

Office for
Students



Payment of fees for investigations

Guidance for providers on implementation of The Higher Education (Investigation Fees) (England) Regulations 2022

Reference OfS 2023.37

Enquiries to OfS finance team at FeeQueries@officeforstudents.org.uk

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Summary

1. This guidance is for higher education providers in England that are registered with the Office for Students (OfS).
2. It sets out the approach the OfS will take to determine the fees payable on the basis of The Higher Education (Investigation Fees) (England) Regulations 2022 ('the Regulations').¹ These Regulations allow the OfS to cover the costs of conducting investigations by charging an individual provider.
3. This guidance sets out:
 - how an investigation fee will be calculated
 - how the fee for an investigation will be communicated to a provider
 - how a provider can make representations in relation to an investigation fee
 - when a fee is payable
 - how to pay it.
4. Ongoing condition of registration G3 requires a provider to pay fees to the OfS and fees charged by any designated quality body and the designated data body (currently Jisc). These fees are required to be paid in full, by the set deadline.
5. The designated bodies publish separate guidance for providers about the calculation and payment of their fees. Further information about those fee arrangements is beyond the scope of this guidance.
6. Please contact the Regulation team at regulation@officeforstudents.org.uk or 0117 931 7305 if you have any questions about the guidance set out in this document.
7. Please contact the OfS finance team at FeeQueries@officeforstudents.org.uk or 0117 931 7111 if you have any questions about making payment in relation to an investigation fee.

¹ See <https://www.legislation.gov.uk/uksi/2022/1191/regulation/3/made>.

Documents referred to in this guidance

Higher Education and Research Act 2017 (HERA):² Section 70 of HERA makes provision for the OfS to charge providers a fee for their registration in the Register of English higher education providers. Section 71 makes provision (subject to regulations) for the OfS to charge fees for other activities and services undertaken in the performance of its functions.

The Higher Education (Investigation Fees) (England) Regulations 2022:³ These regulations set out the fee the OfS may charge for conducting investigations into the activities of higher education providers. This is referred to as the ‘the regulations’ in this document.

Higher Education (Registration Fees) (England) Regulations 2019:⁴ These regulations set out the fee the OfS may charge a provider for its inclusion in the Register of English higher education providers.

OfS regulatory framework:⁵ This document constitutes the regulatory framework for higher education in England as required under section 75 of HERA. It sets out how the OfS intends to perform its various functions and provides guidance for registered higher education providers on ongoing conditions of registration. Additional information about regulatory requirements is also published by the OfS in the form of regulatory notices and regulatory advice. Condition G3 of the regulatory framework (payment of OfS and designated body fees) is an ongoing condition of registration applying to all registered providers. It requires all providers to pay an annual registration fee and other OfS fees, in accordance with regulations made by the Secretary of State, and fees charged by the designated bodies.

² See www.legislation.gov.uk/ukpga/2017/29/contents/enacted.

³ See www.legislation.gov.uk/uksi/2022/1191/contents/made.

⁴ See www.legislation.gov.uk/uksi/2019/543/contents/made.

⁵ See www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

Key terms used in this guidance

Investigation fee: The fee determined by the OfS as payable by a provider of higher education that has been investigated by the OfS. The fee will represent the costs incurred by the OfS in conducting its investigation. See paragraphs 15 and 20.

Fee notification: Document sent by the OfS to a provider which will set out the amount of costs being charged, the deadline for payment and how representations should be submitted. This document should be treated as an invoice for the purposes of paying any investigation fee. See paragraph 27.

Representations: A provider may make representations in respect of the OfS's fee notification within 14 days of receipt of that notification. Representations should be made in writing to the address given in the fee notification. See paragraph 31.

Introduction and background

8. Section 70 of HERA provides for the OfS to charge each registered provider an annual registration fee. Section 71 makes provision (subject to regulations) for the OfS to charge fees for other activities and services undertaken in the performance of its functions.
9. Regulations permitting the OfS to charge a fee for investigation of a registered provider came into force on 8 December 2022 and apply to an investigation where the decision to conduct that investigation was made on or after that date.
10. This document provides guidance about how a fee for an investigation will be calculated by the OfS and how a provider should pay its fee.
11. This document **does not** provide guidance about the OfS's approach to opening or conducting an investigation, except to the extent that this may affect the investigation fee payable.
12. Condition G3 of the OfS's regulatory framework⁶ states:

Condition G3: The provider must pay:

- i. Its annual registration fee and other OfS fees in accordance with regulations made by the Secretary of State.
- ii. The fees charged by the designated bodies.

13. This guidance relates to investigation fees charged by the OfS. These constitute 'other fees' as set out in condition G3(i).
14. Any other fees that may be charged by the OfS, and fees charged by a designated body, are beyond the scope of this guidance.

⁶ See www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

Investigation fee

15. From 8 December 2022, a provider that is subject to investigation by the OfS may be charged a fee to cover the costs of that investigation. This applies only where a decision to conduct an investigation occurred on or after that date.
16. A fee is payable where, as a result of an investigation, the OfS:⁷
 - a. finds that there is or has been a breach of any ongoing registration condition of the provider,
 - b. imposes a specific ongoing registration condition on the provider's registration,
 - c. requires the provider's governing body to provide information pursuant to an ongoing registration condition of the provider referred to in section 8(1)(b) of HERA, or
 - d. makes a recommendation that, in order to mitigate what the OfS considers to be the increased risk of a breach of an ongoing registration condition of the provider, the provider should take or refrain from taking any action specified by the OfS.
17. The investigation fee is payable by the governing body of the provider whose activities are the subject of the OfS's investigation.
18. The sections below set out how an investigation fee will be calculated and notified to a provider, when the fee will be due for payment, and the representations process.
19. HERA makes separate provision in section 73 for the OfS to recover its costs when it has imposed one of the following sanctions on a registered provider:
 - a. imposing a monetary penalty under section 15 of HERA,
 - b. suspending a provider's registration under section 16 of HERA, or
 - c. removing a provider from the register under section 18 of HERA.

The OfS's approach to cost recovery in those circumstances is beyond the scope of this guidance.

Calculating an investigation fee

20. The investigation fee will be the total of the costs reasonably incurred by the OfS in conducting its investigation.
21. Conducting an investigation includes:
 - a. making and communicating a decision to conduct the investigation,
 - b. settling and communicating the findings of the investigation, and

⁷ Section 2 (1) of the Regulations: see <https://www.legislation.gov.uk/uksi/2022/1191/regulation/3/made>.

- c. making any other decision, and engaging in any other activity, in connection with:
 - i. beginning the investigation;
 - ii. conducting the investigation;
 - iii. settling or communicating the findings of the investigation.

- 22. Charges relating to OfS staff costs will be based on the amount of time spent (measured in hours) on an investigation, charged at the total cost of employment of that member of staff for each hour worked (cost per hour). Cost per hour will include employer contributions for national insurance and pensions, and will represent the cost of each hour the member of staff is normally available to work (i.e. excluding annual leave entitlement and bank holidays). Any travel and subsistence costs will be charged at the actual cost incurred by the OfS including any irrecoverable VAT.
- 23. Contracted out costs, and any costs associated with direct purchasing in respect of an investigation, will be based on the actual costs incurred by the OfS, inclusive of any irrecoverable VAT.
- 24. Costs will not include apportionment of the underlying costs of running the OfS, nor general administration costs, except where an increase in these costs can be directly attributed to an investigation.
- 25. The investigation fee will include VAT at the applicable rate. Currently, OfS investigation fees are not within the scope for VAT purposes and so no VAT will be charged.
- 26. The fee charged for an investigation will take account of the impact that payment of fees would have on the financial viability and sustainability of the provider and whether payment of fees would be appropriate where a provider is in financial difficulty.

Fee notification and representations

- 27. The OfS will send a fee notification to a provider which will set out the basis on which the investigation fee has been calculated and the date by which payment must be made. The due date for payment will not be less than 30 days from the date the fee notification is issued to the provider.
- 28. The OfS will send the fee notification to a provider's accountable officer, and to any nominated contacts the provider has given in relation to its annual registration fee.
- 29. A fee notification will be sent by email and will be deemed to have been received on the same day the email is sent, unless the fee notification is sent after normal working hours (after 1700, Monday to Friday), in which case it will be assumed to have been received on the following working day.
- 30. Where a provider's systems require an invoice to be processed for a payment to be made, the fee notification should be used for this purpose. No separate invoice will be sent by the OfS.
- 31. A provider may make representations in relation to an investigation fee if it considers that costs have not been reasonably incurred or any of the information used to calculate that fee. The OfS

will allow not less than 14 calendar days for submission of representations, from the date a provider receives the fee notification.

32. Representations relating to an investigation fee must be made in writing to regulation@officeforstudents.org.uk. The OfS will acknowledge receipt of a provider's representations.
33. When a provider makes representations in relation to a fee notification, the requirement to pay the investigation fee is suspended until the date specified in the OfS's notification of any final decision to confirm or varying the fee.
34. The OfS will consider any representations, and will notify a provider in writing of its final decision. The OfS's final decision will be one of the following:
 - a. confirm the fee notification that was issued,
 - b. vary that notification, or
 - c. withdraw that notification.
35. If a fee notification is confirmed or varied, a provider will have a period of not less than 14 days to make the required payment. The exact payment date will be set out in the OfS's notification of its final decision. No further period for representations will be given.

Making payments

36. Payments must be made by bank transfer to the OfS bank account as set out in Annex A.
37. A provider should quote the fee notification reference as the transaction reference when it makes payment.
38. Where all or any part of an investigation fee remains unpaid by the time when it is required to be paid, the OfS may charge interest on the unpaid amount. Interest will accrue on a daily basis at the following rate:

Bank of England rate + 5 per cent

where 'Bank of England rate' is the official bank rate announced at the most recent meeting of the Monetary Policy Committee of the Bank of England.
39. The total amount of interest due will not exceed the amount of the investigation fee.
40. The OfS may recover from a provider, as a civil debt to the OfS, the unpaid amount of an investigation fee and the amount of any unpaid interest charged, as set out above.

Annex A: OfS details

Company name:	The Office for Students
Company registration number:	Not applicable – the OfS is a non-departmental public body
VAT number:	304325151
Address:	Westward House Lime Kiln Close Stoke Gifford Bristol BS34 8SR
Switchboard:	0117 931 7317
Email for questions about making a payment:	<u>FeeQueries@officeforstudents.org.uk</u>
Phone number:	0117 931 7111
Bank account name:	The Office for Students
Sort code:	60-70-80
Account number:	10028676



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