power set out in section 8(1)(b) of HERA.

We set out the specific reporting requirements in a Notice issued to the provider. That listed the documents we required, the dates on which they were due, and the way the provider was required to submit them. Information requirements imposed in this way are legally binding.

Legal powers:

Section 8 of HERA gives the OfS the power to compel the production of information.

This is enacted through the first branch of ongoing **condition F3**:

For the purpose of assisting the OfS in performing any function, or exercising any power, conferred on the OfS under any legislation, the governing body of a provider must:

i. Provide the OfS, or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified.

In April 2021, the OfS introduced a new ongoing condition of registration (condition C4: Student protection directions) to enable us to intervene more quickly and in a targeted way when we consider there to be a material risk that a registered provider may cease the provision of higher education.

Legal powers:

Section 5 of HERA gives the OfS the power to impose general ongoing conditions.

Condition C4 says: A provider must comply with any Student Protection Direction in circumstances where the OfS reasonably considers that there is a material risk that the provider will, or will be required by the operation of law to, fully or substantially cease the provision of higher education in England ('Market Exit Risk').

Having judged there to be a material risk of market exit for ALRA, we made a provisional decision to impose a student protection direction on 25 January 2022. This required ALRA to produce and submit a market exit plan that set out the arrangements it would have implemented to secure continuation of study for its students in the event of insolvency and market exit. We also continued to engage with ALRA's chair and senior team to test the likelihood of acquisition and its actions to manage its financial position and the impact on students.

What was the legal basis for our decision?

In reaching a provisional decision to impose a student protection direction, we had regard to our general duties as set out in section 2(1) of HERA, in particular general duties (a), (e) and (g); we had regard to the intervention factors set out in paragraph 167 of the regulatory framework. In addition, our proposed direction required ALRA to develop and implement its market exit plan in a way that minimised any adverse impact on students who shared particular protected

characteristics. This is an expectation, set out in the guidance underpinning condition C4,[3] for any OfS registered provider.

We wrote to ALRA setting out our view that it was at material risk of market exit and that our intention to impose a student protection direction that would require it to develop and submit a market exit plan. Our letter contained our detailed assessment of the provider's financial position and the reasons for our provisional conclusions and the proposed student protection direction.

Legal powers:

Section 5 of HERA gives the OfS the power to impose general ongoing conditions.

Condition C4: Student protection directions enables the OfS to intervene where it considers there is a material risk of market exit.

Condition C4 came into force in April 2021.

We did not take a decision to compel the provider to publish its market exit plan but reserved the right to consider this further. We took the view that public statements about a market exit plan and ALRA's financial position would have affected its ability to progress its acquisition and would have increased the likelihood of a disorderly market exit. We considered that the need to minimise the risk in relation to the continuation of study for current students outweighed other factors, such as the interests of prospective students.

In line with paragraph 6 of the guidance underpinning condition C4 we invited ALRA to submit representations about our provisional decision. In its representations, a provider is able to provide further evidence, point out any inaccuracies in the OfS's assessment, and make arguments about the proportionality of the proposed action.

How did the provider respond?

ALRA did not submit any representations in relation to our provisional decision to impose a student protection direction and instead submitted a market exit plan before we had made a final decision about imposing the student protection direction.

We considered the provider's plan and decided that we could not approve it because it did not contain sufficient information about the actions that ALRA would take to protect the interests of its students if it became insolvent.

Shortly after submitting its proposed market exit plan, ALRA told us that the provider with which it had been discussing an acquisition had decided that it could not proceed. Following this decision, ALRA told us that it was likely that it would close.

[3] Regulatory notice 6: Condition C4: Student protection directions C4(v)(7) www.officeforstudents.org.uk/publications/regulatory-notice-6-condition-c4-student-protection-directions/.

What did we do next?

When we learned that the planned acquisition would not proceed, we took several immediate and concurrent actions.

On 15 February 2022, we issued a final decision to impose a student protection direction that required the provider to develop and submit for approval a market exit plan. We introduced some additional requirements to require ALRA to take several immediate actions to protect the interests of students, including preparing evidence of academic achievement for each student and sharing with the OfS draft communications to explain the situation to students.

We decided not to consult ALRA on these additional requirements because of the likely timescale for an exit and the impact of this on students. This reflects the provisions of paragraph 6 of the guidance underpinning condition C4: 'Where the OfS judges that students would not be disadvantaged by any delay to the imposition of a Direction, it may consult with a provider on all or part of a Student Protection Direction'.

We engaged directly with ALRA's validating partners to discuss their roles and responsibilities in relation to the students registered at ALRA and for whom they would award qualifications.

We also established a multi-agency taskforce to coordinate planning for the implementation of ALRA's market exit plan if that became necessary. This included representatives from the OfS, ALRA, its validating partners, the Office of the Independent Adjudicator for Higher Education (OIA), the Student Loans Company (SLC) and the Department for Education (DfE). There were more than 60 meetings of the taskforce, or sub-groups of taskforce members, between 12 February 2022 and 27 April 2022.

Legal powers:

Section 63 of HERA gives the OfS the power to cooperate with other persons where we consider it to be appropriate for the efficient performance of our functions and to provide information to any person if the disclosure is made for the purposes of the performance of a function of the OfS.

How did the provider respond?

ALRA appointed a restructuring adviser to provide expert advice on its position and options. ALRA, its adviser, and ALRA's validating partners engaged extensively to consider a range of options, including an approach that would have allowed students to complete the current academic year at ALRA. This would have involved ALRA entering administration and the delivery of a teach-out period to the end of the academic year. Any remaining students would then be offered the opportunity to complete their studies with other providers, and ALRA would then close.

This plan could not be delivered in practice because of legal and operational issues. ALRA was therefore unable to enter administration. Instead it would have entered compulsory liquidation, which would have meant that it would not have been possible for ALRA, SMU or AUB to implement plans to teach out students to the end of the academic year.

What happened next?

The OfS engaged directly with other providers that deliver drama courses to identify options for ALRA's students to continue their studies at another provider during the current academic year.

A number of providers offered support, including offers for particular groups of ALRA's students to continue their studies, for example those based in London or those on postgraduate courses. Rose Bruford College of Theatre and Performance told us that it had the capacity to offer all ALRA students, on any course at either location, the opportunity to continue their studies during the current academic year. Rose Bruford proposed to teach students in ALRA's current facilities in Wigan, or in London-based studio spaces. We worked with ALRA, its validators and Rose Bruford to put in place detailed arrangements to enable ALRA's students to continue their studies at Rose Bruford if they wished to do so.

The OfS worked closely with ALRA's validating partners and Rose Bruford to coordinate detailed communications to students, to ensure students could make informed choices and to ensure that students received a record of their academic achievement.

ALRA's main validating body set up dedicated web pages and a telephone hotline to provide all ALRA students with:

- clear and impartial guidance about the options available to them
- practical advice (e.g. in relation to collecting their belongings)
- information about how and when students would receive a record of their academic achievement
- pastoral and wellbeing support.

In addition, Rose Bruford set up dedicated webpages and a telephone hotline to provide ALRA students with detailed information in relation to its offer. It held a series of online meetings to engage directly with ALRA students. Led by Rose Bruford's senior team and supported by its central services, new staff teams were recruited at both ALRA locations and students were kept informed about the transitional arrangements. The new Rose Bruford campuses were opened one month after the initial contact from the OfS.

On 4 April 2022 ALRA announced that it had closed and could no longer teach students. On the same day, ALRA's validators contacted the students for whom they were the awarding body setting out the offer from Rose Bruford. Over 90 per cent of ALRA's students chose to move to Rose Bruford to continue their course. Some third year students chose to go straight into industry.

Legal powers:

Section 22 of HERA gives the OfS the power to remove providers from the Register.

On 12 April 2022 ALRA was placed into compulsory liquidation. On that date, the OfS made a decision to remove ALRA from the OfS Register because it was no longer a provider of higher education.