

Reforms to OfS registration requirements

**Part 2: Analysis of consultation
responses and decisions for
new initial condition E7 (now E7, E8 and E9)
– Effective governance**

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Summary of decisions

1. In February 2025, the Office for Students (OfS) consulted on proposals to introduce a new initial condition of registration focused on effective governance. This formed part of the broader consultation on reforms to the OfS's registration requirements (the February consultation).¹ We proposed to replace initial conditions E1 and E2 with a new initial condition of registration (proposed initial condition E7) that would require providers to have effective governance arrangements in place at the point of registration.
2. Our February consultation proposals were responding to changes in the profile of providers seeking registration. Unlike those registered when our processes were first established, new entrants are less likely to have a proven track record in delivering higher education. In this context, it is essential that our entry tests effectively assess a provider's governance and management arrangements. Strong governance is critical to mitigating significant risks to students and taxpayers, particularly given the increasing sector wide challenges related to financial sustainability.
3. The consultation proposed five key requirements.
 - a. **Submission of a defined set of governing documents at registration:** replacing the previous reliance on self-assessment against the public interest governance principles. This proposal aimed to improve clarity, reduce burden for well-prepared providers, and enable the OfS to directly assess whether governance arrangements are appropriate and deliverable in practice.
 - b. **Five-year business plan:** providers would be required to submit a clear and comprehensive business plan covering a five-year period. The plan would need to demonstrate the provider's understanding of the higher education sector, its strategic objectives, associated risks, and how it intended to comply with ongoing conditions of registration. This proposal aimed to ensure that providers were adequately prepared to operate in the regulated sector and to protect students and public funds.
 - c. **Knowledge and expertise of key individuals:** key individuals within a provider would be required to meet minimum knowledge and expertise requirements. This would apply to the chair of the governing body, the accountable officer, the individual responsible for financial management, and (where applicable) an independent member of the governing body. The OfS would assess these capabilities through interviews with key individuals to ensure they were equipped to lead the provider effectively and meet regulatory obligations.
 - d. **Fit and proper persons:** this would require providers to ensure that relevant individuals in senior governance and management roles are fit and proper persons, with checks on past conduct including fraud, misconduct and other matters that could impact public trust or student interests. Providers would need to submit relevant declarations as part of their registration application.
 - e. **Arrangements to prevent fraud and track record:** providers would need to have comprehensive arrangements, that are adequate and effective for the purposes of

¹ See [Consultation on reforms to OfS registration requirements - Office for Students](#).

preventing, detecting and stopping fraud and the inappropriate use of public funds. They would also be assessed through a track record test, under which providers with relevant convictions or regulatory decisions within the past 60 months could be refused registration unless exceptional circumstances apply.

4. We received broad support for these proposals. Respondents agreed that the changes were necessary to ensure that providers were appropriately governed, that public funds were protected, and that students' interests were safeguarded.
5. We have carefully considered the feedback that we received and after further policy thinking, we have decided to implement the new requirements broadly in the form we consulted. We have made some clarifications and adjustments to the requirements and guidance. To improve clarity and usability, the proposed condition E7 has been restructured into three separate initial conditions. This restructuring does not introduce new requirements beyond those consulted on but is intended to support clearer assessment and implementation. The new initial conditions will replace initial conditions E1 and E2, for any new applications for registration, including any application from registered providers for registration in a different category of the OfS Register, received by the OfS on or after **28 August 2025**. The new initial conditions are:
 - a. E7 (governing documents and business plan)
 - b. E8 (fraud and inappropriate use of public funds)
 - c. E9 (fit and proper persons and knowledge and expertise).
6. We have summarised our decisions in the table below.

Proposal	Decision
1. Introduce a new initial condition E7 for effective governance	We have decided to implement the new initial condition of registration as proposed. We have decided to split the condition into three separate conditions to improve clarity and readability. This structural change does not impact the substance of the condition or how it will be assessed. The conditions are: E7 – governing documents and business plan E8 – fraud and inappropriate use of public funds E9 – fit and proper persons and knowledge and expertise.
2. Direct assessment of a set of governing documents at registration	We have decided to implement the requirements relating to a set of governing documents registration as proposed. We have amended the guidance in some areas.
3. A clear and comprehensive business plan	We have decided to implement the requirements relating to the business plan as proposed. We have amended the guidance in some areas.
4. Key individuals must have sufficient knowledge and expertise	We have decided to implement the proposed requirements relating to knowledge and experience of key individuals with minor changes as follows:

Proposal	Decision
	<ul style="list-style-type: none"> • Clarification of the scope of knowledge required for the chair of the governing body and independent member of the governing body in relation to the provider's student cohort • Minor wording change from 'policies and procedures' to 'policies and processes'. <p>We have amended guidance in some areas and provided additional interview guidance.</p>
5. The individuals responsible for running the provider must be 'fit and proper'	<p>We have decided to implement the fit and proper requirements as proposed.</p> <p>We have amended the guidance in some areas and provided additional interview guidance.</p>
6. A provider must have comprehensive arrangements to prevent, detect and stop fraud and inappropriate use of public funds	<p>We have decided to implement the requirements relating to fraud with a change to the condition as follows:</p> <ul style="list-style-type: none"> • Clarification of the scope of the condition which applies to the requirement relating to arrangements only • Minimum arrangement requirement has been inserted into the condition for clarity (this was previously in the proposed guidance). <p>We have also amended the guidance in some areas to improve clarity.</p>

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

7. In our February consultation, we proposed introducing a new initial condition of registration E7, that would require a provider to have effective governance arrangements for the purpose of being a registered higher education provider. This would replace the existing initial conditions E1 and E2 for providers seeking registration with the OfS or applying to change registration category.²

Consultation questions

1a. Do you agree with the proposal to introduce a new initial condition that would require a provider to have effective governance arrangements for the purpose of being a registered provider?

1b. Do you agree with this new initial condition should replace the current initial conditions E1 (public interest governance) and E2 (management and governance)?

Decision

8. We have decided to introduce new entry requirements replacing initial conditions of registration E1 and E2, broadly as proposed. To improve clarity and readability for providers, we have decided to split the proposed condition E7 into three separate conditions: E7, E8 and E9.
- Condition E7 contains requirements A (set of governing documents) and B (business plan).
 - Condition E8 contains requirement E (fraud and inappropriate use of public funds).
 - Condition E9 contains requirements C (knowledge and expertise) and D (fit and proper persons).

This restructuring does not add any new requirements beyond those proposed in the consultation and the requirements have not changed other than where we have specified elsewhere in this decision document. Instead, it is intended to improve readability and usability for providers applying for registration. These three new initial conditions will come into effect on 28 August 2025. Further details on our decision are set out in the remainder of this document.

Summary of respondents' views

9. There was broad support for the proposal to introduce an initial condition requiring a provider to have effective governance arrangements. 18 of the 20 respondents who expressed a view on this, agreed with the principle of introducing a new initial condition which would require a

² See the OfS conditions of registration: [Annex A: Initial and general ongoing conditions of registration - Office for Students](#).

provider to have effective governance arrangements. Some respondents who agreed considered that the current initial conditions E1 and E2 did not offer appropriate assurance and welcomed the proposals in this context. Others considered that the proposals would improve clarity of both the documents the OfS will assess, and the associated assessment criteria.

10. From the qualitative comments in the consultation survey responses, the consultation events and written and oral feedback received by sector bodies outside of the survey, the themes set out below emerged.

Regulatory burden

11. Respondents expressed mixed views about how the proposal would affect regulatory burden. Three respondents welcomed the OfS's attempt to reduce the burden and complexity for providers during the registration process and the proposed reduction in the number of initial conditions. Two respondents raised concerns that the proposal could potentially increase burden on providers and the OfS. One of these respondents noted that there was potential for this requirement to slow down the registration process but acknowledged that the current process often led to lengthy discussions and the OfS eventually requesting many of the documents cited in the proposed condition anyway. Another noted that the proposal aimed to minimise the bureaucratic load on small providers. One respondent made an overarching comment across all 3 consultations, that it appreciated the proportionality of the regulatory activities in respect of smaller providers.

Contextual information and assessment of governance documents

12. Several respondents wanted to understand how the OfS would determine whether governing documents were appropriate to each provider's context, given the sector's diversity. They considered that it was important to avoid overly prescriptive requirements to maintain institutional autonomy and diversity of the sector. One respondent thought that contextual information was necessary to accompany governing documents, saying that without it, providers with complex structures might risk being refused registration. Conversely, there was concern that providers without genuine governance capabilities might still meet requirements through superficially compliant documentation. Another respondent wanted greater clarity on how the OfS will assess governance documents compared with previous self-assessments.

Two-tier system

13. One respondent, while agreeing with the proposal, considered that it was important that the OfS did not create a two-tier system of regulation for new and currently registered providers. Another respondent stated that the proposed initial condition should be expanded to current providers.

Alternative proposals

14. A few respondents made alternative suggestions to the proposal. One respondent suggested that the OfS should require providers to follow a governance code, specifically with reference to the Committee of University Chairs (CUC) Higher Education Code of Governance, to reduce burden and duplication. Another suggested postponing any changes until the CUC's review of the higher education code is concluded.

15. Another respondent suggested that the process of assessment should include engagement with a provider in advance of any decision so the OfS can highlight any specific concerns and give the provider an opportunity to develop any missing policies, within a reasonable timeframe.
16. One respondent encouraged the OfS to review the training it gives to staff to better support them in making these assessments and to conduct a review of governance assessments within 12 months of the process of registration re-opening and again when the new requirements for providers to register is implemented.

Our response

17. We welcome the support we received from respondents in respect of this proposal. We have addressed the views expressed in the paragraphs below.

Regulatory burden

18. We have considered the proportionality of the requirement for providers to submit a set of governing documents. This requirement is designed to address the risks we have identified, specifically the presence of low quality, unclear or inappropriate governance documents. To reduce burden, we have narrowed the scope of the documents required at the point of registration, introduced expectations around quality and clarity, and reducing reliance on provider self-assessments. We consider that this requirement is proportionate at the point of registration because it directly targets known issues, is tailored to individual provider context and balances regulatory oversight with the need to protect provider autonomy. We considered alternative, less intrusive means of achieving this. However, our view is that these alternatives would be less effective at gaining assurance that a provider seeking registration is appropriately governed and so would increase risks to students and taxpayers that arise where institutions are not governed effectively.
19. We consider that the changes to the new registration process will overall make the registration process more efficient for well-prepared providers, and the OfS, because it has been designed to create incentives for providers to submit complete, high quality applications that can be considered more efficiently. This will help the OfS to move more quickly to progress registration applications that are well-prepared and to refuse those that are not – reducing delays in the process.

Contextual information and assessment of governance documents

20. When assessing the governing arrangements against the new requirements, we will consider the 'appropriateness' of a provider's arrangements by reference to the provider's size, complexity, context and the content of its business plan.³ The guidance (Annex C of the consultation document) provides clarity on how the OfS will assess the governance documents submitted. If we were more prescriptive about the requirements that all providers' governing arrangements, or documents, must adhere to, we would risk unduly restricting the different forms that governance arrangements could take and limit the diversity of the sector.

³ Paragraph 36 of the consultation document.

Two-tier system

21. Implementing initial conditions E7, E8 and E9 will mean that providers registered under these conditions will be subject to different requirements from those applying to providers that were registered under existing requirements. We are not persuaded that such differences are a reason not to implement these new initial conditions, given the protections that they afford students and the taxpayer. We are likely to review our ongoing requirements relating to management and governance in the future.

Alternative proposals

22. We welcome work that the CUC is conducting on governance code reforms, as well as other sector led work being undertaken to improve governance. We will work closely with the CUC, and other relevant bodies as well as higher education providers, students and other stakeholders as we develop our review of ongoing regulation of management and governance, as set out in the paragraph above. However, we also note that the CUC's principles and best practice for good governance in UK higher education institutions are aimed at larger institutions and informed by their experience and role as a representative body. As an independent regulator for the sector, our proposals have been developed to specifically address governance risks across a range of types of higher education provider, drawing on our experience (having registered over 400 providers since 2018) and in anticipation of new risks given the shift in the types of providers applying for registration.
23. With respect to the suggestion that the OfS should engage with providers before we make a refusal decision on registration, it is important to note that in all cases, a provisional decision to refuse an application will be issued to a provider. A provider will then be given 28 days to make representations, submit missing information or address deficiencies in the application before the OfS makes any final decision to refuse the application.
24. We have considered whether to introduce a new step of discussing the provisional refusal decision with a provider prior to issuing this provisional decision to refuse. However, our new arrangements are intended to support and incentivise providers to prepare fully before making a registration application. We are introducing changes to the registration application requirements to provide clarity for providers on what they should submit with their application and guidance for our new management and governance conditions. In addition, we will offer pre-application support to signpost providers to our registration requirements and guidance and provide an opportunity for providers to ask questions or seek clarification. Our view is that an introduction of a further chance for a provider to put things right ahead of making a provisional to refuse could encourage a provider to submit a less developed registration application which would reintroduce inefficiencies and delays in the overall registration process for well-prepared providers.

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

25. We proposed changing how we assess the effectiveness of governing documents at the point of registration. Instead of relying on a provider's self-assessment of how its governing documents uphold the OfS's public interest governance principles, we would directly assess a specified set of governing documents. These documents would primarily focus on the workings of the governing body and associated processes.

Consultation questions

2a. Do you agree with the proposal that there would not be a direct reference to the OfS's public interest governance principles in initial condition E7?

2b. Do you agree with the proposal that initial condition E7 should include a requirement for a provider to have a set of documents which would enable the effective governance of the provider in practice? Please give reasons for your answer.

2c. Do you agree with proposals for the governing documents that would be considered as part of the proposed requirement, and the information these should contain? These are:

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

2d. Do you agree with the proposed requirements for each of the governing documents that would be considered in relation to this requirement? These are:

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

2e. Do you have any additional comments on the proposal?

Decision

26. We have decided to implement the requirements relating to the provision of governance documents as set out in our consultation. As discussed in Proposal 1, these requirements will be set out in new initial condition E7, along with proposals relating to business plans (Proposal 3). We have made additions to the guidance which accompanies the condition to clarify how we will assess situations in which a provider plans to change its governing documents during the course of registration, for example moving from franchise delivery to a

validation partnership. Some other minor clarificatory additions have been made to the condition and guidance and these changes are displayed in Annex A which accompanies this document.

Summary of respondents' views

27. Of the 20 responses received, 13 respondents expressly agreed with the proposals; the remainder were uncertain or didn't express an opinion. From the qualitative comments in the consultation survey responses, the consultation events and written and oral feedback received by sector bodies outside of the survey, the themes set out below emerged.

Public Interest Governance Principles (PIGPs)

28. Of the 14 responses received in respect of this question, eight agreed that there should be no direct reference to PIGPs in E7; one didn't express an opinion or was unsure; five considered that the new initial condition should incorporate the PIGPs for the OfS to evaluate the effectiveness of providers' governance arrangements in upholding these principles at the point of registration, because this was seen as an effective measure to protect students and public funds. One respondent commented that the assessment of PIGPs as an ongoing condition, but not at the point of registration, could lead to confusion.

Requirement for set of documents

29. There was broad support for this proposal. Of the 20 responses received, nine expressly agreed and one partially agreed with the proposal that initial condition E7 should include a requirement for a provider to have a set of documents which would enable the effective governance of the provider in practice. No one stated in their response that they disagreed with the proposal. Two respondents thought that this approach would be less burdensome, more efficient and more transparent for providers than the current approach of self-assessment. One respondent went further and considered that self-assessment had led to the 'mis-registration' of providers. Only one respondent considered that self-assessment should be retained, with documents submitted in support as they felt it was unclear how the OfS would determine which governance documents are less important for initial registration than on an ongoing basis, once registered. Another considered that providing documents only would limit the ability to provide important context which could delay registration or lead to unnecessary refusals.
30. Two respondents, while expressing agreement with the proposal, thought there was potential for conflict between the requirements of the Charity Commission, which is the primary regulator for registered charities, and the requirements of the OfS. Where the Charity Commission is a provider's primary regulator, one respondent argued that the OfS would not be able to set minimum standards for the clarity and consistency of documents as the Charity Commission has different criteria for registration. This respondent argued that the OfS would only be able to work with the governing body documents approved by the Charity Commission which would be insufficient because the Charity Commission does not require its registrants to promote freedom of speech and academic freedom in its governing body documents.

Governing body documents required

31. Of the 13 responses, 11 agreed that we had included the right governing documents within the proposed set to be assessed at registration, one partially agreed, and another was uncertain or unsure. One respondent considered that the definitions of 'governing body documents' and 'risk and audit documents' were very broad and that there should be clear guidance to help avoid the burden on both providers and the OfS that could arise from the drafting, submission, and review of documents that are not required. Another respondent disagreed and suggested that the OfS should retain the requirement for a provider to submit a wider range of governing body documents because they consider it the best way to demonstrate how delegated authority would be delegated and managed within a provider.
32. One respondent noted that some providers may change their governance documents during the course of registration, and it was unclear whether they should submit existing documents reflecting current arrangements, or future governance documents. Another respondent noted that it was undertaking more work on conflicts of interest policies and would be happy to share its work with the OfS.

Proposed requirements for the governing body documents

33. Of the 13 responses to this question, 11 agreed, one partially agreed, and another was uncertain or unsure. One respondent asked how the OfS would assess whether governing body arrangements were appropriate. Another respondent thought that limiting the scope of the governing body documents to the highest tiers of governance may not capture decision-making bodies of providers that are part of larger entities. This respondent also requested more guidance on the types of information that should be evident in the governance documents (aligned to the criteria for assessment). A third respondent did not think the requirements for the governing body documents were clear and considered that this lack of clarity may result in non-compliant applications being submitted and refused. This respondent also suggested that the OfS appeared to have internal criteria for the expected resourcing that would make the documents 'deliverable in practice' which had not been shared prior to registration and encouraged the OfS to do so. The same respondent requested that the OfS provide training for its staff to enable them to make consistent judgements.
34. One respondent noted that any attempt by the OfS to prescribe the size and skills of governing bodies would be unwelcome and would fail to recognise the diversity in the sector and the need for diverse governance arrangements.

Alternative proposals

35. Two respondents made alternative proposals for the governing body documents required. One respondent considered that the conflict of interests policy should include a detailed list of executive management, senior management and governors' outside interests and links – especially financial links and activities, and to local, regional and national organisations. Another respondent suggested that risk documents could also include an assessment of opportunities and a statement of risk appetite/evaluation and that providers could submit assurance and accountability mapping.
36. Two respondents made suggestions in respect of the proposed requirements for governing body documents. One of these suggested that the OfS needed to have an independent complaints process for those in the registration process as their view was that judgements

can be highly subjective. Another respondent requested templates and further guidance to support new providers.

Our response

Public Interest Governance Principles (PIGPs)

37. As we explained in the consultation, the new initial condition is intended to strike a balance between making the assessment process more streamlined for well-prepared providers, while ensuring that we are able to identify and refuse registration to providers that are not ready. Requiring providers to submit all the governing documents, to demonstrate that all PIGPs are being upheld, would likely involve the submission of a large number of documents and would create burden for providers for the purpose of registration. Although one respondent has noted the importance of PIGPs in protecting students and public funds, other parts of these proposals in this document set out how we intend to strengthen these protections. We are not proposing to make changes to the ongoing conditions of registration that relate to the PIGPs, given the importance of these for students and taxpayers. Therefore, a provider will still need to have all necessary documentation in place at the point of registration to comply with ongoing conditions E1 and E2, including as these relate to the PIGPs.
38. We have also considered the comment that it is confusing that the governing body documents are not assessed for compliance with the ongoing requirements relating to upholding and delivering in practice the PIGPs (see ongoing conditions E1 and E2) at registration. Our position is that this approach is proportionate. At registration, we will focus on whether a provider has the necessary structure and capacity to meet its ongoing obligations, rather than conducting a line-by-line assessment of every governing document against the ongoing requirements. However, if we have material concerns that the way in which a provider is being run or is proposed to be run is incompatible with the PIGPs, it will be highly likely that a provider would not meet the business plan requirements discussed below and in this case the application will be refused. To clarify this position and reduce any potential for confusion, we have made minor additions to the guidance.

Requirement for set of documents

39. We were pleased that most respondents supported this proposal. In response to the comment by one respondent, that the OfS should retain the requirement for a self-assessment, we note that the proposed condition sets out which documents are required by the proposals, and the consultation document clearly explains the reasons for moving away from a self-assessment. Further, as set out paragraph 20 above, the OfS's assessment will take into account the context of the provider, and our guidance makes clear that we may request additional information or documentation as appropriate.
40. We have reflected on the comments made by the respondents and explored whether there could be a conflict with the requirements of the Charity Commission as a primary regulator of registered charities. Where a provider is required to register with the Charity Commission, it is required to produce governance documents to demonstrate its charitable purposes, any provisions affecting how its assets and property can be used and applied, amendment and dissolution provisions. For a registered charity (and some exempt charities) the Charity Commission would normally need to approve any changes to these documents but may not approve other changes.

41. For providers established in England with charitable purposes, which are exempt from registration with the Charity Commission, the OfS has a duty to promote compliance with charity law by these providers. However, the OfS has its own distinct regulatory requirements for higher education providers, which providers must uphold on an ongoing basis and relate to our duties as the regulator for higher education. We, and the Charity Commission, do not consider there to be a conflict between the two sets of requirements. Rather, the OfS's expectations are additional and specific to the context of higher education.

Governing body documents required

42. We have carefully reflected on the clarity of the documents required and consider that 'governing body documents' and 'risk and audit documents' are clearly and appropriately defined with adequate supporting guidance. We set out what the conflicts of interest policy and risk and audit documents should contain as a minimum, leaving flexibility for the providers to develop their documents beyond these minimum requirements, in accordance with the context in which they operate.
43. In response to the suggestion that additional documentation is needed to demonstrate the implementation and management of delegated authority, we consider that condition E7 already provides for this. In particular, the guidance outlines that the governing body documents should demonstrate whether the governing body has delegated decision making to suitable individuals, whether governing body oversight of delegated decision making is appropriate and if it has delegated risk and audit functions to a separate committee.
44. In response to the respondent who asked for further clarity on the set of governing body documents required in circumstances when the governance of a provider changes during the registration process (e.g. from a franchise to a validated partnership), we would expect a provider to submit the documents which reflect the arrangements it intends to conduct once registered. Where documents are not yet in use, a provider should submit the drafts that it intends to adopt upon being successfully registered, along with clarification about how and when it intends to adopt them. We have changed the guidance in Annex A to make this clear.
45. **Proposed requirements for the governing body documents.** We consider that we have clearly set out the criteria that we will use to assess the appropriateness of a provider's governing body documents – the detail of that criteria can be found in paragraphs 6-19 of the guidance which accompanies initial condition E7 (Annex A). The guidance makes clear in several places how we will assess whether the set of documents submitted at registration will enable effective governance of the provider 'in practice'. This includes:
- taking into consideration the size of the governing body
 - arrangements for reviews of the governing body
 - whether the governing body has delegated decision-making arrangements to suitable individuals
 - whether governing body oversight of delegated decision making is appropriate
 - if the governing body has delegated risk and audit functions to a separate committee

- how the governing body will ensure its risk and audit functions will be discharged and ensure it has appropriate oversight.
46. We have clearly set out the criteria we will use when assessing this aspect of the condition in both the condition and the guidance, and we do not have any additional criteria beyond what has been included in the condition or guidance.
 47. We have also considered the point raised that the documents providers are required to submit may not, in all cases, capture the full range of decision-making bodies within providers that have more complex governance structures. However, we consider that where providers clearly set out their delegation arrangements and provide appropriate contextual information to explain their internal structures and decision-making processes, we will be able to assess compliance with the condition effectively.
 48. As set out previously, the OfS staff will receive appropriate training in respect of the new registration process and initial conditions. We also have quality assurance and review processes in place to ensure consistent judgements are made, and that particular scrutiny is applied where a recommendation is negative to ensure any provisional or final decision to refuse recommendation is robust.

Alternative proposals

49. We have considered the suggestion that the conflicts of interest policy should also include a detailed list of executive management, senior management and governors' outside interests and links. Our view is that, where a provider can demonstrate that the governing body documents outlined in the proposal meet the requirements of the condition, the governance structures in place should be adequate to manage any potential conflicts of interest. Furthermore, the fit and proper assessment under condition E9 requires a provider to make judgements about whether relevant individuals are fit and proper for the purposes set out in the condition, and the OfS will then evaluate how effectively a provider does this. This provides an additional safeguard where concerns about individuals' fitness and propriety, due to the existence of conflicts, may arise.
50. We have also considered the suggestion that risk documents should include an assessment of opportunities and an assessment of risk appetite or assurance and accountability mapping. While we agree that these elements are useful tools in assessing and managing risk, we consider that providers should have flexibility to manage their own approach to risk documentation. We do not think it would be appropriate or proportionate to use a 'one size fits all' approach in this regard as it may increase burden unnecessarily for providers that do not already use this precise approach to managing risk.
51. We have considered the suggestion that the OfS set up a separate independent complaints process for registration. We consider that this type of complaints scheme is not necessary and the administrative burden, cost and potential delay to the registration process of setting this up would not be a proportionate use of our resources. In the event that we are minded to refuse a provider's registration, a provider is given the opportunity to make representations on that provisional decision, as set out in section 4 of the Higher Education and Research Act 2017. Additionally, established routes for judicial review remain available to a provider, should it wish to contest the outcome through the courts. Separately, the OfS complaints team will

consider complaints relating to treatment by OfS staff, for example if they have behaved in an unprofessional way or if they have handled contact with an external party inappropriately.

52. We will keep under review whether further templates and guidance are needed in future.

Decision on Proposal 3: A clear and comprehensive business plan

53. We proposed requiring a provider to present a clear and comprehensive plan for how it will operate at the point of registration. This plan would describe the provider's business, and set out its objectives over the medium term and its strategy for achieving them. The plan would also set out how the provider will comply with the ongoing conditions of registration.

Consultation questions

3a. Do you agree with the proposal that initial condition E7 should include a requirement for a provider to have a business plan which describes the provider's business, sets out its objectives over the medium term, and its strategy for achieving them?

3b. What is your view of the proposed requirements of the plan?

3c. Do you agree with the proposal that the business plan should cover a five-year time period?

3d. If you think another time period is more appropriate, please explain what this time period is and why?

3e. Do you agree with the proposed approach to considering a provider's ability to deliver its business plan in practice?

3f. Do you agree with the proposal that the business plan should include significant consideration of the interests of students? Please give reasons for your answer.

3g. Do you agree that requiring a provider to set out its plans for ensuring compliance with the OfS's ongoing conditions of registration would provide assurance that the provider is adequately prepared to deliver higher education and has an understanding of the regulatory requirements?

3h. Do you agree with the proposed information that would need to be included in the business plan?

3i. Is there any additional information you think should be included as part of the business plan?

Decision

54. We have decided to implement the entry requirements relating to the business plan as set out in our consultation. We have amended the guidance in Annex A to include a description of the provider's employer base where employer-funded courses are identified in the business plan. We have included additional guidance to require an explanation of any additional regulatory processes that need to be completed. Some other minor changes to the guidance have been made for clarity and consistency.

Summary of respondents' views

55. We have analysed responses to our consultation, feedback provided at the consultation events and written and oral feedback received by sector bodies outside of the survey, the themes set out below emerged.
56. Of the 20 responses received, 10 respondents agreed with the proposals, one partially agreed, one disagreed and the remainder didn't express an opinion or were unsure but made comments which related to both question 3a and 3b.

Requirements of the plan

57. Respondents who agreed that the proposed business plan requirements would be the minimum content of a plan for any registered providers considered that the proposed requirements were sensible and that the requirements clearly demonstrate the OfS's expectations and therefore should facilitate an efficient registration process. The one respondent who disagreed with this requirement considered that it shifted the requirements for registration from quality and standards to financial sustainability, which may alter as the sector changes. This respondent also wanted assurance that the OfS has expertise to make fair and reasonable judgements about business plans.
58. Comments from individual respondents included:
 - a. One respondent suggested that delays to the registration assessment could result in business plans becoming out of date and therefore delays should be minimised.
 - b. Another respondent thought that 'professionally written' plans (referred to in paragraph 56 of the consultation document) gave the impression that providers need external professional consultancy in developing their plan, adding to the cost of registration. The respondent suggested choosing alternative wording such as 'competently' or 'proficiently'.

Business plan to cover a five-year period

59. Of the 11 responses to this question, seven agreed, three disagreed, and the remainder didn't express an opinion or were unsure. All three respondents who disagreed considered that forecasting beyond year two may be difficult because of changes in the external environment, and one respondent suggested a two-year plan was more appropriate because of this. Another respondent suggested that the level of detail expected in years four and five could be reduced. One respondent also noted that there is uncertainty about how long OfS registration might take and suggested that consideration should be given to the level of detail expected in the plan for years four and five. This respondent also requested greater clarity on registration timelines, to support providers in planning their student recruitment activities – particularly where its planned recruitment activity is contingent on successful OfS registration. The respondent encouraged the OfS to work closely with sector partners – such as the Student Loans Company (SLC), UK Visas and Immigration (UKVI) and the Department for Education (DfE) – to provide information on timelines for related processes such as accessing student loans and applications for student sponsor licences, to ensure these are clear and easily understood. They also suggested 'example provider journeys are provided'.

60. One respondent sought clarification on whether the business plan should pertain to the provider itself or to its parent company, in cases where the provider operates under a parent organisation.

Ability to deliver the business plan in practice

61. Of the 12 responses we received to this question, 10 agreed, one broadly agreed, and one disagreed. The respondent who disagreed with the proposal made the following comments:
- a. A request for further information about the 'other factors' referenced in the guidance to E7.5b and E7.6 that the OfS would consider to determine the provider's ability to deliver the business plan.
 - b. The length of the registration process means that the OfS registration assessor can sometimes change during the process and that the new assessor may take different views, resulting in inconsistency of assessment.
 - c. Delays in achieving registration can mean providers recruit staff before they are needed.

Business plans should include significant consideration of the interests of students

62. Of the 12 responses we received to this question, 10 supported the proposal, two agreed (with caveats – see paragraph below), and one disagreed. Respondents who supported the proposal commented that consideration of the interests of students should be at the forefront of business planning given that they are the primary stakeholder for all providers, and that this was particularly important for providers that may be adopting a high-risk business model. The respondent who disagreed considered that the proposal conflated strategic educational mission with a business plan and would confuse students and be a burden for providers.
63. One respondent who caveated their agreement considered that the question of student interest is best addressed in other processes, for example through an assessment of the quality conditions. With this approach, the risks (as outlined in Annex D of the consultation document) to quality and standards, recruiting students from underrepresented groups, and reliance on validation partners for awarding qualifications, could be addressed in a provider's quality plan and processes, not necessarily in the business plan. While this respondent supported the assessment of commercial objectives proposed, they considered this could lead to potential conflict with the interests of students and provided examples of this. The other respondent considered that providers whose higher education provision is a small part of their total business should be required to provide a separate business plan and audited accounts for the educational part of this business. This respondent considered this is necessary in cases where the object, value and financial considerations of the primary business is not educational or directed towards the student benefit.
64. One respondent, who agreed with the proposal, suggested that the requirement should be strengthened to require providers to state how they seek to ensure that the governing body directly engages with students' interests in line with the governance code they have chosen to follow. The respondent suggested several ways of achieving this, for example ensuring that there is sufficient and effective student representation on the governing body, as well as clear mechanisms for wider reporting on students' interests to form part of the governing body's cycle of business.

Requiring a provider to set out its plans for ensuring compliance with the OfS's ongoing conditions

65. Of the 11 responses received, nine agreed, one didn't express an opinion or was unsure, and one disagreed. Respondents who agreed with the proposals commented that providers seeking registration should be able to demonstrate that they understand the OfS's regulatory requirements and have plans for meeting those requirements. This would show a provider's commitment to delivering high quality higher education in the interests of students in a sustainable manner.
66. The respondent who disagreed considered that the business plan is not the appropriate place for articulation of how the provider will meet ongoing conditions of registration. In the respondent's view, the quality plan (condition B7) fulfils this function with its focus on how providers will or do deliver higher education (there is an assumption in this question that the provider does not already deliver higher education).

Proposed information to be included in a business plan

67. Of the 12 responses received, nine agreed, two disagreed (without comments), and one didn't express an opinion or was uncertain.
68. One of the respondents who disagreed considered that the proposed information was too detailed, and the other respondent noted that it was not appropriate for the business plan to articulate how the provider will meet the ongoing conditions of registration as the quality plan required under condition B7 fulfils this function. This respondent also suggested there should be clear assessment criteria for what amounts to 'coherent and consistent', in OfS guidance.

Further comments

69. One respondent commented that any changes involving policy should give sufficient time for providers to consider the actions needed. This would be particularly relevant for larger higher education institutions, where there are a number of routes and processes that need to be followed in order to make a policy change – these can include consultation with internal and external bodies. If a provider does need to make a change involving policy, and the timeline is not sufficient, there should be a case-by-case extension period to allow those processes to be followed.

Alternative proposals

70. Some respondents suggested a shorter period for business plans of four years to align with normal business planning. Three others suggested a three-year period (one reason provided was to align with undergraduate cycles); one respondent (as above) suggested a two-year plan. Another suggested business plans should be reviewed at years 3, 5 and 10 to ensure value for taxpayers' money and accountability. Another considered two business plans should be submitted, one five years from application and another five years from registration.
71. One respondent considered that providers should state how they seek to ensure that the governing body directly engages with students' interests in line with the governance code they have chosen to follow. They suggested this could include ensuring that there is sufficient and effective student representation on the governing body as well as clear mechanisms for wider reporting on students' interests to form part of the governing body's cycle of business.

72. Another respondent suggested that the OfS could also require evidence that the business plan has been discussed and agreed by the governing body.
73. One respondent recommended that the following additional information should be included in the business plan:
- A description of a provider's employer base, where employer-funded courses are identified in the business plan.
 - Under 'Description of the provider's higher education competitors', an analysis of demand from students or employers as this would be relevant to most new providers entering the higher education sector but facing some competition.
 - A description of a provider's current and planned academic partnerships, including any anticipated changes. This was seen as important for providing context to changing governance structures or quality provisions. It was suggested that the OfS should request a transition plan for any change in partnerships – including a franchise moving to validation and a provider applying for degree awarding powers following registration.
 - Under 'The provider's strategy for achieving its business objectives and targets', the respondent thought that the OfS should require providers to identify any additional regulatory processes they need to complete and the strategy for meeting other regulatory requirements. For example, if a provider proposes to introduce new apprenticeships but the register for apprenticeships is not open for new entries except in specific circumstances, their strategy to do this should be assessed.

Our response

Requirements of the plan

74. We consider that strong management and governance are fundamental to both financial sustainability and the maintenance of high quality and standards in higher education and are pleased to have the support of most respondents for our proposals. The business plan requirement plays a key role in assessing a provider's ability to understand the sector, plan and implement its strategy effectively, protect the interests of students and undertake its regulatory obligations once registered. Strong performance in these areas support long-term financial health and educational quality. While we have separate conditions of registration that examine financial sustainability and quality and standards in greater detail, the business plan offers an important, early indication of a provider's overall capability to deliver on these outcomes.
75. Delays to registration are often caused by poorly prepared registration applications which impact the efficiency of the OfS assessment process. The proposal to replace self-assessment with the requirement for the provider to have set of specified documents in place should mitigate the risks of delay which render a business plan out of date.
76. We confirm that our expectations are that the plans are written proficiently – not that providers need to procure the services of external consultants. Elsewhere in the consultation document, specifically in respect of Proposal 4 (Key individuals have sufficient knowledge and expertise), we explain the risk that the use of external consultants or third parties can, in

some circumstances, mask a lack of knowledge and experience of key leaders – which can cause problems post-registration. We agree that the phrase ‘professionally written’ could cause a provider to consider that it needs to outsource the writing of the plan in some cases and this is not included in the condition or guidance.

Business plan to cover a five-year time period

77. Our aim in requiring the plan to cover a five-year time period is to ensure a provider has made sufficiently detailed plans over the medium term. We consider this length of time will allow a provider to sufficiently set out its intended course of direction, and therefore demonstrate key strategic objectives and targets, and consideration of associated risks. A five-year period also aligns with the period over which financial forecasts and information are required for a newly established provider (that does not have audited financial statements) under condition D. To produce these forecasts, we consider that the provider will have needed to undertake a sufficiently detailed level of planning over this period. We therefore consider that aligning the business plan to the same period will reduce additional burden arising from this proposal. Our view is that a shorter period would not provide a sufficiently long-term view of a provider’s aims to enable it to illustrate its plans for change and therefore demonstrate that it has undertaken sufficient planning and is appropriately managing risks.
78. We acknowledge that there may be more uncertainty in a provider’s forecasts for years 4 to 5 of a business plan. We do not expect a provider to seek to change its entire plan if there were minor changes to its plans. However, we do expect a provider to notify us of any material changes to its business plan, such as changes to its business objectives and targets in response to unexpected change in the sector, changes to significant elements of its business plan, changes to the relevant risks or to its ability to deliver its business plan during the registration period. In response to comments made in the consultation, we have made changes to the guidance to provide additional clarity on the changes that need to be reported to the OfS during the application process in Annex A. A consequential amendment has been made to Part 3, Reforms to registration, Proposal 4: ‘Reporting specified matters that affect an application to register’, to add this new matter to the list of matters a provider applying for registration must report to the OfS during the registration process.
79. As proposed in Part 3 of the consultation: ‘Proposals for changes to registration application requirements application requirements’, the timeline for registration has been streamlined to remove the initial period of up to three months for a provider to amend its application after initial submission. Instead, we are establishing clear and precise submission requirements for providers seeking registration, which we will publish alongside these consultation outcomes. This, combined with new guidance which illustrates the process of a registration assessment, should help providers to time the submission of their applications accordingly. This should mitigate the concern expressed by one respondent about the need to improve information on timelines.
80. Further, as set out previously, we will be providing support to applicants if they want to discuss the timing of their applications. We consider that this would be more helpful to providers than mapping out specific timeframes. However, we will keep this under review and may consider developing such guidance at a later stage if there is evidence that it would add value. Timescales for related processes referred to by the respondent such as accessing student loans and applications for student sponsorship licences will be provided by relevant bodies.

81. In response to the respondent who asked whether the business plan should pertain to the provider itself or to its parent company we would like to clarify that the plan should apply to the legal entity that is registering with the OfS.

Ability to deliver business plan in practice

82. Our proposed approach to considering the ability of a provider to deliver plans in practice mirrors our consideration of the quality plan a provider must submit in relation to initial condition B7 – where credibility of the plan is assessed by reference to whether a provider has the capacity and resources to deliver it in practice.⁴ When considering a provider's ability to deliver its business plan for initial condition E7, we will give significant consideration to the capacity and resources available to deliver the plan but other factors will also be taken into account. These other factors will include matters such as, whether the student recruitment targets are realistic, given the market conditions and whether any other targets in the business plan are realistic. Condition E7.9.c sets out the main factors the OfS will take into account when assessing capacity and resources, which include (but are not limited to) the financial resources of the provider, the number, expertise and experience of the staff (current and anticipated) and the provider's management and governance arrangements.
83. We do not agree with the view that changes in the OfS assessor during the registration process do or could result in a lack of consistency in the assessment of capacity and resources. We have processes in place to ensure a detailed handover to new assessors. We also have quality assurance and scrutiny processes to ensure consistent judgements are made by different team members. This proposal has been designed to create more consistency between providers' business plans for the purpose of registration, with clear requirements and definitions provided.
84. In relation to the comment that a provider could recruit staff too early due to uncertainty about the registration timeline, we encourage providers to consider the timelines outlined in Regulatory advice 3⁵ and to determine for themselves when it is appropriate to recruit relevant staff. In our experience, the majority of delays, and therefore uncertainty about timelines, are caused by poor quality applications. The changes we are introducing are designed to address this. We are open to engaging in discussions with providers to help inform their recruitment decisions.
85. As is the case for assessment of a provider's set of governing documents, we are proposing that our judgement of whether a provider has the ability to deliver the arrangements and activities set out in its business plan may, in part, be informed by communications with key individuals in a provider's senior management and governing body, and assessments of those individuals' knowledge and expertise. For more information around these proposed tests of key individuals, see Proposal 4.

Business plans should include significant consideration of the interests of students

86. We do not agree that the assessment of the B conditions alone would be sufficient to assess the ability of the provider to consider, respond and act in the best interest of students. Instead, we agree with the majority of respondents who commented on these proposals, that

⁴ See OfS regulatory framework, Condition B7: Quality - Office for Students.

⁵ See Regulatory advice 3: How to register with the Office for Students – Office for Students.

this is appropriate to protect students where providers make a decision to adopt high-risk business models without ensuring students are protected from potential detriments arising from those approaches. We would expect to see the interests of students feature as a primary consideration in the business plan that sets out a provider's overarching purpose, its planned activities, targets and risks. Where a provider is also pursuing commercial objectives, which have the potential to conflict with the interests of students, we would expect it to demonstrate awareness of the potential risks, and to have given thorough consideration to how any such conflicts will be managed. These are minimum requirements, which allow a provider the freedom to explore how it can best consider the student interest in its business plans.

87. We agree with the respondent who considered that organisations whose primary business is not higher education must provide a separate business plan and audited accounts for the educational component of their business. For the avoidance of doubt, this is required by the condition and explained in the guidance. We have not prescribed how providers should state how they seek to ensure that the governing body directly engages with students' interests, as we want providers to have the flexibility to determine how they can best achieve this given the diversity in size and shape of providers.

Compliance with ongoing conditions

88. It is important that a provider seeking registration has sound understanding of the ongoing conditions of registration and has plans in place to ensure that it complies with these conditions. As set out in the guidance, when assessing this requirement the OfS will pay particular attention to whether the business plan accounts for compliance with the ongoing conditions of registration in a credible way that is likely to achieve ongoing compliance in practice. This is essential to ensure providers are sustainable and to avoid risks to students and creating a drain on the resources of both the provider and the OfS in the event of non-compliance. We therefore consider this to be a critical part of the business plan requirements.
89. Where the provider's business plan (or other information submitted by the provider) indicates that the provider is clearly at significant risk of breaching the ongoing conditions, this is likely to be indicative that the provider's business plan does not meet the requirements of E7 in relation to ongoing conditions of registration – for example, because it would not demonstrate that the provider has a sound understanding of the requirements imposed under the ongoing conditions of registration, and the risks of non-compliance with those conditions.
90. We have considered the comment raised by a respondent that we should rely on the quality plan, under condition B7, in respect of future compliance, but note that this condition focuses on future compliance with the ongoing quality conditions rather than all ongoing conditions.

Proposed information to be included

91. We note that the majority of respondents supported our proposals here. We consider that the information requirements are appropriate and have set out how we will assess business plans and when we are likely to judge that a plan is not consistent or coherent in the guidance (paragraph 28) and consultation document (paragraph 56, third bullet).

Further comments

92. We acknowledge one respondent's concern regarding the time required to implement policy changes, particularly within larger higher education institutions where internal and external

consultation processes may be necessary. However, we would like to clarify that this requirement applies only to providers seeking registration with the OfS. If a provider feels that additional time is needed to meet the requirement, they have the option to delay their application until they are ready to proceed. If the respondent's comment was instead referring to any potential future application of this requirement to already registered providers, a full consultation would be undertaken if we were considering any such changes.

Alternative proposals

Business plan to cover a five-year period

93. We have considered the alternative proposals of reviewing business plans at years 3, 5 and 10 and that applicants should provide two business plans: one covering the period of five years from the point of application and another five years from the point of registration. However, as stated above, we have specifically suggested that the plan covers a five-year period to align with the financial forecasts and information requested from newly established providers under condition D, which would minimise any additional burden. This meets our policy objective for a provider to undertake a detailed level of planning over this period. Given we will be assessing the business plan provided by a provider as part of its registration, we think there would be in most cases only marginal benefit to requiring a separate business plan from the point of registration.

Significant consideration of the interests of students

94. We agree with the suggestion that the governing body directly engages with students' interests, and note that condition E7.7 includes a requirement for providers to demonstrate that it has given significant consideration to the interests of students E7.7.

Governing body agreement

95. As the application is submitted on behalf of the governing body, we would expect the governing body to have been involved in discussions and to have agreed the registration application – including the business plan – in principle (even if it had not agreed all the details or underlying documents and information), alongside the other documents submitted as part of the application. As set out in Proposal 4, we would expect the chair and independent member of the governing body to have a sound understanding of the business plan. Having reflected on this comment, we have decided, for the avoidance of doubt, to make this expressly clear in Regulatory advice 3.

Additional information to be included in the business plan

96. We have considered the suggestions that providers business plans should include some additional information or clarifications, and we have made some changes as a result. We agree that it would be helpful to include further guidance on the meaning of the provider's employer base where employer-funded courses are identified in the business plan. We have reflected this change in the guidance in Annex A.
97. We consider that it is not necessary to require a provider to include a description of its current and planned academic partnerships (including anticipated changes) is not necessary, as this is already a requirement under condition B7 (quality plan) which must be submitted as part of the current and new registration requirements, as set out in the section 3(5) notice. We agree that an explanation of any additional regulatory processes that need to be completed, and the strategy for meeting those regulatory requirements, would be helpful additions. We have clarified this position and included such a scenario in the guidance in Annex A as an example

of a strategic objective that should be outlined by providers. The other recommended change is to include a description of a provider's higher education competitors. Proposed condition E7.B5d already requires the business plan to include the provider's business competitors and E7.B5e vi. requires the provider to set out its likely business competitors; therefore, this change is unnecessary.

Decision on Proposal 4: Key individuals have sufficient knowledge and expertise

98. We proposed requiring a defined set of 'key individuals' to be able to demonstrate that they have sufficient knowledge and expertise to ensure the provider, if registered, would be able to comply with the conditions of registration, deliver its business plan, and deliver its arrangements for preventing fraud and protecting public funds.
99. We also proposed that we would normally assess the knowledge and expertise of these individuals via an interview.

Consultation questions

4a. Do you agree with the proposal that initial condition E7 should include a requirement for key individuals to have sufficient knowledge and expertise to ensure the provider, if registered, would be able to:

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

Please give reasons for your answer.

4b. Do you agree with the proposed knowledge and expertise requirement for each of the individuals that would be covered by this test? If you think there are any requirements that should be added or removed, please explain your reasons.

4c. Do you agree that holding interviews with key individuals would be the most efficient and effective way of testing this requirement?

4d. Do you have any additional comments in relation to this proposal?

Decision

100. We have decided to implement the requirements relating to knowledge and expertise of key individuals broadly as proposed. We have made changes to provide greater clarity on the knowledge requirements that apply to the chair and independent member of the governing body, to clarify the knowledge level intended. These requirements are set out in initial condition E9 which has been published alongside this document in Annex C. We have also made some changes to the guidance in response to respondents' views including providing more guidance on how the interview process will work in practice.

Summary of respondents' views

101. We have analysed the qualitative comments in the consultation survey responses, the consultation events and written and oral feedback received by sector bodies outside of the survey. Several respondents provided similar responses across all of the questions.

Test of individuals' knowledge and expertise

102. Of the 15 respondents who responded to this question, 13 agreed with the need to assess the knowledge and expertise of key individuals at registration, one disagreed but did not provide further explanation and one didn't agree or disagree.
103. Two respondents asked what would happen if an individual failed an interview, whether feedback would be given, and to whom, and whether one individual's failure at interview would lead to a registration refusal.

Specific knowledge and expertise requirements

104. In response to the question about whether the test covers the correct knowledge and expertise requirements for each individual, we received mixed views across 10 responses. Seven respondents agreed with the proposal, two disagreed and one did not offer an opinion.
105. One respondent thought that there was a lack of clarity on the meaning of 'sound understanding' and that there were some inconsistencies in the language used in the consultation to describe the lower level knowledge requirements in some places.
106. One respondent thought that the OfS needed to be clear on whether we require the key individuals to be different people or if the role can be fulfilled by one person. If they are the same person, then the respondent considered that it would be appropriate to interview multiple people anyway and also considered that the OfS should reinterview if there were relevant personnel changes.
107. Some respondents thought that the knowledge and expertise requirements were too rigid and did not account for the varying size and complexity of different providers. One respondent suggested that senior leaders in large institutions are less likely to be familiar with operational details, which could unfairly disadvantage them at interview. Another respondent argued that sometimes the vice-chair shares responsibility with the chair in providers such as those who are part of a larger organisation which conducts other business.

Interviews

108. In response to the question about whether an interview is the most efficient and effective way of testing this requirement, seven respondents disagreed and six agreed. The points raised by respondents are included in the paragraphs below.
109. Some respondents were concerned that the interview process would create significant additional work for the OfS and impact providers in the following ways:
- a. One respondent speculated that the OfS might increase registration fees to cover the cost of the interview process.
 - b. Other respondents commented that interviews could lengthen the registration process.

110. One respondent commented that the guidance to the condition states that interviews would “normally” be used to assess knowledge and expertise and sought clarification on the scenarios in which an interview would not be conducted.
111. Respondents asked how OfS assessors would be trained to ensure that consistency of interviewing and decision-making is maintained.
112. Two respondents thought that fixed questions were necessary for fairness, while another respondent argued that a fixed question approach would undermine the purpose of interviews.
113. The interview format was criticised by one respondent as having “the lowest validity measure to assess performance”.
114. One respondent argued that while the proposal aims to prevent consultants from masking a lack of knowledge and expertise within providers, consultants could simply coach individuals to pass interviews.
115. One respondent raised concerns that 30-60 minutes would be insufficient to test knowledge and expertise.
116. One respondent raised concerns that an interview format could add unnecessary anxiety or jeopardy to the registration process and argued that a different method, such as a two-way dialogue, could be more appropriate (particularly in light of recent reforms by Ofsted).
117. Another respondent strongly agreed with the interview process for testing key individuals but argued that, where there is a reliance on individuals on the governing body to provide necessary expertise, the OfS should require a clear recruitment plan to replace individuals who leave the roles – especially where these roles are unremunerated.

Alternative proposals

Alternative individuals to be interviewed

118. Instead of an independent member of the governing body, one respondent suggested using the chair of the audit and risk committee, given their oversight role. Another respondent commented that the OfS should add the person responsible for the delivery of the business plan as a key individual because they would have significant expertise in that specific area.

Collective accountability and skills matrix

119. Three respondents supported the principle but thought the test should apply to the governing body or executive leadership as a whole, rather than to specific individuals. These respondents considered that a diversity of skills and accountability across senior management and the governing body is important to ensure that there is a lower risk of reliance on key persons. Three respondents suggested that a skills matrix be used to assess knowledge and expertise across the governing body and executive leadership in line with this principle.

Dialogue-based approach

120. Two respondents suggested replacing the interview with a more collaborative dialogue to build a holistic understanding of the provider’s structure; one of the two felt there should be no formal test as an outcome of the dialogue.

Interview fewer individuals

121. One respondent suggested that the OfS should interview fewer individuals (e.g. principal and finance director) and create a threshold for other roles based on an evaluation of the documentation provided, to lower burden for the OfS and reduce the likelihood of delays to registration.

Document-based assessment

122. One respondent stated that providers should be able to demonstrate compliance through documentation, qualifications, or paper-based checks, without requiring interviews. Another respondent disagreed and felt that interviews are a way of mitigating the risks posed by the move to a more document-based approach across the other proposals. The risks identified by this respondent included providers copying documentation from registered providers or being unable to implement the promises of the documentation in practice. This respondent felt that these risks to the reputation of the sector would be unacceptably high.

Additional comments

123. One respondent proposed applying the test to all providers – registered and unregistered – each time a new governing body member is appointed.
124. One response highlighted that, in some cases, small and specialist providers may have difficulty in recruiting diverse and skilled members of the governing body. This respondent also expressed their opinion that boards should be small and have limited membership.
125. One respondent noted that there may be scenarios in which a single individual is fulfilling all the key individual roles within a provider. In such cases, the provider may engage external consultancy support to assist with the registration process. The respondent suggested that it would be helpful for the OfS to agree a clear registration timeline, so that the individual can plan appropriately – both in terms of transitioning responsibilities from the consultants and in beginning the recruitment of staff to fill the key individual roles on a permanent basis. The respondent considered that this would allow the provider to have the individuals in place and for the OfS to interview key individuals at an appropriate time.

Our response

Test of individuals' knowledge and expertise

126. In response to comments about the practical application of the interview process, we have produced additional guidance.⁶ This guidance sets out how the evidence gathered at interview will feed into our wider application assessment process. We do not intend to communicate 'pass' or 'fail' outcomes of interviews, but where the evidence collected from interviews informs an assessment that we are minded to refuse an application, or impose a specific condition of registration, this will be shared with the provider and they will be able to respond to it, in line with the wider application assessment process. The guidance also clarifies that we normally expect to interview all key individuals but will make this decision on a case-by-case basis.

⁶ See Annex R, Guidance for providers on the interview process, at [Supporting documents - Office for Students](#).

Specific knowledge and expertise requirements

127. The following definitions for the knowledge and expertise requirements set out in the condition and accompanying guidance will be used in our registration assessments:
- a. 'Sufficient awareness' refers to a broad, high-level knowledge of relevant requirements, plans, policies, or other listed matters. It does not require detailed subject knowledge of, or familiarity with, the operational steps necessary to ensure compliance or deliver plans.
 - b. 'Sound understanding' of a subject sets a higher bar. It includes the broad, high-level awareness described above but also requires more detailed knowledge including, where relevant, some understanding of the practical, operational detail.
128. We consider that these definitions are clear and consistent, and providers should refer to them when interpreting the knowledge and expertise requirements. We have made some small changes to the condition to improve clarity of the requirement on the chair and independent member of the governing body. This change clarifies that the Chair and the independent member require only sufficient awareness of the provider's student cohorts.
129. In response to the comment raised relating to whether one individual could fulfil all key roles, we note that the condition itself does not prohibit individuals from holding multiple roles. However, providers should be aware that the role of accountable officer (AO) is not compatible with that of an independent member of the governing body. These two roles are mutually exclusive and combining them would conflict with the requirements set out in the OfS's regulatory advice.⁷ For any other combination of roles, providers should ensure that there is no conflict with the AO requirements outlined in Regulatory advice 10 and should refer to PIGP requirement XI for further guidance. More broadly, while combining multiple roles may be permissible, we consider that doing so can increase the risk of oversight failures, reduce the diversity of skills and experience, and weaken the separation of responsibilities that supports effective scrutiny and accountability. For these reasons, we think such arrangements are only likely to be appropriate in particular circumstances.
130. In response to the suggestion that the OfS should interview multiple individuals even where one person is fulfilling several roles, we clarify that the condition requires each key individual to demonstrate the necessary knowledge and expertise relevant to their role. Where an individual holds more than one role and can clearly meet the knowledge and expertise requirements for each, this element of the condition would be satisfied. There may be circumstances where responsibilities, such as overarching responsibility for the management of a provider's financial affairs, are split across multiple individuals. In such a scenario, we would expect to interview all individuals who fulfil the responsibilities of that role, as set out in the condition. We agree that if there are changes to key individuals during the registration process, additional interviews would be required with any new postholders.
131. We acknowledge the concern raised by one respondent that senior leaders in larger institutions may be less familiar with day-to-day operational details. We want to reassure providers that the interview process will not assess individuals on operational minutiae, but on knowledge that is integral to their strategic and governance responsibilities. We consider that

⁷ See [Regulatory advice 10: Accountable officers. Guidance for providers on the responsibilities of accountable officers - Office for Students](#).

the knowledge requirements should apply to key individuals at all providers, regardless of their size or structure. These requirements reflect what we view as a minimum level of knowledge necessary to ensure effective governance and management. They are not intended to test detailed operational knowledge but rather focus on the core understanding that underpins sound leadership and oversight.

Interviews

132. We acknowledge the concerns raised regarding the potential resource implications for the OfS associated with conducting interviews and we have taken this into consideration in our response set out below and in the operational guidance.⁸ We still consider that interviews with key individuals are the most effective and reliable method for assessing whether those individuals possess the knowledge and expertise required to enable the provider to comply with ongoing conditions of registration, deliver its business plan, and implement effective arrangements for preventing fraud and protecting public money. We acknowledge that introducing these interviews creates an additional step in the registration process, the overall aim of the proposals is to make the registration process more efficient – particularly for well-prepared providers. We expect that by setting clearer expectations and improving the quality of applications, we will spend less time on poorly prepared submissions. This will allow our staff to focus on assessing strong applications increasing overall efficiency of the process. With respect to interviewing specifically, we anticipate that conducting interviews (for those providers that reach the interview stage of the process) may slightly increase the overall amount of OfS staff time required to register a provider, but that this will not be significant and will be balanced out by other improvements to the process.
133. Our view is that interviewing key individuals is the most effective way of determining whether the provider has key individuals who meet the requirements of the condition. The interview process will allow us to explore, in a structured and proportionate way, the individual's understanding of the provider's regulatory obligations, business strategy, and operational context. While we recognise that there are limitations to the extent that we can assess the knowledge and expertise of key individuals through interview (e.g. individuals could be coached by consultants – see paragraph 140 below) it moves beyond paper-based compliance. We think this is important for the reasons set out in paragraphs 114-115 of the consultation and we agree with the respondents who pointed out some risks of relying on documentary evidence alone, such as providers copying documentation from registered providers or being unable to implement the promises of the documentation in practice.
134. A document-based assessment that focuses only on qualifications and CVs would be less effective in testing whether key individuals have the knowledge and understanding required for their role. We consider such an approach may also unintentionally create barriers to individuals who have valuable and relevant experience from outside the sector. We have considered the alternative option of a dialogue-based assessment as proposed by one respondent but think it would be more challenging to fully test the experience and knowledge of individuals through this process and it could result in delays to the process. A dialogue could also lack the consistency required for fair assessment.
135. However, there may be limited circumstances where we determine that an interview is not necessary for a particular individual, for example where we consider we can make an

⁸ See Application requirements notice (Annex A) at [Supporting documents - Office for Students](#).

assessment of their knowledge and expertise without the need for the information we would collect in interview. This decision will be made on a case-by-case basis, taking into account the nature of the application and any relevant regulatory intelligence. In such cases, we may rely on alternative evidence, such as CVs or existing regulatory information, to assess whether the individual meets the knowledge and expertise requirements of their role. This targeted approach would ensure that we are removing unnecessary burden on providers and the OfS by focusing resources where they are most needed.

136. We have a statutory duty when performing our functions to have regard to transparency and consistency. Alongside this document we have published interview guidance that provides operational details on how interviews will be carried out. We plan to follow this guidance when assessing providers. We intend to undertake a review of this approach at a suitable time after implementation (for example, after 12-18 months) to ensure it is operating efficiently and achieving the intended outcomes.
137. There were conflicting views about whether it would be fairer to use a fixed question approach or whether this approach would undermine the purpose of the interview. Our position is that the primary purpose of the interview requirement is to assess whether key individuals have the knowledge and expertise required to meet the expectations of the condition. To preserve the integrity and effectiveness of this assessment we will not share the exact interview questions in advance, as doing so could lead to rehearsed responses that do not provide a reliable basis for evaluation.
138. In line with our operational guidance, we will support providers and individuals in preparing for interviews by sharing topics that will be covered in the interview in advance. These topics will be selected on a case-by-case basis and may reflect specific areas of concern identified during our review of the provider's application documents, the complexity of the provider's structure or governance arrangements, or the background and experience of the individual being interviewed. This approach will ensure that interviews remain focused, proportionate and tailored to the context of each application, while maintaining fairness and transparency for providers. More detail about the level of knowledge or expertise that is required of particular key individuals can be found in the condition⁹ in Annex C and the operational guidance.¹⁰
139. We considered feedback provided by one respondent that the interview format has the "lowest validity measure". While we acknowledge that this method has benefits and drawbacks, we continue to view interviews as a proportionate and effective tool to achieve our regulatory aims. This is because interviews allow us to explore an individual's understanding of their role, their provider's business plan and the regulatory context – which provides a flexible and targeted means of assessing whether the provider has the leadership knowledge and expertise to meet the requirements of the condition. In this way, interviews best support our policy aim of ensuring that providers are led by individuals with the knowledge and expertise necessary to operate effectively in the regulated higher education sector. We received alternative suggestions for assessment methods which we have responded to substantively below.

⁹ See Annex C at [Consultation outcomes: Reforms to OfS registration requirements - Office for Students](#).

¹⁰ See Annex A at [Supporting documents - Office for Students](#).

140. One respondent noted that while the interview format is intended to prevent providers from masking low capability among key individuals – such as by relying heavily on consultants to prepare registration applications – there remains a risk that individuals could be coached to perform well at interview without genuinely possessing the required knowledge and expertise. We acknowledge this concern, but we would fully expect key individuals to take all necessary steps to prepare thoroughly for interview, whether or not they use consultants. In fact, if coaching leads individuals to engage meaningfully with the regulatory framework and develop a deeper understanding of their responsibilities, then it supports – rather than undermines – our regulatory aims. The purpose of the interview is not to test innate knowledge, but to ensure that individuals have acquired the understanding necessary to lead a provider effectively in a regulated environment.
141. One respondent raised a concern that 30-60 minutes would not be sufficient to test knowledge and expertise. We expect that 30-60 minutes will be the average time for interviews; we anticipate that this amount of time will let us test the critical areas rather than exhaustively assess each individual's knowledge and expertise. However, it is possible that some interviews will be extended, for example because of the complexity or novelty of a provider's business model and/or any regulatory intelligence received; in these cases, interviews may take a longer period. We consider that this approach strikes the right balance between rigour and proportionality.
142. We have considered the concern that the interview format could add unnecessary anxiety or jeopardy to individuals involved in the registration process alongside our legal duties under the Equality Act 2010. As set out in the consultation, we have considered the potential for the interview process to disadvantage individuals with protected characteristics. We recognise the importance of ensuring that our approach is inclusive, accessible and compliant with the Public Sector Equality Duty. To mitigate the risk of discrimination, we have identified a range of scenarios that could give rise to disadvantage and will implement a series of measures to address them. These include but are not limited to:
- a. Ensuring the interview space is physically accessible for all individuals including those who have impaired mobility or use a wheelchair.
 - b. Providing a sign language interpreter for the interview if needed.
 - c. Allowing individuals to bring notes and refer to these during the interview.
 - d. Giving individuals more time to complete interviews if needed.
 - e. Training interviewers in inclusive and bias-aware interviewing techniques, including awareness of neurodiversity and unconscious bias where these are supported by robust evidence.
 - f. Proactively asking whether any reasonable adjustments are needed when scheduling interviews.
 - g. Reviewing the interview process a suitable time after implementation to ensure that it is meeting our policy intent and obligations under equality law.

- h. Collecting data via an optional and anonymous diversity questionnaire to interviewees, to ensure that we do not unintentionally create barriers to individuals with protected characteristics.
143. We also considered the suggestion that providers should be required to produce a clear recruitment plan for replacing key individuals who leave their roles. While we agree that succession planning is good practice, we do not consider it necessary to mandate this as part of the assessment for initial condition E9. The purpose of this condition is to ensure that key individuals responsible for the strategic direction of the provider have the prerequisite knowledge and expertise; it does not assume that such knowledge and expertise is exclusive to those individuals. Where a provider is exposed to significant key person risk, we would expect this to be identified and addressed within the provider's business plan, as part of the assessment under condition E7. This allows us to consider the provider's capacity and resilience in a proportionate and risk-based way, without introducing a blanket requirement that may not be relevant, necessary or proportionate in all cases.

Alternative proposals

Alternative individuals to be interviewed

144. One respondent suggested that the key individuals listed should also include the individual responsible for the delivery of the business plan. We have considered this option and understand that in larger providers there may be a specific individual who holds this particular role. However, we do not consider it necessary to include a separate interview on this basis as accountability for most providers' strategic and financial direction will rest with the head of the provider and the individual with overarching responsibility for the management of the provider's financial affairs. It may be the case that multiple individuals fulfil the roles of the chair or the individual responsible for the management of the provider's financial affairs, and in those cases the OfS would normally interview all of those individuals. While we acknowledge that someone may be tasked with operational delivery of the business plan, ultimate responsibility for its successful implementation lies with senior leadership. Including a separate interview for a delivery-focused role could risk diluting accountability and may inadvertently suggest that senior leaders do not need to be fully abreast of the business plan's detail. Our approach is therefore to focus interviews on those individuals who hold overarching strategic and financial responsibility, to ensure they have the depth of understanding required to lead the provider effectively.
145. We have also considered another suggestion that we include the chair of the audit and risk committee as a key individual, rather than an independent member of the board (governing body). We have currently focused on roles that are consistently present across providers and are central to institutional accountability, and we note that some small and specialist providers may not have dedicated audit and risk committees. For the providers that are required to have independent members on their governing body, our expectation is that these individuals play a meaningful role in providing scrutiny and challenge, which is why we think it is important to test this element of governance at the point of registration. However, we agree that the chair of the risk and audit committee is an important role in a provider and will keep this suggestion under consideration as we keep the impact of our new conditions under review and consider any changes to the ongoing requirements under the E conditions.

Collective accountability and skills matrix

146. We considered the suggestion that we should assess collective accountability rather than individual knowledge and expertise through a skills matrix. While we acknowledge that it is not reasonable to expect each key individual to hold all knowledge and expertise needed to run a higher education provider, we do think that the specific requirements listed against this proposal for each key individual are deliberately high level, proportionate and necessary for the effective management of all providers. Although a skills matrix may indicate whether individuals can claim to hold particular knowledge or expertise, it does not provide assurance that they can apply that knowledge. We recognise that there may be specific and limited circumstances where particular knowledge and expertise may be held across a number of individuals. In these cases, providers may wish to submit a skills matrix; however, this is not a requirement and is a supplementary tool that may be used in specific, risk-based scenarios where the evidence available is strong enough to support a robust assessment without the need for an interview.
147. We expect individuals would normally be appointed before the completion of the application assessment period. 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.
148. For clarity, we have included additions to the guidance that sets out if a provider completes the appointment of a key individual during the assessment period, we will normally interview the individual once they have been appointed and may pause our assessment of condition E7 until this can be done.

Dialogue-based approach

149. We have addressed this suggestion in paragraph 134 above.

Interview fewer individuals

150. We have considered the suggestion that we interview fewer individuals and conduct further interviews based on risk identified by other parts of the application. We agree that a risk-based approach is appropriate, and we have set out our approach to this in the operational guidance. While we consider interviews to be the most effective method for assessing the knowledge and expertise requirements of E7, we do not take a blanket approach. Instead, we will determine on a case-by-case basis whether an interview is necessary, taking into account the nature of the provider's application, the role of the individual and any regulatory intelligence we hold. Where we judge that sufficient assurance can be drawn from other evidence, such as a prior regulatory engagement, we may decide not to interview a particular individual. However, our starting assumption is that we will normally interview all individuals proposed for key roles, as this provides the strongest basis for assessing whether the provider has the leadership capacity to meet its regulatory obligations. This approach ensures that our use of interviews is proportionate, targeted, and aligned with the level of risk presented by each application.

Document-based approach

151. We have addressed this suggestion in paragraph 134 above.

Additional comments

Apply the test to all providers and new appointments

152. We have considered the suggestion that the test should be applied to all providers and to new appointments at already registered providers. At present, we are not applying this requirement to providers that are already registered, nor are we requiring newly appointed key individuals at registered providers to be interviewed by the OfS. This is because the current consultation relates specifically to an initial condition of registration, and extending the requirement more broadly would go beyond the intended scope of this proposal.

Challenges for small and specialist providers in recruiting governing body members

153. We recognise the challenges that smaller providers may have in recruiting individuals with diverse and specialist knowledge onto their governing bodies. However, we consider it essential that all providers, regardless of size, ensure that their key individuals possess the prerequisite knowledge and expertise required for effective leadership. As registered providers, they are entrusted with access to public funds, they contribute to the reputation of the higher education sector, and are responsible for protecting the interests of students. These responsibilities demand a level of individual knowledge and expertise, and our approach is designed to ensure that those in key roles are equipped to meet those expectations. We note that the condition only requires that up to two governors meet specific knowledge and expertise requirements (chair and independent member) and that these roles must be filled regardless of provider size to comply with other conditions of registration, where providers apply in the approved fee cap (higher) category of registration.

Agreeing a registration timetable for transition from consultants to key personnel.

154. While we understand that providers may find a set timetable helpful in planning when to hand over the registration process from consultants to key individuals, the registration process varies significantly, based on a number of factors, and it is therefore often unhelpful to commit to specific timetables. Setting a rigid timetable could create unrealistic expectations and create further barriers for providers that may need flexibility. Our approach is therefore to maintain flexibility while providing clear communication throughout the process. For clarity, we have added additional information in guidance, setting out our expectations for when individuals will be available for interview. During registration, we are able to discuss providers' proposed timetables for key appointments during pre-application calls, providing guidance to help them understand the regulatory implications of their decisions.¹¹

¹¹ For further details on registration, please see [Regulatory advice 3: How to register with the Office for Students – Office for Students](#).

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

156. We proposed introducing a requirement in initial condition E7 that a provider must ensure that certain individuals within its organisation are ‘fit and proper’ for the purposes of ensuring that:

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

Consultation questions

5a. Do you agree that the overarching test should be based on an assessment of relevant individuals’ track record in relation to the protection of public money, the maintenance of the good reputation of the higher education sector and the protection of the interests of students?

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

5b. Do you agree that a provider should retain responsibility for appointing relevant individuals against a published fit and proper test and related criteria?

5c. Do you agree that the non-exhaustive list of matters in the proposed condition are matters which should be considered in the fit and proper test?

5d. Do you agree with the proposed factors to which we will give weight?

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

5e. Do you agree that the list of matters in Table 3 and draft condition E7D.4 are matters which should be considered as meaning an individual is more likely to not meet the fit and proper test, except in exceptional circumstances?

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

5f. Do you agree that the fit and proper test should be applied to a specific list of relevant individual roles and interests, rather than a more general definition such as ‘beneficial owners’ or ‘senior managers’? Please explain the reasons for your answer.

5g. Do you agree that the list of roles contained in the definition of relevant individuals in the proposed condition is appropriate?

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

Decision

157. We have decided to introduce the proposed fit and proper requirements, which are included in new initial condition E9. We have made some clarificatory changes to the guidance including in relation to the definition of significant overarching responsibility.

Summary of respondents' views

158. We have analysed the qualitative comments in the consultation survey responses, the consultation events and written and oral feedback received by sector bodies outside of the survey. An overarching test based on an assessment of relevant individuals' track record

159. Of the 12 responses received, nine agreed and one disagreed that the overarching test should be based on an assessment of relevant individuals' track record in relation to the protection of public money, the maintenance of the good reputation of the higher education sector and the protection of the interests of students.

160. The respondent who disagreed considered that the assessment should take into account the wider mechanisms, processes and team within the provider, that allow a purpose such as the prevention of fraud to be fulfilled, rather than focusing on individuals and their work.

Responsibility for appointing relevant individuals against a published fit and proper test and related criteria

161. Of the 12 responses received, nine agreed, one disagreed, one partially agreed with our proposals and one didn't express a view either way. The respondents who partially agreed and disagreed both provided alternative proposals, which are captured in the alternative proposal section below.

162. The respondent who disagreed considered that there should be a degree of flexibility in choosing which individuals must be fit and proper to allow for different providers' different organisational structures. One respondent noted that if further assurance around appointments is required, the provider should submit governing body documents and details of the committed structure showing where responsibility sits for the appointment of governors/directors and executive leadership within the organisation.

163. One respondent disagreed with paragraph 131 of the consultation document which states that the OfS would have the authority to decide the fit and proper person test.

Matters which should be considered in the fit and proper test

164. Of the 12 respondents that replied, eight agreed, three didn't express an opinion or were unsure and one disagreed. One respondent, while agreeing with the proposal, considered that it created additional burden with questionable value. They suggested that it was not clear whether the new proposal would require changes to a provider's policies and processes

which it had developed to meet the current definition in the OfS regulatory framework. The respondent who disagreed made a similar point and noted that the OfS regulatory framework currently includes a series of indicators for when an individual is and is not likely to be a 'fit and proper person' which are relatively straightforward to apply. This respondent considered that the new indicators are broader and vaguer and thought that, while the explanatory guidance is helpful, providers will find them harder to interpret. This may lead to overreporting where providers are unsure whether a matter is likely to be of concern to the OfS.

165. One respondent was concerned about the inclusion of the matter for consideration set out in E7D.2c ('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)'). The respondent considered that, as defined in the draft condition, this could include routine matters relating to organisations an individual is, or has been, connected with that are irrelevant to whether that person is 'fit and proper' to manage a higher education provider. (An example would be an adverse judgment in a routine employment tribunal claim, or a decision by the Information Commissioner to overturn the provider's decision on a Freedom of Information request.)
166. One respondent was concerned that certain indicators may be too broad. In their view:
- a. Being involved in an organisation that went into insolvency, liquidation or administration (in any jurisdiction) should not necessarily exclude individuals from holding positions on governing bodies. This respondent noted that there are many reasons for insolvency, and it is not always through mismanagement. In these instances, the chair should record the fact that this has been reviewed, and a decision made as a matter of public record.
 - b. Past declared bankruptcy (or equivalent) in any jurisdiction may not always be caused by financial mismanagement and appears discriminatory.
 - c. The 'any jurisdiction' clause appears to disregard a huge number of global business and legislative differences and appears to be outside the OfS authority to meaningfully assess.
 - d. Being dismissed or asked to resign can result from many non-performance-related concerns, making the criterion difficult and potentially unfair to assess.
167. One respondent considered that the requirement relating to 'significant managerial responsibility or influence' should be applied carefully to avoid inadvertently creating a blacklist of individuals. This respondent considered that individuals would be effectively banned, and that this should only occur where individuals had the competence, skills and experience but chose to commit misconduct. This respondent suggested that information relating to this will only ever be partial (especially where Non-Disclosure Agreements are in place) so this requirement is likely to be applied inconsistently and may discourage disclosure. The respondent stated that the OfS should clarify that the purpose of this requirement is around protecting public funds and protection of the student interest and apply the mitigating circumstances generously.
168. Another respondent suggested that the OfS give additional weight to any findings of harassment or sexual misconduct in relation to circumstances where '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.' The respondent

thought that this consideration would align with condition E6: Harassment and sexual misconduct and ensure that these requirements extend to those in governing roles.

Proposed factors to which we will give weight

169. Of the 12 respondents to this question, eight agreed, and three were uncertain or didn't express an opinion. Some commented on the specific aspects of the proposal below.
170. One respondent considered the OfS should broaden its definition of 'recent' to reflect the long timelines typical in higher education governance and the student lifecycle. They expressed concern that dismissing events from 72 months ago could mean that serious past misconduct – such as fraud and unethical practices – that went unsanctioned due to weak regulatory frameworks (specifically between 2005 and 2015) were missed. The respondent considered that individuals responsible for such actions, especially those with repeated involvement, should not be deemed fit for leadership roles today, regardless of the time elapsed. While opportunities for explanation and evidence of reform should be offered, the regulator's priority must be to protect the sector from those with a history of harmful conduct.
171. Another respondent noted that the term 'relevant' is used but not explained. The respondent also considered that it would be useful to have likely timeframes on how long the OfS anticipates individuals to be 'unacceptable' for governing body positions if they fall under the criteria set out in the non-exhaustive lists. One other respondent thought that it would be important to take context into account when considering the risks an issue poses to the stated purpose of the fit and proper test.

Matters which should be considered as meaning an individual is more likely to not meet the fit and proper test, except in exceptional circumstances

172. Of the 12 respondents to this question, nine agreed, three were uncertain or didn't express an opinion.
173. One respondent said that because our proposal gives weight to a 'recent' incident this would not allow an opportunity to learn from either mistakes or deliberate mismanagement and fraud. They also thought that "in order for this to be applied, there needs to be clarity on a definition of any jurisdiction and on who makes the final decision on whether an offence is minor (using what criteria)". We have interpreted this comment in two ways, the first being that if the OfS takes recency into account it would not allow individuals to learn from mistakes before being considered not fit and proper. The second point has been interpreted as meaning that the OfS should be clear on the meaning of any jurisdiction, the criteria of minor offences and on who will make final decisions on these matters.
174. Another respondent suggested that we consider a 'comply or explain approach' for elected students/staff governors, if for example they declared personal bankruptcy. The respondent noted that while similar standards must be maintained between staff and student governors as with independent or ex-officio members, this requirement may not be as relevant if a student or staff governor declared personal bankruptcy. The respondent noted that students face a relatively high risk of financial difficulties given the rising cost of living. In support of this statement, they cross-referenced research from the Higher Education Policy Institute and The Centre for Research in Social Policy at Loughborough University Minimum Income Standard (May 2024). Further, as staff and student representatives are usually elected by peers, providers have less control over these appointments, which means that applying a 'comply or

explain approach' might be a good approach for student and staff representatives. The respondent suggested that alternatively, providers must set clear standards and guidelines defining who can and cannot be elected as a representative based on the indicative matters.

Fit and proper test should be applied to a specific list of relevant individual roles and interests, rather than a more general definition such as 'beneficial owners' or 'senior managers'

175. Of the respondents, nine agreed, two disagreed and one was uncertain or didn't express an opinion.
176. Two respondents who disagreed suggested options which are captured under the alternative proposal section below.
177. Another respondent commented that the proposal should contain a degree of flexibility to allow for providers that have different organisational structures.
178. Another respondent commented that the OfS should further develop its definition of 'any individual who would have significant overarching responsibility for ensuring that the provider complies with the ongoing conditions of registration (if registered)' to be clear about the roles to which this is likely to apply. This is because it could theoretically include a significant number of individuals, so it will be essential that such individuals are informed and aware that they fall within its scope. As with other roles, they must be given the opportunity to mitigate their own future association with the regulatory track record of the provider, should they become aware of any misconduct or potentially serious breaches of conditions of registration.

List of roles contained in the definition of relevant individuals in the proposed condition

179. Of the ten that responded, seven agreed, two disagreed and one was uncertain or didn't express an opinion.
180. One respondent who disagreed did not support the OfS's proposal to include 'any individual who would have significant overarching responsibility for ensuring that the provider complies with the ongoing conditions of registration (if registered)'. This respondent considered that, in a large provider, this could cover a large number of staff (for example staff involved in academic quality assurance, financial management and statutory data return), and would be difficult and impractical to apply.
181. The other respondent who disagreed commented that including any individual who owns 25 per cent or more of the provider or the provider's parent company as a relevant individual is a reach beyond the OfS remit. This respondent expressed the following views:
- a. 25 per cent is not a 'significant' share.
 - b. Just because the information is available on Companies House does not automatically constitute a risk to the reputation of the provider or the wider sector.
 - c. Someone who has more than 25 per cent shares in the parent company does not represent a significant interest in the company (the provider may be a very minor share of the partner company). These individuals should be excluded from this list of individuals who should be fit and proper persons.

d. A parent company's governance arrangements can be completely different to the provider and therefore do not reflect the provider's application and standalone structure.

182. One respondent noted that the list should be able to be extended, as required, and tailored for individual organisations depending on their structure, but as their roles and titles change in the sector, this will need regular updating. The respondent comments that Company Secretary and Company Director may not be titles that exist so suggests the inclusion of the words 'or equivalent'.

Alternative proposals

183. Two respondents suggested that the OfS's fit and proper person test be undertaken in line with the HMRC fit and proper test for beneficial owners, officers and managers (BOOMs) that already exists. They also suggested that these tests should already be applied by the provider in line with best practice as either a company director or charity trustee, dependant on the corporate form of the provider. This should take the form of a 'comply or explain approach', to demonstrate how an organisation either complies with the HMRC BOOM test requirements or is able to explain how they will demonstrate their approach to assure the protection of the interests of students as part of its written submission.

184. One respondent considered that relevant individuals should be appointed by a diverse panel of peers, who have no links to the provider.

185. One considered that examples of individuals to be covered by fit and proper person tests are better than a compulsory list. Another respondent considered the list should include anyone with an interest or link to the institutions, such as owners, non-executive directors, senior management, directors, executives and governors.

186. Another respondent suggested the inclusion of individuals who are appointed to strategic advisory boards to the list of relevant individuals as they are in a position to influence matters relating to conditions of registration and should be subject to the same fit and proper test.

Our response

An overarching test based on an assessment of relevant individuals' track record

187. We agree with the majority of respondents who considered that the test within the condition should be based on an assessment of the relevant individual's track record. We disagree with the view of one respondent that the sum of our proposals focuses disproportionately on individuals without taking into account wider mechanisms and processes within a provider. New initial conditions E7 and E8 set out expectations for a provider's internal policies and processes. Condition E9 builds on these by ensuring that the individuals responsible for running the provider can demonstrate sufficient knowledge and expertise and are fit and proper. Together, these conditions offer a more complete and coherent basis for assurance. We consider that tests that do not focus on the fitness and propriety of individuals would not adequately reduce and mitigate risks to students and taxpayers. This additional assurance is required given the emerging risks and the profile of the providers now applying for registration. To ensure that the proposals are proportionate to our aim of addressing these risks, we have imposed these requirements on a limited number of individuals.

Responsibility for appointing relevant individuals against a published fit and proper test and related criteria

188. We considered the suggestion that the list of relevant individuals to whom the fit and proper person test would apply should remain flexible, to account for different organisational structures. As drafted, the proposal includes a definition of relevant individuals which we consider is suitably wide to allow for the different organisational structures. The proposed condition does not require providers to have a specific organisational structure, or to have individuals in roles with specific titles, but where individuals are responsible for the responsibilities outlined in the condition they must be fit and proper. We therefore do not think that changes to the condition or guidance are necessary to account for different organisational structures. The suggestion that providers could submit governing body documents and details of committee structure for additional assurance is already required as part of E7: Direct assessment of governing documents.
189. We consider that the response relating to paragraph 131 of the consultation document has multiple interpretations. These are:
- a. that the respondent believes the OfS should not have the authority to assess whether an individual is fit and proper; and
 - b. that the respondent considers that it is not appropriate for the OfS to approve individuals.
190. For the avoidance of doubt, the test is that the relevant individuals must, in the OfS's judgement, be fit and proper. However, the OfS is proposing to assess the fitness and propriety of the individuals after the provider appoints an individual, not beforehand. Providers will retain the responsibility for appointing relevant individuals and ensuring that they are fit and proper when they are appointed. The OfS will review a provider's policies and processes to ensure they are robust, as well as checking the credibility of the outcome of the checks completed.

Matters which should be considered in the fit and proper test

191. We note that the majority of respondents agreed with this proposal and considered that we have identified the correct matters to address. We have set out the risks for students and taxpayers that the proposal aims to address at paragraphs 118 to 122 of the consultation document. The current initial conditions E1 and E2 require a provider to uphold public interest governance principles in its governing documents and practice – this includes a principle that certain individuals at the provider must be fit and proper (although it is not a direct test). Consequently, we consider that the additional burden of undertaking these tests is low (and we have sought to limit the information that we will require providers to submit by focusing on specific individuals) when weighed against the risk. We consider that the proposal clarifies the requirements which will assist providers in assessing their relevant individuals for fitness and propriety. We also do not agree that the indicators are too broad and vague. We consider these tests are transparent and clear for providers, and there is explanatory guidance to assist with this. We have developed additional operational guidance since the publication of our consultation document to assist providers to comply with this element of condition E9.¹²

¹² See Annex S, Guidance for providers on Fit and Proper Persons (FPP), at [Supporting documents - Office for Students](#).

192. In response to the respondent who considered that the requirements in proposed E7D.2 may include routine matters that are irrelevant to the condition, we would like to clarify that, as drafted, the OfS would give particular consideration to the matters listed under E7D.2 but would not automatically deem that an individual is not fit and proper should one or more of the matters apply. The OfS will take relevant information into account as set out in the proposed guidance that accompanies the condition. The factors that the OfS will consider include 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. The accompanying guidance set out in our proposals in Annex C provides more detail on the factors the OfS will consider.
193. We acknowledge the view expressed by one respondent that mismanagement may not always be the cause of an organisation's failure. However, we consider that it may indicate that there were wider governance issues, such as poor risk planning, weak financial controls or inability to respond to market changes. Due to the challenging financial environment for providers, it is now more important than ever to place additional scrutiny on the financial management of providers that wish to register and access public funds. This is an indicative matter that the OfS will give particular consideration to when assessing if an individual is fit and proper for the purposes in the condition. However, as set out in the guidance, the OfS will look at relevant information submitted by the provider when considering this matter. For example, the nature of the insolvency or other failure, and the impact of that failure on relevant stakeholders, including any students, and on the protection of public funds, may be relevant contextual information to our assessment of the relevant individual's fitness and propriety for the purposes set out in the condition.
194. While we recognise the argument that personal bankruptcy does not always arise as a result of financial mismanagement or poor judgement, our position is grounded in the importance of protecting public funds, the interests of students and maintaining trust in the higher education sector. Bankruptcy can raise legitimate concerns about an individual's ability to manage finances and, where individuals are entrusted with overseeing significant public resources, a history of insolvency indicates that further scrutiny is necessary. This indicator is common across a number of regulated industries, and we consider that this requirement is not out of kilter with other sectors that require equal levels of accountability to the public. We intend to give particular consideration to circumstances where an individual has previously been declared bankrupt, but we do not intend that this approach would automatically disqualify any individual as fit and proper unless the individual was an undischarged bankrupt. We view an individual's status as an undischarged bankrupt as particularly serious, given the recent nature and gravity of the issue, as well as the potential legal constraints – such as the requirement for court approval to serve as a company director. As such, we would only deem them fit and proper in exceptional circumstances where there are compelling circumstances which demonstrate, in the OfS's judgement, that the individual is nevertheless fit and proper. We therefore do not consider that this requirement is discriminatory.
195. We have considered the view expressed that extending the fit and proper person indicators to include matters in any jurisdiction disregards global business and legislative differences. In line with our approach to circumstances which have taken place in the UK, we will offer the opportunity for providers to share relevant information where one or more of the indicators apply to a relevant individual. We also disagree that it is outside of the OfS authority to meaningfully assess such matters. Our position remains consistent with the view expressed in the alternative options section of the consultation proposal: that an individual's conduct

overseas is just as reflective of their integrity, honesty and financial responsibility as conduct within the UK. Restricting the scope of these matters to the UK would, in our opinion, pose a risk to the aims of the fit and proper person test.

196. We recognise that there are a number of reasons why an individual may have been dismissed or asked to resign from a role at an organisation and, for this reason, we do not intend that this indicator automatically precludes an individual from being considered a fit and proper person. As with the other indicators listed under proposed E7D.2 (new E9), the OfS would give particular consideration to this matter and take into account the recency, severity and whether the conduct is repeated or sustained, alongside any relevant information. However, our position is that being dismissed or asked to resign may indicate serious concerns about performance, conduct or integrity and ignoring this factor would mean potentially overlooking patterns of misconduct or poor judgement.
197. In assessing the criterion related to 'significant managerial responsibility or influence', the OfS will make its decisions carefully and in accordance with public law principles. Our assessments will be based on published criteria and all relevant information obtained. We will assess each case individually, taking into account relevant circumstances and the nature of any past conduct. For the avoidance of doubt, neither this criterion nor the fit and proper condition are designed to create a 'blacklist' of individuals; rather, we will assess the fitness and propriety of each relevant individual in the context of each individual case. As the respondent suggested, the purpose of this requirement is to ensure that individuals in key governance roles are suitable to manage public funds and uphold the interests of students (as well as to maintain public trust and confidence in the higher education sector).
198. We agree with the view expressed by the respondent who suggested that the OfS give additional weight to findings of harassment or sexual misconduct. While we consider that the existing matters listed in Table 2 of the consultation document are a non-exhaustive list of indicative matters which the OfS will give particular consideration – and therefore harassment and sexual misconduct are already covered by this requirement – we agree that these matters are particularly important. We have therefore made changes to the guidance in this area.

Proposed factors to which we will give weight

199. The timeline of 72 months was provided only as an example to illustrate how the OfS would balance the weight to be attributed to each of the factors set out in paragraph 130 of the consultation document and paragraph 2 of the guidance to condition E7D.1 and E7D.2. As stated in both documents, the OfS will consider these factors in combination. We have updated the example timeframe to a longer one to clarify our position.
200. For the avoidance of doubt, the OfS will not decide that a relevant individual is not fit and proper for a set period of time. Instead, the test is whether, in the OfS's judgement, a relevant individual is fit and proper at the point of assessment. The fitness and propriety of an individual will be determined on a case-by-case basis and will consider the recency, among other factors. As set out in the consultation document (paragraph 130) and paragraph 2 of the guidance to condition E7D.1 and E7D.2, we will take context into account in relation to the risks posed. The contexts to which we will give additional weight are listed; they include recency, seriousness, repeated and/or sustained behaviour, and behaviour indicative of bad or poor conduct. In response to the feedback that the term 'relevant' is used but not defined,

we consider that the specific terms ‘relevant individuals’, ‘relevant fraud offence’ and ‘relevant person or body’ and ‘relevant public funds’ are sufficiently defined in the guidance of the condition E9 in Annex C.

Matters which should be considered as meaning an individual is more likely to not meet the fit and proper test, except in exceptional circumstances

201. We have considered the request for clarity on the definition of any jurisdiction, the criteria of minor offences, and who makes a final decision on these matters. We are using the phrase ‘any jurisdiction’ in its ordinary, natural sense. We note that minor offences are defined in Condition E9 and we consider that the definition is clear.
202. We have considered whether taking recency into account may prevent individuals from demonstrating that they have learned from past mistakes. We note that the OfS considers recency to be a significant factor in assessing risk. A recent event may indicate a higher likelihood of ongoing or unresolved concerns and is therefore likely to carry greater weight in the assessment of whether an individual is fit and proper. However, as outlined in the guidance to condition E7D, the OfS will take a proportionate approach that considers any relevant information. The presence of an indicative matter does not automatically result in a negative judgement. The OfS will normally consider the nature, seriousness and timing of the issue, as well as any relevant information provided by the provider. This includes whether the matter is isolated or part of a pattern, and whether the individual has taken demonstrable steps to address the issue or prevent recurrence.
203. We have reflected on the comments made by the respondent suggesting that there should be a ‘comply or explain approach’ for elected students and governors if, for example, they have declared personal bankruptcy. As noted in the guidance to condition E7D, bankruptcy is one of the matters listed under E7D.4 and is generally considered a serious indicator of potential risk, particularly in relation to an individual’s capacity to manage financial responsibilities. However, the guidance also makes clear that the presence of an indicative matter does not automatically result in a negative judgement. The OfS will consider whether there are exceptional circumstances that may justify a different conclusion. As set out in the guidance, including in the section on assessment, the OfS will take into account any relevant information provided by the provider as part of its registration application. In line with the condition, an individual will only be judged to be fit and proper despite the presence of a matter listed in E7D.4 if the OfS is satisfied that there is clear evidence of an exceptional circumstance. This approach allows for flexibility in individual cases, such as for elected students and staff governors, while maintaining the integrity of the test and the protection of the public interest. However, we also consider it appropriate that student and staff members of the board are held to the same standards of accountability as other board members. This reinforces the collective responsibility of all board members, regardless of their background or role.

Fit and proper test should be applied to a specific list of relevant individual roles and interests, rather than a more general definition such as ‘beneficial owners’ or ‘senior managers’

204. We have considered whether to further develop the definition of ‘any individual who would have significant overarching responsibility for ensuring that the provider complies with the ongoing conditions of registration (if registered)’. This is dealt with in the section below.

205. We have also considered the response that suggests that individuals should be informed if their role falls within the definition of ‘relevant individuals’ and must be given the opportunity to mitigate their own future association with the regulatory track record of the provider, should they become aware of any misconduct or potentially serious breaches of conditions of registration. To ensure clarity and fairness, we consider that it is the provider’s responsibility to identify which roles fall within this scope and to ensure that relevant individuals are informed of their inclusion.
206. We have set out detailed information on the factors we will normally consider when assessing whether an individual is fit and proper in the guidance to part 2 of the condition (this includes whether any issues identified are recent, serious, repeated or sustained). In considering these factors we will consider any declaration and supporting relevant information the provider shares, as well as the results of our own fit and proper checks, which may include checks of external information sources or databases for the purposes of assessing the indicative matters set out condition E9.5 and E9.7. Where a provider declares an indicative matter about a relevant individual but judges that the relevant individual would nevertheless meet the threshold in E9.4, the provider will have the opportunity to explain its reasoning when we make our follow up request for further information. We will take this reasoning into account when determining if we need to request further information that identifies the individual, and if we consider the individual fit and proper.

List of roles contained in the definition of relevant individuals in the proposed condition

207. In response to the suggestion that the OfS should provide a clearer definition of any individual who would have significant overarching responsibility for ensuring the provider complies with the ongoing conditions of registration – we recognise 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. We have clarified this point in the guidance that accompanies the condition. We have considered the suggestion to further refine our definition of ‘significant overarching responsibility’. However, we consider our definition – which includes, but is not limited to, serving on a board or governing body, holding voting rights, or occupying a senior management position – is necessary to capture the full range of governance structures across the sector.
208. We consider that it is important that individuals with a 25 per cent share in a company or parent company should be subject to fit and proper checks. A 25 per cent stake is widely recognised in the UK and internationally as the threshold for significant influence and mirrors requirements outlined by the Financial Conduct Authority (FCA). Individuals with a 25 per cent stake can exert meaningful control over a provider’s strategic direction, governance and financial decisions. Excluding them would create a regulatory gap, potentially allowing individuals with substantial influence to avoid scrutiny. If there are concerns about compliance with fit and proper tests from an individual, providers can set out any relevant information. This may include, for example, that individual having no role in decision-making committees. Where individuals have more than 25 per cent share of the parent entity, but governance

arrangements are entirely separate and have no bearing on the registering provider, the OfS will take this relevant information into account when assessing individuals' fitness and propriety. More information is included in the operational guidance.

209. We agree with the respondent who highlighted that roles and titles can vary across providers. We recognise that the job titles listed in the proposed condition may not align precisely with every provider's internal structure. However, we have set the parameters for the relevant individuals very deliberately and specifically to ensure that the condition captures those with the level of influence that could materially affect management and governance. We are aware that providers operate with diverse organisational models and, in a very limited number of cases, there may be individuals with significant influence who do not hold the specified titles. Nonetheless, for the purposes of clarity, consistency and effective implementation, we intend to keep the fit and proper person roles limited to those we have explicitly identified.

Alternative proposals

210. We have reflected on the two respondents' views that the fit and proper tests should be undertaken in line with the HMRC test for Beneficial Owners, Officers and Managers (BOOMs). We note that the test consists of three parts:

(1) a criminal conviction check;

(2) a compliance check with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (or a risk that the applicant may be used for money laundering, terrorist financing or proliferation financing); and

(3) consideration of honesty and integrity, skills and experience, and financial soundness.

While some elements of our proposed fit and proper person test are aligned with some parts of the HMRC test (particularly part 1, and the honesty and integrity and financial soundness elements of test 3), our aims differ. The HMRC test is designed to ensure individuals are suitable to run certain types of financial businesses whereas the OfS's test is designed to ensure that individuals are suitable to lead higher education providers that receive public funding, contribute to the reputation of the sector and are responsible for protecting the interests of students. As such, we have focused our fit and proper person tests on areas relevant to achieving our regulatory objectives. Where appropriate we have drawn on HMRC's approach to reduce duplication, but we have also made deliberate departures, such as in the assessment of skills and experience. Rather than include this within the fit and proper person test, we address it separately to ensure that knowledge and expertise are robustly assessed.

211. We have considered the suggestion that relevant individuals should be appointed by a diverse panel of peers who are independent from the provider, and we do not agree that this approach would meet the OfS's aims of ensuring that relevant individuals are fit and proper for the purposes of accessing public funds, maintaining the reputation of the sector and protecting the interests of students. Firstly, individuals who are independent of the provider may not possess the necessary understanding of the specific indicators and requirements set out in the OfS's fit and proper person test; this could lead to appointment of individuals who possess negative indicators. Furthermore, this approach is likely to create significant additional burden for providers through procurement and delivery of such panels, which could

divert resources from core educational and regulatory responsibilities. We agree that independence is important, which is why initial condition E7 explicitly requires providers to demonstrate how independence, scrutiny and oversight are embedded within their governance frameworks. However, independent recruitment processes alone do not inherently guarantee appointment of people whom the OfS considers to be fit and proper.

212. We have considered the alternative option suggested by the individual respondent who disagreed with the proposal. They suggested that examples are better than a compulsory list but did not elaborate on this. We consider that the list of roles in Table 4 of the consultation provides certainty and consistency to providers and predictability for those who will be assessed, while maintaining a degree of flexibility and breadth in application. The list of individuals in roles set out in Table 4 are those that, in our experience, exercise significant control over the management and governance of providers in the higher education sector. We would expect these individuals to possess the requisite knowledge and expertise to hold such significant roles of responsibility within a provider.
213. We have also considered a comment by another respondent who suggested that the list should include anyone with an interest in or link to the institution, such as owners, non-executive directors, senior management, directors, executives and governors. While we understand the intention to ensure comprehensive oversight, we do not consider that extending the definition in this way would be proportionate. The proposed definition of 'relevant individuals' in condition E7D already captures those with significant influence over a provider's governance, financial management, and regulatory compliance. Expanding the list further would place a substantial additional burden on providers, without delivering a commensurate increase in regulatory assurance. In our view, individuals outside the defined scope are less likely to have a material impact on the provider's ability to meet its obligations and therefore pose a lower risk if they do not meet the fit and proper person criteria.
214. While we recognise the benefits of the suggestion to include individuals on strategic advisory boards onto the list of individuals to which fit and proper tests should apply, we do not consider this to be proportionate or necessary. Primarily, individuals on advisory boards do not typically have formal decision-making power or legal responsibility within the organisation, unlike directors or executives. We believe that these individuals present a lower overall risk to provider governance, and consequently to the protection of public funds, the preservation of trust in the sector, and the protection of students' interests. We therefore do not consider it a good use of the OfS or provider resource to enforce a broader range of roles to which fit and proper checks should apply.

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

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

Consultation questions

6a. Do you agree that initial condition E7 should include the two proposed tests (relating to arrangements a provider would need to have in place and evidence that the provider has a satisfactory track record in relation to fraud and public funds) in its requirements?

6b. Do you have any comments about the proposed requirements for the arrangements that a provider would need to have in place to prevent, detect and stop fraud and the inappropriate use of public funds?

6c. Do you think we have identified the correct minimum requirements to be considered as 'comprehensive arrangements'? What else should be included?

6d. Do you agree that a provider should have a satisfactory track record in relation to receiving or accessing public funds in order to be registered with the OfS?

6e. Do you agree with the proposed factors that the OfS would use to establish a provider's track record?

6f. Do you have any additional comments on this proposal?

Decision

216. We have decided to introduce these requirements broadly as set out in our consultation. These requirements are set out in condition E8. We have moved the requirement for minimum arrangements set out in the draft guidance attached to the February consultation, into the condition itself for clarity.
217. We have also clarified in the condition that the requirement for providers to have a satisfactory track record is intended to apply across all types of provision. The arrangements for preventing, detecting, and stopping fraud apply only to higher education provision.
218. Finally, we have included additional guidance relating to the requirements for a provider to have arrangements in place to prevent, detect and stop fraud and the inappropriate use of public funds in the condition guidance (Annex B). We have also included minor clarificatory changes to the condition and guidance.

Summary of respondents' views

219. From the qualitative comments in the consultation survey responses, the consultation events and written and oral feedback received by sector bodies outside of the survey, the themes set out below emerged.

Inclusion of two tests

220. In response to the question about whether the new condition should include the two proposed tests (one relating to the arrangements a provider must have in place to detect, prevent and stop fraud and one relating to a provider's track record in relation to receiving and/or accessing public funds), 12 respondents submitted responses. Eleven agreed with the proposal, and one respondent disagreed with the proposal but gave no reasons for their disagreement. Overarching comments included:

- a. Burden on small and new providers: two respondents raised concerns about how the proposal may be overly burdensome or unfair to small and new providers, particularly in relation to the proposed minimum requirements.
- b. Two-tier system: one respondent suggested that the requirements of the proposal should apply to lead providers in franchise partnerships in addition to providers that are seeking registration.

Requirement relating to arrangements

221. We received 10 responses to the question which asked if we had identified the correct minimum requirements to be considered as 'comprehensive arrangements' for the purposes of preventing, detecting and stopping fraud. Of these, nine agreed with our proposals, with many noting that the proposed arrangements are already standard practice. One other respondent suggested "regular unscheduled checks on institutions should be included to ensure prevention, detection and the stopping of fraud". We understand this to mean that the OfS should, on an initial and ongoing basis, conduct compliance visits on site at provider campuses in relation to this requirement.

Track record requirement

222. Twelve respondents gave feedback on whether a provider should have a satisfactory track record to be registered with the OfS. Of these, 10 agreed while two were unsure or didn't express an opinion. The two respondents who didn't express an opinion or were unsure about this requirement asked for clarification on how this requirement would work in practice. One of these asserted that new providers that have not previously accessed public funds should not be precluded from registering with the OfS because they cannot demonstrate a 'track record'. One other respondent asked for clarification on how a provider could demonstrate a satisfactory track record.

223. Another respondent considered that the track record requirement should be extended to cover 20 years. This respondent suggested that assessment of such matters could operate on a sliding scale and take context of the circumstances into account.

Additional comments

224. One respondent noted that the track record requirement could preclude providers from satisfying the condition in some circumstances, for example in respect of apprenticeships, where an audit triggers repayment of funds through no fault of the provider.

Alternative proposals

225. Respondents made alternative proposals in the following areas:

- a. **Track record test to include fraud findings relating to discharging of sponsorship duties for student visas.** One respondent suggested that the track record test should include any provider that has had its student sponsorship licence revoked by UKVI for any reason.
- b. **Templates for arrangements.** One respondent suggested that the OfS should consider issuing templates, guidance or examples of best practice to alleviate disproportionate burden on smaller providers.

Our response

Inclusion of two tests

226. We agree with the majority of respondents that the two proposed tests are reasonable and appropriate for ensuring providers meet standards related to public funding and fraud prevention. We have reflected on respondents' views on burden on small and new providers, but consider that the increase in burden is necessary to achieve our objectives, to adequately and effectively prevent, detect and stop fraud and the inappropriate use of public funds, and therefore address the risk to taxpayers and student interest. We have considered and responded to concerns about a two-tier system of regulation in our response to Proposal 1 set out above. Therefore, we have decided to proceed with implementation of this proposal.

Requirement relating to arrangements

227. We have considered the suggestion that we should conduct unscheduled checks for compliance with this requirement. However, we are not planning to conduct unscheduled visits to providers during the registration application process, as we do not think it would be proportionate to do so. We consider that a desk-based assessment of this requirement is sufficient to determine if providers have the adequate arrangements in place for the purposes of preventing, detecting and stopping fraud and the inappropriate use of public funds, for the reasons set out in the consultation. We therefore consider that conducting site visits would be unnecessarily burdensome on providers and the OfS. Furthermore, because this is an initial condition rather than an ongoing one, there is no requirement relating to ongoing compliance or review. We will consider whether to include this suggestion in our future work on ongoing requirements relating to management and governance in due course.

Track record requirement

228. If none of the indicators in E8.4a (Annex B) apply, a provider is deemed to have a satisfactory track record. New providers should meet this requirement by declaring the indicators do not apply, without needing to show prior access to public funds. However, they must also meet the second test in E8 (relating to arrangements that a provider must have in place to prevent, detect and stop fraud and the inappropriate use of public funds) to satisfy the condition

overall. The requirement does not exclude new or compliant providers, and we have clarified this position in the condition guidance. We have also removed from the guidance examples of scenarios that the OfS may consider as ‘exceptional circumstances’ when determining whether a provider has a satisfactory track record in relation to receiving or accessing public funds. This is because we think that exceptional circumstances will be fact-specific; instead of setting out specific examples of potential exceptional circumstances, we will consider exceptional circumstances on a case-by-case basis.

229. We acknowledge views that the 60-month timeframe may be too short; however, we consider it proportionate. It enables effective assessment of past offences while avoiding undue burden on providers. A sliding scale would introduce unnecessary complexity and reduce clarity. The timeframe aligns with standards set by regulators such as the FCA, Ofqual, and the Charity Commission, which we have considered in evaluating the overall impact. We do not agree that providers with fraud findings over five years ago automatically pose a risk, provided they have appropriate safeguards, fit and proper individuals, and compliant governance. Sixty months is a reasonable period for addressing past issues, assuming the provider meets conditions E7 and E8. We also agree that context is important. The track record test includes a structured framework for assessing issues involving public funds and allows providers to present exceptional circumstances as part of the assessment.

Additional comments

230. Where a conviction or decision of the kind specified in the condition applies, we recognise there may be exceptional circumstances which could demonstrate, in the OfS’s judgement, that the provider nevertheless has a satisfactory track record in relation to receiving and/or accessing public funds. This is reflected in the condition and guidance as drafted, and we do not consider any changes need to be made in this respect.

Alternative suggestions

Track record test to include fraud findings relating to discharging of sponsorship

231. We acknowledge the suggestion to include UKVI licence revocation as an indicator of an unsatisfactory track record. Under the current drafting of the condition, a provider is considered not to have a satisfactory track record if convicted of the offence set out in section 199 of the Economic Crime and Corporate Transparency Act 2023. This includes cases where the offence is associated with conduct that also leads to the revocation of the provider’s UKVI licence. We will give further consideration to this suggestion as part of our future work on ongoing management and governance conditions.

Templates

232. In response to stakeholder feedback, and for the sake of clarity, we have made a structural change to the condition. Specifically, we have moved the requirement for minimum arrangements from the guidance into the face of the condition itself. This change reflects the strong consensus among respondents in support of the minimum arrangements requirement and ensures that the expectation is clearly set out. As a result of this change, we have revised the accompanying guidance to align with the updated condition. The guidance now provides additional clarity around the minimum arrangement requirement, helping providers to better understand what is expected of them. However, while we have provided additional guidance, we have not included templates, as we recognise that the nature and detail of a provider’s arrangements will necessarily vary depending on their size, structure and context.

Our view is that prescriptive templates may be unhelpful or misleading in this regard, and that providers are best placed to determine the most appropriate arrangements for their specific circumstances. However, we will keep this approach under review.

Other questions

Other consultation questions

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

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

9. Do you foresee any unintended consequences resulting from the proposals in this consultation? If so, please indicate what you think these are and the reasons for your view.

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

11. In your view, are there ways in which the policy objectives discussed in this consultation could be delivered more efficiently or effectively than proposed here?

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

Summary of respondents' views

Requirements of proposed condition

233. We received six responses in answer to question 7. Of these, three agreed that the requirements of the proposed condition were clear and two gave no further comment. The one substantive comment related to previous points raised in respect of retaining the requirement for providers to conduct a self-assessment with supporting documents and the assessment against PIGPs. We have responded to those views in paragraphs 37 and 38.

Clarity and helpfulness of guidance

234. We received six responses to question 8. Of these, two agreed that the guidance is clear and helpful; three gave no further comment. The one substantive comment has been covered elsewhere in this document.

Unintended consequences

235. We received nine responses to question 9. Of these, one did not foresee any unintended consequences, two gave no further comment and six provided responses highlighting potential unintended consequences. The six respondents suggested the following unintended consequences from the proposals:

236. The increased burden on new providers seeking registration would prevent good new providers from being able to register and this would not serve the student interest.

237. Established providers that deliver high standards should not bear the regulatory or resource brunt of achieving higher standards for new applicants. We have interpreted this to mean that established providers which are already registered should not have to pay for raising the bar for new entrants or have the same regulation extended to them.
238. The use of absolutes in relation to the track record test for fraud and the inappropriate use of public funds could lead to conflict in institutions' responses and the OfS should therefore take context into account. This respondent also considered that submission of a business plan without the inclusion of information about the educational character of the institution could encourage providers to focus on business decision-making practices to the detriment of academic and accessibility activity.
239. The timetable for the reforms is too short for providers to ensure that they have appropriate and effective governance arrangements in place and the OfS should reconsider if it is appropriate in the context of the full consultation proposals.
240. The fit and proper person definition in Annex B of the OfS regulatory framework states that a person may not be fit and proper if they have been '...privity to... any serious misconduct or mismanagement...'. The respondent was concerned that many senior role holders would be 'privity to' serious misconduct by nature of their seniority. They suggest that "party to" would be a better definition, since it emphasises involvement in misconduct or mismanagement rather than mere awareness of it".

Clarity of aspects of the proposal

241. In response to question 10, we received five responses. One respondent said that there were no aspects of the proposals they found unclear. Two respondents provided no further comment, and two respondents provided suggestions for clarity. These suggestions were as follows:
- a. One respondent said, "it would be helpful to have links to the relevant parts of the document". We understood this to mean embedded links in both the consultation document and in future guidance.
 - b. The other respondent restated the same views as those given against Proposal 2, question 7 and question 8, which we have already responded to.

Ways in which the policy objectives could be delivered more efficiently and effectively

242. In response to question 11, we received four responses. Two of these responses provided no further comment, one restated the same point covered by responses to questions 7, 8 and 10 and the final respondent argued that the proposed changes are unnecessary because the existing conditions have been sufficient for a significant period of time.

Potential impact of proposals on individuals with protected characteristics

243. In response to question 12, we received five responses. Of these, three had no further comment, one drew attention to a previous comment about the suitability of interviews for specific individuals (which we have addressed in paragraph 131) and one argued that protected characteristics should not be considered when determining whether an institution is protecting public funds and operating in accordance with policies and procedures.

Our response

Unintended consequences

244. We have considered the argument that burden might prevent good new providers being registered. While we acknowledge that burden may increase in some areas, we do not think that high-quality, well-prepared providers will be materially negatively impacted by these proposals. We expect well prepared providers to experience a more efficient registration process as a result of other changes being implemented as explained elsewhere in this decision document. The purpose of these proposals is to ensure that all providers that register meet a consistent high standard that protects students and public funds. We have addressed the issue of regulatory burden in response to the respondents' views on the proposals throughout this document.
245. In response to the point raised that established providers that are already registered with the OfS should not have to bear the brunt of higher burden requirements on new entrants, we consider that the requirements set out are necessary and proportionate to address the risks to students and taxpayers in the current context. We also consider that established and registered providers that have robust governance arrangements in place should be broadly compliant with the new conditions already.
246. We have responded to the point that the OfS should take context into account in relation to the track record test in [paragraph 228]. We have responded to the point in relation to inclusion of information about the interests of students in [paragraphs 86 and 87].
247. Other respondents have stated that the timeframe for implementing these proposals is short and we have addressed this concern in the Background and Executive summary paper. We consider that these reforms are necessary in a rapidly evolving sector facing financial challenges; additional scrutiny is needed to robustly assess providers' ability to protect public money. We acknowledge that providers may need some support in understanding and complying with the new initial conditions of registration, and we intend to offer appropriate support. This includes updated guidance for registration in Regulatory advice 3 and running events following the publication of these consultation outcomes. However, we also note that the reforms are fundamentally aimed at improving management and governance, and providers that already operate with sound governance are likely to be largely compliant with the new requirements already.
248. We have carefully considered the point raised regarding the definition of 'fit and proper', as outlined in Annex B, in light of the new requirements. We acknowledge that while the definition of fit and proper outlined in Annex B of the regulatory framework does not form part of the proposals, and E7, E8 and E9 would replace E1 and E2 as initial conditions, the substance of the respondent's concern is pertinent to both the existing and proposed regulations, particularly those referenced in E7. We have considered the suggestion that the OfS should treat only direct involvement in misconduct (as set out in Annex C – E9) as a negative indicator, rather than mere association with a provider – through a senior leadership role – at the time the misconduct occurred. While an individual may not have been directly responsible for the wrongdoing, their presence in a senior leadership position during such events may nonetheless indicate a potential governance risk. It is important to clarify that the inclusion of this provision in E9 does not automatically disqualify an individual from being deemed fit and proper and the requirement in E9 allows for the consideration of wider context

and exceptional circumstances. We consider that this approach appropriately balances fairness with the need for transparency, accountability, and the safeguarding of public funds.

Clarity and helpfulness of guidance

249. We have considered the suggestion that links are provided to relevant parts of the document to provide additional clarity and have done so where possible within this document and in accompanying documents and guidance.
250. We do not share the view that existing requirements are sufficient and therefore new requirements are not needed. As outlined in the consultation document, the higher education sector and the financial challenges it is facing have changed significantly since the OfS was set up and we see new and emerging risks around management and governance and consumer protection in particular. The new requirements are designed to ensure that the framework remains fit for purpose as business models evolve and the sector faces new challenges.

Potential impact of proposals on individuals with protected characteristics

251. The public sector equality duty requires the OfS to have due regard to the need to: eliminate conduct prohibited by the Equality Act 2010, advance equality of opportunity between people who share a relevant protected characteristic and those who do not, and to foster good relations between persons who share relevant protected characteristics and those who do not.

Abbreviations used in this document

Abbreviation	Meaning
BOOMs	beneficial owners, officers and managers
CUC	Committee of University Chairs
DfE	Department for Education
FCA	Financial Conduct Authority
OfS	Office for Students
PIGPs	Public Interest Governance Principles
SLC	Student Loans Company
UKVI	UK Visas and Immigration

Annex A: Condition E7 – comparison with the condition we consulted on

Amendments to the version on which we consulted are highlighted, with text to be removed struck through, and text to be added in red font.

This includes some corrections to grammar and punctuation and for clarity and consistency. Please note that structural changes have been made to consolidate proposed E7A and E7B into new condition E7. Where such changes have occurred without any alteration to the content, these have not been specifically highlighted.

Initial condition of registration

Condition ~~E7A~~**E7**: A set of governing documents **and business plans**

Part 1: A set of governing documents

Requirements relating to a set of governing documents

~~E7A~~**E7.1** The provider must have a set of documents which will enable the effective governance of the provider in practice.

~~E7A~~**E7.2** The set of documents referred to in ~~E7A~~**E7.1** must include:

- a. documents which establish the provider as an institution, including (where applicable to the provider's legal form) its Royal Charter, memorandum and articles of association or trust deed;
- b. **governing body documents**;
- c. **risk and audit documents**;
- d. **decision making documents**;
- e. a **conflict of interests policy**; and
- f. any other documents (including **shareholder agreements**) which contain rules which govern the operation of the provider's **governing body**.

~~E7A~~**E7.3** The requirement in ~~E7A~~**E7.1** will be assessed by reference to factors such as the provider's size, complexity, context and **business plan**, and includes that the set of documents must:

- a. provide clear and appropriate arrangements for the constitution and operation of the **provider's governing body** including by providing for mechanisms to ensure that:
 - i. the **governing body** is of an appropriate size;
 - ii. the members of the **governing body** have appropriate expertise and skills;

- iii. where the provider is applying for registration in the Approved (fee cap) category, the provider's **governing body** has at least one **independent member**;
 - iv. (where appropriate) the **governing body** has access to advice from persons who are external to the provider;
 - v. the effectiveness or performance of the **governing body** is subject to appropriate review;
 - vi. meetings of the **governing body** take place at appropriate intervals;
- b. provide clear and appropriate arrangements for decision making within the provider, including by:
 - i. clearly identifying any persons (including committees) with decision making responsibilities that have been delegated by the provider's **governing body**, and the nature of those responsibilities;
 - ii. imposing delegated decision making responsibilities on persons suitable to hold those responsibilities;
 - iii. providing for appropriate **governing body** oversight in relation to delegated decision making;
- c. provide clear and appropriate arrangements for discharging **risk and audit functions**, including by:
 - i. clearly identifying any persons (including the **governing body** and committees) with responsibilities in relation to any **risk and audit functions**, the nature of those responsibilities, and how the person intends to discharge those responsibilities in practice;
 - ii. imposing responsibilities in relation to **risk and audit functions** on persons suitable to hold those responsibilities;
 - iii. where responsibility in relation to **risk and audit functions** has been delegated by the provider's **governing body**, providing for appropriate **governing body** oversight in relation to those functions;
- d. provide clear and appropriate arrangements for the constitution and operation of any committee with responsibility for any **risk and audit functions** (where the provider has one or more such committees), including by:
 - i. articulating clear and appropriate roles and responsibilities of the committee, including in relation to commissioning or overseeing internal or external audits of the provider;
 - ii. providing for mechanisms to ensure that:
 - A. its members have appropriate expertise and skills;
 - B. meetings of the committee take place at appropriate intervals;

- C. the **provider's governing body** has appropriate oversight of the committee's activities;
- D. the committee operates with appropriate input from independent persons;
- e. provide clear and appropriate arrangements for managing any actual or potential conflicts of interests in relation to individuals responsible for management and governance of the provider, where they are making decisions on behalf of the provider;
- f. ~~is~~**be** clearly drafted, including in respect of English language, spelling, grammar and formatting, such that the contents of the documents are properly understandable;
- g. ~~is~~**be** coherent both within documents and between documents, with no material inconsistencies, contradictions or discrepancies either within or between documents.

~~Condition E7B~~ **Part 2: Business plans**

Scope of Part 2

~~E7B.1 This~~**E7.4 Part 2 of this** condition applies to higher education provided (or to be provided) in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider).

Requirements relating to business plans

~~E7B.2~~**E7.5** The provider must have:

- a. a business plan which:
 - i. meets **relevant requirements**; and
 - ii. covers the provider's planned activities over a five-year period, including the provider's current financial year and **the four future years which follow**; and
- b. in the OfS's judgement, the ability to deliver the business plan in practice.

~~E7B.3~~**E7.6** In assessing whether a provider has the ability to deliver the business plan in practice, the OfS will consider:

- a. whether the provider has the **capacity and resources** to deliver the business plan in practice;
- b. where relevant, evidence of the provider's past performance providing higher education;
- c. any other matters which the OfS considers relevant to the provider's ability to deliver the business plan in practice.

~~E7B.4~~**E7.7** The provider's business plan must demonstrate that the provider has given significant consideration to the interests of students in the formation of its business plan, including by:

- a. identifying any **business objectives and targets** that may conflict with the interests of students;
- b. considering how that conflict will be managed, which may include placing less weight on **business objectives and targets** where such objectives and targets conflict with the interests of students.

~~E7B.5~~**E7.8** The provider's business plan must include a description of all of the following:

- a. where the provider has previously provided, but is not currently providing, higher education, the nature of any **higher education courses** that the provider has previously provided (including a summary of the subject matter and level of those courses, the modes of study, modes of course delivery, and the numbers and characteristics of the cohorts of students the provider has recruited);
- b. where the provider is currently providing higher education, the nature of any **higher education courses** that the provider is currently providing (including a summary of the subject matter and level of those courses, the modes of study, modes of course delivery, and the numbers and characteristics of the cohorts of students the provider has recruited);
- c. the geographic location of any previous or current higher education provision;
- d. **where the provider has previously provided, or is currently providing, higher education, the provider's previous or current business competitors;**
- e. the nature of the provider's planned higher education provision, including:
 - i. any **higher education courses** it intends to provide;
 - ii. the subject matter and level of those courses;
 - iii. the modes of study and of course delivery;
 - iv. the numbers and characteristics of the cohorts of students the provider has recruited and/or intends to recruit for those courses and the academic needs of those students;
 - v. the geographic location of any planned higher education provision;
 - vi. the provider's likely business competitors;
- f. the provider's **business objectives and targets**;
- g. the provider's strategy for achieving the **business objectives and targets**, including how the provider intends to approach:
 - i. how it will use any surplus generated (if applicable);
 - ii. marketing to, and recruitment of, students, and whether it intends to use recruitment agents;
- h. any **relevant risks** and how the provider plans to manage those risks; and

- i. the provider's plans for how, if registered, it would comply with all ongoing conditions of registration applicable to it from the date of registration.

Definitions

~~E7B.6~~**E7.9** For the purposes of this condition ~~E7B:~~**E7**:

- a. **"business objectives and targets"** means measurable objectives and targets that the provider plans to use to monitor its overall performance, including (but not limited to):
 - i. the provider's financial targets;
 - ii. the numbers of students it aims to recruit to its **higher education courses**;
 - iii. where the provider is currently providing **higher education courses**, any aims to expand the provider's current provision (including to new subject areas, levels of study or modes of course delivery);
 - iv. any aims to obtain authorisations, accreditations or licences from other persons or organisations, including the Office for Students, the Secretary of State, and professional statutory and regulatory bodies;
 - v. any aims to form partnerships with other persons or organisations, including other higher education providers (whether or not registered with the Office for Students) and/or awarding bodies;
- b. **"business plan"** means a business plan as required under Part 2 of this condition E7;
- c. **"capacity and resources"** includes, but is not limited to:
 - i. the financial resources of the provider;
 - ii. the number, expertise, and experience of the staff employed or contracted by the provider (or to be employed or contracted by the provider); and
 - iii. the provider's management and governance arrangements;
- d. **"conflicts of interest policy"** means a policy which governs how the provider will manage any actual or potential conflicts of interests in relation to individuals responsible for management and governance of the provider where they are making decisions on behalf of the provider and which, at a minimum:
 - i. contains a definition or guidance of what would constitute a conflict of interests, that would enable users to identify whether a conflict existed;
 - ii. contains an explanation of how and when conflicts of interests should be declared to the provider;
 - iii. contains mitigations to address conflicts of interests declared;
- e. **"decision making documents"** means documents which set out the following:

- i. any persons (including committees) with decision making responsibilities that have been delegated by the provider's **governing body**, and information setting out those delegations (in a scheme of delegation or equivalent);
 - ii. arrangements for **governing body** oversight in relation to this delegated decision making, including arrangements for reporting to the **governing body**;
- f. "**governing body**" has the meaning given by section 85 of the Higher Education and Research Act 2017;
- g. "**governing body documents**" means documents which set out the following information in relation to the provider's **governing body**:
 - i. its purposes or objectives;
 - ii. the number of **governing body** members and the roles of each of its members;
 - iii. processes for appointing members;
 - iv. roles and responsibilities of the body;
 - v. procedures for its decision making;
 - vi. arrangements for meetings of the body (including meeting frequency);
 - vii. arrangements for reviewing the body's effectiveness or performance;
- h. "**higher education course**" is to be interpreted:
 - i. in accordance with the Higher Education and Research Act 2017; and
 - ii. so as to include, for the avoidance of doubt:
 - A. a course of study;
 - B. a programme of research;
 - C. any further education course that forms an integrated part of a higher education course; and
 - D. any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course;
- i. "**independent member**" means an external member of the provider's **governing body** who is independent of the provider;
- j. "**relevant requirements**", in respect of a provider's business plan, includes (but is not limited to) that, in the OfS's judgement:
 - i. the plan is comprehensive;

- ii. the plan is clearly drafted, including in respect of English language, spelling, grammar and formatting, such that the contents of the plan are properly understandable;
 - iii. the plan is coherent both internally and alongside other documents in the provider's **registration** application, with no material inconsistencies, contradictions or discrepancies either within the plan itself or between the plan and other documents in the provider's application;
 - iv. the plan demonstrates that the provider has a sound understanding of:
 - A. the higher education sector and the context in which the provider plans to operate;
 - B. **relevant risks**;
 - C. the requirements imposed under the ongoing conditions of registration which would apply to the provider from the date of registration (if registered);
 - v. the plan contains appropriate strategies to manage **relevant risks**;
- k. "**relevant risks**" means:
- i. any risks of non-compliance with ongoing conditions of registration which, if registered, would apply to the provider from the date of registration;
 - ii. any risks to public funds;
 - iii. any risks to the interests of students that may arise as a result of the provider's **business objectives and targets**;
 - iv. any risks arising from assumptions made by the provider in the formation of its business plan, including any which could impact:
 - A. the provider's ability to achieve its **business objectives and targets**;
 - B. the provider's compliance with ongoing conditions of registration which, if registered, would apply to it from the date of registration; and
 - C. the interests of students;
- ~~f. "**staff**" includes, but is not limited to, employees and contractors.~~
- l. "**risk and audit documents**" means documents which set out the following:
- i. any persons (including the **governing body** and committees) with responsibilities in relation to any **risk and audit functions**, the nature of those responsibilities, and how the person intends to discharge those responsibilities in practice;
 - ii. where responsibility in relation to **risk and audit functions** has been delegated by the provider's **governing body**, arrangements for **governing body** oversight in relation to those functions, including arrangements for reporting to the **governing body**;

- iii. where the provider has one or more committees with responsibility for any **risk and audit functions**, the following additional information in relation to each committee:
 - A. its purposes or objectives;
 - B. the number of committee members and the roles of each of its members;
 - C. processes for appointing members;
 - D. roles and responsibilities of the committee, including any role of the committee in relation to commissioning or overseeing internal or external audits of the provider;
 - E. procedures for its decision making;
 - F. arrangements for meetings of the committee (including meeting frequency);
 - G. arrangements for **governing body** oversight of the committee, including arrangements for reporting to the governing body;
- m. **“risk and audit functions”** means functions which relate to:
 - i. identifying and managing risks;
 - ii. overseeing internal or external auditing of the provider, as well as the provider’s financial reporting and disclosures;
- n. **“shareholder agreement”** means an agreement between the shareholders of a company governing the relationship between the shareholders;

Summary

Applies to: all providers seeking registration

Initial or general ongoing condition: initial condition

Legal basis: section 5 of HERA

Part 1: Set of governing documents

Conditions E7.1 and E7.2

1. The range of documents a provider will need to submit to satisfy ~~E7A~~**E7.1** will depend on the provider’s management and governance structures. This will depend on factors, including the provider’s size, complexity and legal form. The form, structure and number of these documents may be different for different providers. Some providers may, for example, include the various elements within a single document, whereas others may submit separate documents. A provider must have a ‘conflict of interests’ policy to satisfy the condition. **Where a provider expects that its governing documents will change as a result of registration with the OfS, it**

should submit the versions of the documents it intends to adopt once registered. This will ensure that the assessment is based on the most relevant information.

2. 'Governing body documents' will normally mean the terms of reference, or equivalent, for the governing body, and any other documents needed to demonstrate the information set out in ~~E7A.4.e~~**E7.9.g**. This may include additional policies that set out governing body procedures in more detail, such as a separate 'appointments policy' or 'code of conduct' for members of the governing body. It may also include or overlap with other documents submitted in relation to this condition, such as a provider's articles of association and shareholder agreements that include provisions that influence governing-body decision making.
3. 'Risk and audit documents' may mean the terms of reference for a provider's risk and audit committee, or similar, where a provider has such a committee. It may be, or include, a provider's governing body documents. The OfS expects that risk and audit functions will be different for different providers and be based on a provider's own context and circumstances. A provider may have different individuals or committees to discharge risk and audit functions (e.g. an audit committee and a separate risk committee, or risk dealt with by the governing body and audit dealt with by a separate finance committee). Whatever a provider's arrangements, they should be clearly explained in its documents.
4. 'Decision making documents' will normally mean any scheme of delegation that the provider has in place but may also include any descriptions or diagrams of a provider's committee structure, where necessary to explain the interactions between the governing body and any committees or individuals to which it has delegated authority. The information required may be contained in a broader document which sets out a provider's overarching governance framework. The OfS will, however, only assess information about decisions delegated by the governing body, rather than wider information about a provider's committees and their operation. A provider does not need to provide documents which govern the detailed operation of committees of the governing body, except any committee or committees which have delegated authority related to a provider's risk and audit functions.
5. A 'conflict of interests policy' may be a standalone document or covered by content of a 'code of conduct' for members of the governing body, **senior executive** or similar. To satisfy the requirement, the document must cover all the content described in ~~E7A.4.b~~**E7.9.d**.

Condition ~~E7A~~E7.3****

6. ~~E7A~~**E7.3** provides further information about the set of documents that a provider must have at registration to enable the effective governance of the provider in practice. The arrangements set out in those documents must be both clear and appropriate. Clear documentation will be easily understandable and written in plain English. It will not contain contradictions or inconsistencies with other documentation submitted in relation to this condition, ~~or elsewhere within a provider's application.~~
7. 'Appropriate arrangements' are those which reflect the size, complexity, context and business plan of the provider, and the OfS expects governing documents will vary accordingly. It is more likely that a small provider with a simple business model would have simpler governance arrangements than a large, more complex provider. ~~E7A.3a~~**E7.3.a** sets out requirements relating to the constitution, operation and mechanisms of the governing body and the mechanisms by which it would discharge its duties. These include the following provisions:

- a. Appropriate size – the appropriate size is one that will enable the effective governance of the provider in practice. Small providers which deliver a smaller range of courses may require fewer members on the governing body whereas large providers with multiple faculties may benefit from additional oversight and expertise. A provider with an inappropriately sized governing body ~~is unlikely to~~ **will not** meet this requirement. A provider of any size is unlikely to meet this requirement if it has an exceptionally small or large governing body.
- b. Appropriate expertise and skills – the governing body needs to include a range of suitable knowledge and experience so that it can manage the provider effectively. The required expertise and skills will vary between providers. It may include risk management, knowledge of regulatory and legal requirements, financial management, academic experience specific to the needs of the provider, and the ability to represent the perspectives and interests of students.
- c. Independent member – **where** the provider ~~may not have appointed the independent member, but the OfS expects the relevant governing documents to set out the requirement and process for appointing them (for a provider~~ **is seeking registration in the Approved (fee cap) category the OfS requires its governing documents to provide for its governing body to have at least one independent member**, An independent member should have no ‘material relationship’ with the provider before they are appointed that could create a conflict of interest in performing their duties independently. ‘Material relationships’ will include, but not be limited to, being an employee, customer or supplier of the provider, or having any other affiliations (for example, familial or business affiliations) that could influence, or be perceived to influence, their decisions. **As set out in the guidance to condition E7, the OfS expects the provider seeking registration in the Approved (fee cap) category to have appointed the independent member before the completion of the application period (in the event that the independent member is not appointed in this period, we would normally pause the application).**
- d. External advice – it may be appropriate for a governing body to have in place arrangements to access external advice in circumstances where it has identified gaps in its knowledge or expertise in specific areas, or on high-risk issues. It may achieve this, for example, by establishing an advisory board to provide expert advice on particular issues as an interim measure, or seeking external, independent advice to provide additional scrutiny on particular issues. In such circumstances, the provider’s governing body documents should clearly set out how these arrangements will work.
- e. Review of governing body – governing body documents should clearly set out the arrangements for reviews, including the frequency, responsibilities and mechanisms for undertaking reviews. These reviews should enable the effective governance of the provider in practice.
- f. Meetings – an appropriate interval for meetings of the governing body **will be that that** ensures ~~it can receive~~ **the governing body receives** timely information, scrutinises relevant reports on activity that it oversees, and makes timely decisions. The frequency should not impede efficient operation or conflict with reasonable competing commitments of members.

8. ~~E7A~~**E7.3.a.ii.** requires that the relevant governing documents include clear **and appropriate** mechanisms ~~and processes~~ that make sure the **members of the** governing body ~~as a whole~~ ~~has~~**have** appropriate expertise and skills. When the OfS assesses the mechanisms ~~and processes~~ in the relevant governing documents, it will consider:
- Whether the governing body incorporates a sufficiently diverse mix of expertise, skills and perspectives, for the size and complexity of its operations.
 - The role of effectiveness reviews of the governing body and its members in ensuring sufficient skills and expertise.
 - The role of governing body appointment procedures in ensuring sufficient skills and expertise.
 - Any senior management roles which are defined as members of the governing body, and their areas of responsibility and the expertise that they bring.
9. ~~E7A~~**E7.3.b** requires **the provider's governing** documents ~~which demonstrate how to provide~~ **clear and appropriate arrangements for decision making within** the provider ~~discharges (in order to enable the effective governance of the provider in practice (per E7.1)), including by imposing~~ delegated decision making responsibilities **on persons suitable to hold those responsibilities and providing for appropriate governing body oversight in relation to delegated decision making**, When the OfS assesses whether the provider has delegated decision making ~~arrangements to suitable individuals to enable effective governance of the provider in practice, this~~**responsibilities to suitable persons, it** will consider:
- The level of authority and seniority necessary to take the decisions which have been delegated, and whether the governing body retains ultimate responsibility for major decisions.
 - Whether individuals, committees, and members of those committees to which decision making responsibilities have been delegated, have the skills, knowledge and experience to discharge decision making duties in areas requiring specific expertise.
10. In assessing whether arrangements for governing body oversight of delegated decision making are appropriate ~~to enable the effective governance of the provider in practice~~, the OfS will consider:
- Whether the documents provide clear information about the individuals or committees responsible for taking delegated decisions, and the terms on which those delegations have been made, including any conditions or limitations.
 - How frequently and when delegated decisions are reported to the governing body and the mechanisms it has to scrutinise delegated decisions.
 - Processes the governing body follows to review whether delegated decision making is effective.
 - Whether the governing body has chosen to delegate matters which are appropriate to indirectly oversee rather than deal with directly. Matters which are likely to be appropriate to

delegate include matters which need detailed or expert scrutiny or those which are operational rather than strategic.

11. ~~E7A~~E7.3.c sets out requirements for documents which describe how a provider will discharge its risk and audit functions. ~~E7A~~E7.3.d sets out requirements for documents which govern the constitution and operation of any committee with responsibility for any risk and audit functions.
12. A provider must clearly set out in its documents:
 - a. which individuals or committees have responsibility for risk and audit functions.
 - b. what those responsibilities are and how the individuals or committees will discharge them in practice.
 - c. how the provider will ensure that these functions are undertaken by suitable persons.
 - d. how governing body oversight is secured.
13. If a governing body discharges risk and audit functions, information about how it does so must be set out in the provider's governing body documents. Where a provider has delegated these functions to a separate committee or committees, it must submit the documents which govern the operation of that committee or committees. In either case, these documents must make clear how the provider will effectively deliver those functions in practice. If the body responsible for these functions intends to use the services of an external person, this should be clearly set out.
14. The condition defines 'risk and audit functions' in broad terms. The OfS will consider audit activity in the broadest sense, including, but not limited to:
 - a. a provider's arrangements for securing independent auditing of its financial statements
 - b. auditing of a provider's internal controls
 - c. Any other internal programme of audit undertaken in relation to other areas of the provider's business, whether or not these involve external input.
15. The arrangements a provider has in place to identify and manage risk and to oversee its audit activity are likely to overlap. Risk and audit documents should clearly identify responsibilities, describe the nature of those responsibilities and set out how these will be discharged in practice. Examples of the types of information that would help satisfy this requirement include but are not limited to:
 - a. Documents which describe the provider's risk management framework, including:
 - i. How it categorises and rates risks, and its tools for doing so (such as a risk register).
 - ii. Mechanisms for risk reporting and monitoring, including who undertakes this and with what frequency.
 - iii. How risk appetite is set and communicated.

- iv. Processes for ensuring all employees are aware of their responsibilities in relation to risk management.
 - b. Documents which demonstrate the operation of the provider's risk management framework, including risk registers or other records which demonstrate how key risks have been considered and measured, and describes key mitigations that are in place.
 - c. Documents setting out how a provider will carry out or commission different audit activities, including:
 - i. Responsibilities and processes for appointing and supporting external auditors, including but not limited to auditing of the provider's annual financial statements.
 - ii. The arrangements the provider has in place for internal audit, including identifying and agreeing the programme of cyclical reviews and any external input into these.
 - iii. Any responsibilities and processes for ensuring deficiencies or recommendations identified as part of internal or external audit are addressed.
 - d. Documents which set out responsibilities and processes for scrutinising a provider's financial reporting including, but not limited to, at the financial year end.
 - e. Documents which set out mechanisms for overseeing a provider's internal controls, including the process through which the statement of internal controls required in the audited accounts is produced.
16. The OfS's assessment of whether ~~suitable individuals hold~~ **the provider's documents impose** responsibilities for risk and audit functions **on suitable persons** will include all the factors set out in paragraphs 9a-b. It will also consider whether ~~individuals~~ committees and members of those committees to which the governing body has delegated risk and audit functions:
- a. Have sufficient understanding of risk management in the context within which the provider is operating or intends to operate. This may be demonstrated by the membership of the committee, or the rules and procedures for appointment to the committee, or the appointment of external input to provide this function.
 - b. Have sufficient independence from the senior management of the provider within its membership to enable appropriate and objective challenge to the disclosures and information provided to the committee. Where such independence is not possible internally, this must be delivered by other means.
17. The OfS will assess whether **the provider's documents provide for** meetings of any committee ~~discharging~~ **with responsibility for** risk and audit functions **to** take place at appropriate intervals. This will include whether the meeting's frequency allows the committee to receive timely information, scrutinise relevant reports on activity which it oversees, and make timely decisions. The frequency should not impede efficient operation or conflict with reasonable competing commitments of members. ~~The OfS will consider any available information from the provider's application about other positions to which an individual has been appointed, or responsibilities the individual holds~~

18. The OfS's assessment of whether ~~risk and audit~~ the provider's documents contain clear and appropriate mechanisms to ensure the governing body has appropriate oversight of the ~~committee's activities~~ of any committee with responsibility for risk and audit functions (in order to enable the effective governance of the provider in practice (per E7.1)), will include:
- a. Whether the oversight mechanisms reflect the size, complexity and context of the provider, and the scale and complexity of business considered by the committee.
 - b. Whether the documents provide clear information about responsibilities and accountability for delegated decision making by the committee.
 - c. How frequently and when the committee reports to the governing body and the mechanisms the governing body has to scrutinise delegated decisions.
 - d. ~~Processes~~ The adequacy of the processes the governing body follows to review whether the committee's work and decision making is effective.
19. When the OfS assesses whether the provider's documents contain clear appropriate mechanisms that to make sure the any committee with responsibility for risk and audit functions operates with appropriate input from independent persons, it will consider:
- a. The rules that the documents set out about membership of the committee, including the requirements for independent members of any such committee, and procedures for appointment to it.
 - b. ~~Procedures~~ The adequacy and effectiveness of procedures that the documents set out to ensure the independence and objectivity of the external auditor, which will make sure that the provider's financial statements meet the requirements of the OfS's accounts direction.
 - c. ~~Any~~ The appropriateness of any authority granted to the committee to engage independent advisers.

Assessing compliance

20. The OfS's assessment of this condition will involve a review of the documents a provider submits in relation to the requirements set out in the condition. The OfS may request additional information or documentation as it considers appropriate.
21. The OfS will not assess the provider's governing documents against the OfS Public Interest Governance Principles (PIGPs) at registration. However, governing documents are expected to uphold these principles in order to comply with ongoing conditions E1 and E2. Where there is evidence that a provider is clearly at significant risk of breaching the ongoing conditions, this is likely to be indicative that the provider does not meet the requirements of E7 Part 2: Business plans in relation to ongoing conditions of registration.

Part 2: Business plans

Business plan

22. The business plan means the document, or documents, submitted by a provider to fulfil this requirement. The business plan need not be a new document created solely for the purpose of this condition, providing it meets the information requirements set out in ~~E7B.3~~**E7.6**. A provider may choose to rely on a pre-existing business plan, strategic plan or other planning document it has previously produced, as long as the content remains accurate and up-to-date. A provider may, where necessary, submit that document alongside additional narrative which covers any omissions. Where a provider chooses to submit multiple documents, these must collectively include all required information and meet all the relevant requirements.
23. **As set out in the section 3(5), a provider must inform the OfS of any material changes to its business plan that arise during the registration process. This includes material changes to the provider's business objectives and performance targets, any substantial revisions to its planned higher education provision, or any developments that may affect its ability to deliver the commitments set out in its business plan.**

Relevant requirements

24. The 'relevant requirements' a provider's plan must meet are listed in ~~E7B.6~~**E7.9.j**.

Comprehensive plans

25. In judging whether a business plan is comprehensive, the OfS will consider whether the plan provides enough detail and specific factual information to understand how the provider intends to operate.
26. 'Specific factual information' means concrete information relevant to a provider's plans (such as course names, forecast student numbers, demographic statistics, measurable key performance indicators (KPIs)). A plan will not be assessed to contain enough 'specific factual information' if it only contains vague, descriptive statements about what a provider wants to achieve (such as general statements about providing high quality education, or opportunities for students).
27. A provider's business plan will not be considered 'comprehensive' where it omits significant elements of a provider's plans relating to the information requirements set out in ~~E7B.5~~**E7.8**. The OfS would not, for example, consider a provider's business plan comprehensive if it:
- a. Omits any information about plans it is actively pursuing to enter new partnership arrangements, or secure new awarding bodies for its courses.
 - b. Omits information about planned new campuses.
 - c. Omits information about business objectives and targets that it has adopted for the purposes of reporting to shareholders or the governing body.
 - d. Omits information about its strategies for achieving business objectives and targets which are essential to its success, particularly where this involves activities carrying a higher degree of risk, such as recruitment of international students, use of recruitment agents, or delivery through partnership arrangements.

Coherent plans

28. The OfS is unlikely to consider a plan coherent or consistent where:

- a. The future direction of the provider set out in the plan does not tally with financial and student number forecasts submitted in relation to condition D (for example, where the business plan suggests a cautious approach and modest growth, but forecasts show a rapid increase in revenue and student numbers).
- b. The business plan describes robust arrangements for overseeing and managing key risks through a provider's governance structures, but these are not reflected in the provider's set of governing documents and descriptions of a provider's arrangements to prevent fraud and protect public money.
- c. A provider's business plan gives a narrative description of its aims and purpose which prioritise the interests of students, but this is inconsistent with the practical targets, objectives and measures it has put in place to monitor performance, which are purely financial.

Sound understanding of the higher education sector

29. 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.

30. Examples of content in a business plan which are likely to lead the OfS to consider that a provider does not have a sound understanding include:

- a. The provider identifies inappropriate or unrealistic competitors, for example a small college identifying a large established university as a key competitor.
- b. The provider sets out unrealistic or too ambitious short-term goals, such as high performance in league tables or immediately being granted degree awarding powers.
- c. The provider's growth projections are too optimistic or rely on the assumption of unrealistically high rates for conversion of applicants to registrations.

Sound understanding of relevant risks

31. The OfS will assess whether a provider's business plan demonstrates that the provider has a sound understanding of relevant risks by considering whether it identifies the most substantial **relevant** risks that are likely to arise from its chosen approach. The OfS's assessment will take account of factors, including:

- a. the information included in the provider's business plan about the nature of its students and courses
- b. its business objectives and targets
- c. its strategies for achieving these.

32. The most substantial **relevant** risks are those that are likely to occur and have the largest impact on students, in terms of scale and seriousness, if they do. The exact nature of relevant

risks will vary depending on the aims and objectives of the provider and its strategy for achieving them. Examples include:

- a. Risks of not meeting student recruitment targets, particularly if there are reasons recruitment may be challenging.
- b. Risks relating to recruitment of international students.
- c. Risks relating to quality and standards of courses, especially where a provider has not delivered higher education courses before or has set out plans to expand its provision.
- d. Risks relating to reliance on validation partners for awarding qualifications.
- e. Risks relating to not being awarded degree awarding powers, or a student sponsor licence.
- ~~f. Risks that may arise from a business model which recruits a significant proportion of students from underrepresented groups. Examples are the increased risk that these students may not receive sufficient personalised academic or personal support to achieve a positive outcome, or the risk that cost pressures may disproportionately affect such students' ability to complete their course or obtain a good grade.~~
- g. Risks related to a provider's ability to secure positive outcomes for students with specific support requirements.

33. The OfS is unlikely to consider that a provider's business plan demonstrates a sound understanding of relevant risks where:

- a. The provider's plan fails to identify significant risks which the OfS considers the provider is likely to encounter, particularly where these risks arise from a high-risk approach which a provider has chosen to pursue (for example, where a provider does not identify the potential risks to the interests of students or risks to public funds associated with its planned reliance on domestic recruitment agents).
- b. The provider's plan fails to engage with entire categories of risk set out under the definition of relevant risks (for example, where a provider's plan does not include any consideration of potential risks of regulatory non-compliance).
- c. The provider's plan significantly misjudges the potential severity of the risks it has identified. It may underestimate the likelihood of a risk occurring or underestimate the potential scale or seriousness of negative impacts on students associated with those risks.

Sound understanding of the conditions of registration

34. The OfS will assess whether a provider's business plan demonstrates a sound understanding of the conditions of registration. The OfS will pay particular attention to whether the business plan accounts for compliance with the ongoing conditions of registration in a credible way that is likely to achieve ongoing compliance in practice.

Appropriate strategies to manage relevant risks

35. In determining whether a provider's business plan contains appropriate strategies to manage relevant risks, the OfS will consider:

- a. The risks a provider has identified.
 - b. How substantial those risks are (and the OfS's judgement about whether this demonstrates a sound understanding of the relevant risks).
 - c. Whether the plan sets out a clear position for the provider to accept, avoid, mitigate or otherwise manage those risks.
 - d. Whether any proposed strategy for managing the risks is appropriate to the likelihood, scale and seriousness of impact or the risk materialising.
36. The OfS is unlikely to consider that a provider's business plan contains appropriate strategies to manage relevant risks where:
- a. The provider has not demonstrated a sound understanding of relevant risks.
 - b. The provider's plans identify risks, but do not set out plans to manage these risks, or the risk management plans are superficial or generic, lacking concrete detail about the actions the provider needs to take that will manage or mitigate risks.
 - c. The provider's assessment of the relevant risks or the impact of its mitigations is too optimistic. The provider may, for example, accept substantial risks but not take any extra actions, or take minimal or insufficient actions in response.

Condition E7.5b and Condition E7.6

Ability to deliver the business plan in practice

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

Condition ~~E7B.3~~

38. ~~The OfS will assess whether a provider can deliver its business plan in practice. This includes evaluation of the provider's ability to meet all relevant ongoing conditions of registration.~~ The OfS will assess the provider's capacity and the resources available to implement its plans relating to compliance with ongoing conditions, and consider whether information provided elsewhere the registration application supports or undermines those plans.
39. The OfS will consider that a provider is unlikely to be able to deliver its plans to comply with the ongoing condition of registration where (for example):
- a. ~~The plan lacks robust processes for collating and validating student data, for example if it fails to demonstrate that IT systems are adequate or does not identify sufficiently skilled individuals responsible for data management.~~
 - b. ~~The plan and accompanying financial forecasts suggest that the provider has not accounted for mandatory subscription requirements.~~
 - c. ~~In communication with the OfS, the chair of a provider's governing body demonstrates insufficient understanding of their responsibilities – such as being unaware of requirements~~

to submit data returns of reportable events, or is unable to explain how the provider meets these requirements.

- d. The provider's set of governing documents submitted in relation to Part 1 of E7 are inadequate for meeting the ongoing conditions of registration. For example, a provider applying for Approved (fee gap) category fails to include provisions for appointing an independent board member.

40. The OfS may also draw on any additional evidence from discussions with the provider's senior staff about its plans to assess the credibility of the provider's plans for meeting its regulatory requirements.

Capacity and resources

41. The OfS's assessment of a provider's ability to deliver its business plan **in practice**, will consider the provider's capacity and resources. This includes assessing the provider's financial resources. The OfS will pay particular attention to whether the provider can afford any proposed activity in its business plan or governing documents which is necessary to ensure compliance with ongoing conditions of registration or to manage significant risks.

42. The OfS will assess whether the provider's management and governance arrangements are sufficient to deliver its plans. The OfS will consider how the provider oversees activities to ensure compliance with ongoing conditions of registration, including how it structures and resources relevant committees.

43. The OfS may also draw on its communications with a provider's staff during the assessment process. For example, a provider is unlikely to be considered to have sufficient capacity and resources if it has said that it cannot provide audited financial statements to the standard the OfS has specified, or the OfS needs to engage with it extensively before receiving them.

44. A provider is also unlikely to be considered to have sufficient capacity and resources where:

- a. It has identified significant investment needs in a business plan (for example, to invest in IT systems for data returns), but it does not appear to have the financial resources to deliver them.
- b. Its business plan has not identified or appointed an independent external auditor that meets the requirements of the OfS's accounts direction.

~~The OfS will also assess whether a provider can deliver its plans for how it would comply with all the ongoing conditions of registration that would apply to it. The OfS will consider the provider's capacity and resources for delivering its plans in these areas, and whether information in the rest of its registration application supports or contradicts those plans. The OfS would consider that a provider is unlikely to be able to deliver its plans to comply with the ongoing condition of registration where:~~

~~The plan does not set out robust processes for collating and validating student data, including by failing to demonstrate that IT systems are sufficient for this purpose, or failing to identify sufficiently skilled individuals who will be responsible.~~

- a. ~~The plan (alongside financial forecasts) suggests that the provider has not planned for, or does not have the financial resources to meet, mandatory subscription requirements.~~
- b. ~~During any communication with the OfS, the chair of a provider's governing body demonstrates an insufficient understanding of the governing body's responsibility for interactions with the OfS and its designated bodies and for ensuring compliance on an ongoing basis. For example, the chair is unaware of the requirements to submit information, including data returns and reportable events as required, or cannot explain the provider's arrangements for fulfilling these responsibilities.~~
- c. ~~The provider's set of governing documents submitted in relation to E7A do not contain what is needed to comply with the ongoing conditions of registration. This includes, but is not limited to, where the documents of a provider seeking registration in the Approved (fee cap) category do not provide for appointing an independent board member.~~

~~The OfS is likely to draw on any additional evidence from discussions with the provider's senior staff about its plans for compliance with the ongoing conditions. The OfS will use this evidence to assess whether the provider's claims are credible.~~

Past performance

45. When assessing whether a provider can deliver its business plan in practice, a provider's past performance may be relevant. This may include (but is not limited to):
 - a. The provider's track record in delivering higher education, particularly any evidence in relation to quality, preventing fraud and protecting public money.
 - b. The provider's previous financial performance.
 - c. Published or final judgements from relevant regulatory or statutory bodies, within the last five years, placing more weight on more recent judgements within that period.
46. Circumstances where past performance may inform a judgement that a provider does not have the ability to deliver its business plan in practice include, but are not limited to:
 - a. Historical poor performance or adverse judgements against the provider from relevant regulatory or statutory bodies, within the last five years., ~~that the business plan does not address appropriately, such that risks remain relevant and insufficiently mitigated.~~
 - b. Financial forecasts relating to costs or income, or student number forecasts, that are unrealistic compared with historical performance, where this performance resulted from a similar approach to that which the provider intends to pursue.
47. Looking at past performance will be particularly relevant for providers in subcontractual arrangements. A provider may have already been delivering higher education and indirectly accessing public money as a delivery partner in a subcontractual arrangement with a registered provider. In these circumstances, the OfS will pay particular attention to any evidence about how it has managed activities necessary to facilitate ongoing regulatory compliance historically. This may include evidence which indicates the provider had a poor track record in delivering high quality courses on behalf of a lead provider. It may also include notifications to the OfS about the provider's failure to adequately prevent fraud and protect

public money. If the evidence suggests that a provider has not managed these activities well, the OfS would be less likely to consider that it would be able to deliver its plans for complying with ongoing conditions of registration.

48. A provider in a subcontractual arrangement should also provide complete, accurate data in a timely fashion to the Student Loans Company or its lead partner. Doing so informs accurate student finance payments. If evidence suggests a provider has not done this, the OfS would consider that it is unlikely to be able to deliver its plans to comply with ongoing requirements in these areas. The provider would need to show that it had made substantial changes to the way it managed the return of this data in the past.

Other relevant matters

49. The OfS will also consider other matters it considers relevant to whether a provider can deliver its business plan. This will include considering whether the provider can realistically deliver its plan in practice, regardless of its capacity and resources. For example, the OfS would consider that a provider could not deliver a plan that contains opposing or contradictory aims.

Scope of the OfS's judgement

50. Any decision that a provider satisfies this condition does not represent a judgement about whether:

- a. the provider's plan will mean that it succeeds commercially
- b. the provider will meet the targets in its plan
- c. the provider's approach is valid or has the OfS's endorsement.

51. A decision only means that the OfS considers that the provider meets the requirements for registration, and has not identified any evidence that it cannot deliver its plan in practice.

Condition ~~E7B.4~~E7.7

52. A provider would be unlikely to satisfy this requirement if its business plan **if it:**

- a. Demonstrated little or no consideration of the characteristics or aims of the students it intended to recruit, particularly by failure to properly consider the potential support needs of the specific students it intends to recruit.
- b. Made little or no reference to students in describing its mission or overarching objectives.
- c. Focused primarily on commercial or financial targets, with few or no objectives or targets related to its students, their academic experience or outcomes.
- d. Failed to sufficiently prioritise the mitigation of risks of regulatory non-compliance which may have a negative impact on students, or other risks to students, in contrast to a high prioritisation of the mitigation of commercial risks.
- e. Set out targets, including commercial targets, or ways of operating that were likely to create conflict with the interests of students, without considering how that conflict would be managed. This might include, but not be limited to:

- i) Plans for rapid growth which do not set out how this is going to be done in a way that ensures that all students continue to have a high quality student experience. For example, ensuring that the provider has adequately prepared and is ready for growth in student numbers, before this happens or where necessary setting limits on growth based on considerations of the staff-student ratio or availability of resources.
- ii) Plans to generate significant surpluses to be issued as dividends or shared as profits which do not recognise the risks to value for money for students or consider how to manage those conflicting interests by, for example, demonstrating the provider has arrangements in place to provide transparent information to students about value for money.
- iii) Plans which project minimal ongoing investment in resources and services in order to meet financial targets, without recognising risks of potential negative impacts on the student academic experience. Or plans that do not consider how to manage those conflicting interests. For example, a plan may not balance profit-seeking behaviour with reasonable investment in the provider's staff, estate and physical and virtual infrastructure to deliver a high quality learning experience.

Condition ~~E7B.5~~ E7.8

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

53. A provider needs to provide a description of the courses it plans to offer.

54. In addition to a description of its planned provision, where relevant a provider should provide a description of its current courses or the courses it offered in the past. A summary description of the nature of courses offered in the most recent years of delivery, rather than a full history of all the higher education courses it has ever offered, is sufficient.

55. The business plan should provide an overarching description of the provider's provision rather than an exhaustive account. This description should be detailed enough to enable a sound understanding of the provider's business model, its current and/or planned course offering and student population. It should demonstrate that the provider has a comprehensive plan for how it intends to operate. It should also show that the provider understands the higher education sector and allow the OfS to identify any substantial risks the provider is likely to face.

56. A description of the nature of a provider's higher education provision does not need to list every individual course offered. But it should provide a comprehensive picture of the range of courses on offer and the distinguishing characteristics of those courses. For example, a sufficiently detailed description would cover the following points:

- a. A high-level description of the subject areas covered by courses, identifying any areas of specialism or expertise.
- b. A sense of scale and relative importance of the course offering, which may include the number of courses offered across different subject areas and the proportion of students studying (or intended to be recruited) in different areas.
- c. Whether the providers courses are at first degree level, sub-degree, postgraduate masters', include foundation years or are a mixture of different levels, and the proportion of courses at those levels. For a provider delivering a small number of courses this may include listing

individual qualification titles, but for a provider with a large, diverse range of courses it would only need to include some descriptive statistics.

- d. Details of the awarding body for the provider's courses and any partnerships that it is reliant on, including future plans.
- e. Whether all courses are delivered on a full-time or part-time basis, involve apprenticeships, are in-person or delivered as distance learning, and any campus locations.

57. Information about the characteristics of the cohorts of students recruited to the provider's courses, or that it plans to recruit, should demonstrate the provider's understanding of its target market, and the academic needs and aims of its current and potential students. Relevant information may include, for example:

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

58. Information about a provider's business competitors should show that the provider understands the market in which it will operate and that its plans are informed by sufficient understanding of the higher education landscape. Relevant information may include, for example:

- a. identifying the provider's most relevant competitors and showing that it understands their offer
- b. a strategy that takes this into account (for example, by setting out how it differentiates itself from its competitors, or is responding to unmet demand).

Business objectives and targets

59. The 'business objectives and targets' included in the business plan will vary by provider.

~~E7B.6~~**E7.9.a** provides examples of the business areas in which a provider may have set objectives and targets that would be particularly relevant to the OfS's assessment, such as financial targets, recruitment targets, or objectives around expanding the provider's course offering.

60. In deciding the information to include about objectives and targets, a provider should especially consider including:

- a. ~~Details of any business-critical goals~~ **Any objectives** (financial or otherwise) ~~which if not met might jeopardise the~~ **that are critical to a** provider's ability to deliver its plan. ~~For~~ **These may include, for example, if the courses a provider plans need to offer depend on achieving secure** professional accreditations ~~or its own,~~ **obtain** degree awarding powers, or ~~if the provider's financial sustainability depends on any~~ **meet** short-term **student** recruitment or

~~turnover~~ **revenue** targets ~~these business-critical goals would need to be highlighted as such in the~~ **to ensure financial sustainability. The provider's plan should highlight these goals, the timelines for achieving them, and any related regulatory obligations that may arise from them.**

- b. Any performance indicators, strategic objectives or other measures of success (financial or otherwise) that the provider has set for itself within the period covered by the business plan. Examples of strategic objectives would include:
 - i) recruitment or revenue targets
 - ii) goals related to successful TEF participation or student sponsor license applications
 - iii) the development of the provider's course portfolio or the establishment of new subcontractual partnerships to deliver courses on behalf of another provider.
- c. Relevant performance indicators would include, but not be limited to:
 - i) Any targets set out by the provider in any business plans, strategic plans, annual reports or other planning documents, particularly where these have been used to secure investment, report to shareholders or report to other stakeholders.
 - ii) Any measures adopted for internal reporting or performance monitoring, for example, through establishing KPIs or metrics which are regularly reviewed by the provider's senior managers or governing body.
 - iii) Any measures used to determine performance-related pay of the provider's senior managers.

61. The OfS will pay particular attention to whether the information provided is comprehensive. Omission of any of the business objectives and targets described above from a provider's business plan may indicate that the business plan does not comprehensively reflect how the provider intends to operate.

62. The business plan should set out, in broad terms, the provider's strategy for achieving the business objectives and targets it has identified. The content of this section will depend on the targets and objectives identified, but may include, for example:

- a. A provider's strategy for achieving recruitment targets, such as its target demographic, approach to marketing, and any planned use of recruitment agents.
- b. A provider's strategy for growth of its course portfolio (or other objectives relating to changes in the provision it offers), such plans for to start new partnerships or expand into new subject areas.
- c. A provider's strategy for achieving financial targets, particularly where this involves the generation of surpluses, such as any approaches the provider intends to adopt to increase revenue, reduce or limit costs, or any planned changes to its fee structure.
- d. A provider's strategy for achieving objectives in relation to the academic experience or outcomes of students, such as investment in staff, physical or digital resources,

partnerships with employers, curriculum changes, or changes to academic support arrangements.

63. The plan should provide information about any planned strategies which will require:

- a. additional investment
- b. a significant change to the size and shape of the provider or the way it currently operates
- c. approaches which carry a risk that the provider needs to manage.

Annex B: Condition E8 – comparison with the condition we consulted on

Amendments to the version on which we consulted are highlighted, with text to be removed struck through, and text to be added in red font.

This includes some corrections to grammar and punctuation and for clarity and consistency.

Initial condition of registration

Condition E8: Fraud and inappropriate use of public funds

Requirements relating to arrangements

~~Scope~~

~~E7E~~**E8.1** ~~This condition~~**Condition E8.2** applies to higher education to be provided in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider).

~~E8E~~**E.2** The provider must have in place comprehensive **arrangements** in relation to the higher education it plans to provide if registered (including, but not limited to, processes, policies, training and the deployment of staff and financial resources) that could reasonably be considered as being adequate and effective for the purposes of detecting, preventing and stopping any form of conduct (including a failure to act) that could potentially amount to a ~~Relevant Fraud Offence~~**relevant fraud offence** or the ~~Inappropriate Use~~**inappropriate use** of ~~Relevant Public Funds~~**relevant public funds**.

E8.3 For the purposes of E8.2, “**arrangements**” means:

- a. **a conflicts of interest policy;**
- b. **internal control processes relating to the detection, prevention and stopping of the forms of conduct set out in E8.2, including but not limited to processes to ensure the accuracy of any data submitted to other organisations for purposes related to receiving or accessing relevant public funds;**
- c. **a risk register (or equivalent document(s) for the purpose of managing risks relating to the forms of conduct set out in E8.2;**
- d. **a whistleblowing policy;**
- e. **an anti-bribery policy;**
- f. **training for staff relating to the awareness, detection, prevention and stopping of fraud;**
- g. **deployment of staff with responsibility for overseeing the policies, processes, training and other arrangements put in place for the purposes set out in E8.2, and structures for oversight of those staff; and**

h. any other arrangements necessary for the purposes of complying with E8.2.

Other requirements

~~E7E.3~~**E8.4** The provider must have a satisfactory track record in relation to receiving and/or accessing public funds. For the purposes of this requirement:

- a. unless there are ~~Exceptional Circumstances~~**exceptional circumstances**, the provider will be deemed not to have a satisfactory track record in relation to receiving and/or accessing public funds if, within the past 60 months of the date the provider applied for registration with the OfS:
 - i. the provider was convicted of the offence provided for in section 199 of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud);
 - ii. a ~~Relevant Person~~**relevant person** has made a final decision that directly or indirectly revokes the provider's access to, or directly or indirectly requires the provider to repay, ~~Relevant Public Funds~~**relevant public funds** on grounds relating to a ~~Relevant Fraud Offence~~**relevant fraud offence** and/or the ~~Inappropriate Use~~**inappropriate use** of such funds; and/or
 - iii. a conviction described in ~~E7E.3~~**E8.4.a.i**, and/or a decision described in ~~E7E.3~~**E8.4.a.ii**, has been made in relation to another legal entity that the OfS considers to have been operating substantially the same higher education business as the provider;
- b. if none of the matters listed in ~~E7E.3~~**E8.4.a.i-iii** apply, the provider will be deemed to have a satisfactory track record in relation to receiving and/or accessing public funds.

Definitions

~~E7E.4~~**E8.5** For the purposes of **this condition** ~~E7E~~**E8**:

- a. **"conflicts of interest policy"** has the meaning given in condition E7.9;
- b. **"exceptional circumstances"** means compelling circumstances which demonstrate, in the OfS's judgement, that the provider nevertheless has a satisfactory track record in relation to receiving and/or accessing public funds;
- c. **"~~Inappropriate Use~~ inappropriate use"** means, in respect of ~~Relevant Public Funds~~**relevant public funds**, any of the following:
 - i. not complying with legally binding terms and conditions that specify or restrict how funding can be used;
 - ii. obtaining, or continuing to receive, funding in circumstances where any conditions or criteria that determine a provider's (or, as the case may be, its students') **recipient's** eligibility to receive the funding **is are** not satisfied (but excluding circumstances to the extent that the legal framework relating to the relevant funding permits the ~~provider~~**recipient** to make any form of estimation or projection in respect of information that is used to calculate the funding to which it may be entitled);

- d. ~~“Public Authority”~~ **“public authority”** has the meaning given in section 6(3) of the Human Rights Act 1998;
- e. ~~Relevant Fraud Offence~~ **“relevant fraud offence”** means any of the following:
- i. an offence under any of the following provisions of the Theft Act 1968:
 - A. section 17 (false accounting);
 - B. section 19 (false statements by company directors etc.);
 - ii. an offence under any of the following provisions of the Fraud Act 2006:
 - A. section 1 (fraud);
 - B. section 2 (fraud by false representation);
 - C. section 3 (fraud by failing to disclose information);
 - D. section 4 (fraud by abuse of position)
 - E. section 9 (participating in fraudulent business carried on by sole trader etc.);
 - F. section 11 (obtaining services dishonestly);
 - iii. the common law offence of conspiracy to defraud as preserved by section 5(2) of the Criminal Law Act 1977;
- f. ~~Relevant Person~~ **“relevant person”** means:
- i. the Chancellor of the Exchequer;
 - ii. any Secretary of State or Minister;
 - iii. the OfS;
 - iv. UKRI;
 - v. the Student Loans Company Limited;
 - vi. Research England;
 - vii. a local authority;
 - viii. any other ~~Public Authority~~ **“public authority”** in the United Kingdom with statutory functions to give grants or loans;
- g. ~~Relevant Public Funds~~ **“relevant public funds”** means any sums of money obtained or otherwise derived from a ~~Relevant Person~~ **“relevant person”**, and includes, but is not limited to, the following:
- i. funding provided to a registered higher education provider by the Student Loans Company Limited on behalf of a student;

ii. any form of payment made by a registered higher education provider ('the relevant provider') to another registered higher education provider or unregistered English higher education provider in connection with the provision of higher education to students who are the beneficiaries of funding provided to the relevant provider by the Student Loans Company Limited.

Summary

Applies to: all providers seeking registration

Initial or general ongoing condition: initial condition

Legal basis: section 5 of HERA

Requirements relating to arrangements Proposed guidance

~~Condition E7E.1~~

1. Condition **E8.2** applies to the arrangements relating to the delivery of higher education that the provider plans to offer when it is registered.
2. The reference to higher education provided 'in any manner or form' includes any higher education course (whether or not that course is recognised for OfS funding purposes, or any other purpose), at any level, and with any volume of learning. This means, for example, that postgraduate research courses, the study of modules or courses leading to micro credentials, and apprenticeships are included within the scope of this condition. It also includes courses provided face-to-face, by distance learning, or by a combination of delivery approaches.
3. ~~This condition~~ **Condition E8.2** applies to any higher education provided 'by, or on behalf of, a provider'. This includes higher education provided to all the students who are registered with a registered provider, taught by a registered provider or studying for an award of a registered provider (or where these services are provided on a registered provider's behalf). This includes UK-based and non-UK-based students, and courses delivered through partnership arrangements both within the UK and internationally.
4. The reference to 'including, but not limited to, circumstances where a provider would be responsible only for granting awards for students registered with another provider' means that a provider is required to comply with the provisions of ~~this condition~~ **Condition E8.2** where it would be the awarding body for a course, whether or not that provider would have any other role in the design or delivery of that course.
5. Where a provider would not be the awarding body for a course, ~~this condition~~ **Condition E8.2** applies to a course the provider itself would deliver, or which would be delivered on its behalf, regardless of the identity of the awarding body, whether or not that awarding body is registered with the OfS, or the nature of any partnership agreement. For the avoidance of doubt, this means, for example, that a provider **applying for registration** that ~~would~~ **is planning to** deliver, or allow another provider to deliver **on its behalf**, courses leading to a qualification awarded by Pearson ~~is responsible for compliance~~ **must comply** with ~~this condition~~ **the requirements in**

Condition E8.2 in relation to those courses. Similarly, a provider **applying for registration** that ~~would~~ **is planning to** deliver, or allow another provider to deliver, courses leading to a qualification awarded by another higher education provider, whether that awarding provider is located in England or elsewhere, is responsible for compliance with this condition in relation to those courses.

6. In practice, these provisions may result in more than one provider being responsible for compliance with ~~this condition~~ **Condition E8.2** in relation to the same course.

Condition ~~E7E~~ **E8.2-2 and E8.3**

7. **E8.3** defines the arrangements that a provider must have in place for the purposes of **E8.2**, which includes specific arrangements as well as any other arrangements needed to comply with **E8.2**.
8. The arrangements listed in **E8.3** and their corresponding definitions are set out below:
 - a. a conflicts of interest policy – as defined in initial condition **E7.9d**.
 - b. internal control processes relating to the detection, prevention and stopping of the forms of conduct set out in **E8.2**: structured policies, procedures, and monitoring mechanisms implemented to prevent unauthorised activities and detect indicators of fraudulent behaviour.
 - c. a risk register (or equivalent document or documents) for the purpose of managing risks relating to the forms of conduct set out in **E8.2**: a structured document or system used to identify, assess, and manage risks within the provider, detailing each risk's likelihood, potential impact, assigned ownership, mitigation measures, and current status to support informed decision-making and compliance.
 - d. a whistleblowing policy: a policy that allows individuals to confidentially report concerns about misconduct, unethical behaviour, or regulatory breaches, while ensuring protection against retaliation and outlining investigation procedures.
 - e. an anti-bribery policy: a policy that outlines the provider's approach to preventing, identifying and addressing bribery.
 - f. training for staff relating to the awareness, detection, prevention and stopping of fraud: compulsory training to ensure staff have the knowledge, skills and awareness needed to identify, prevent and report fraudulent activity.
 - g. deployment of staff with responsibility for overseeing the policies, processes, training and other arrangements put in place for the purposes set out in **E8.2**, and structures for oversight of those staff and: the deployment of staff with defined responsibilities for the arrangements listed in **E8.3** for the purposes set out in **E8.2** to ensure that internal controls are effectively applied and risks are actively managed.
 - h. any other arrangements necessary for the purposes of complying with **E8.2**: this may include, but is not limited to, internal and external audit functions and integration with broader governance systems.

9. In order for a provider to comply with E8.2, it must have comprehensive arrangements in place that could reasonably be considered to be adequate and effective for the purposes of the condition.
10. Comprehensive arrangements are ~~arrangements that are of~~ broad in scope and cover a range of scenarios that could potentially amount to a relevant fraud offence or the inappropriate use of public funds. ~~Comprehensive arrangements~~ They may include, but are not limited to, a combination of processes, policies, training and the deployment of staff and financial resources. An arrangement is considered 'adequate' if it delivers its stated or implied objective. To be adequate arrangements must be: of sufficient scope and coverage, appropriate to include as a minimum: the provider's context, clearly documented and appropriately resourced. Effective arrangements are preventative and responsive, subject to regular review and supported by appropriate oversight.

~~conflict of interests policy~~

~~internal control processes relating to the prevention of fraud and protection of public funds, including in relation to the submission of accurate data~~

~~a risk register (or entry) and corresponding mitigations, relating to the prevention of fraud and protection of public funds~~

~~a whistleblowing policy~~

~~an anti-bribery policy~~

~~fraud awareness and prevention training~~

~~provision for staff (and reporting structures) responsible for oversight of the arrangements listed above.~~

11. A provider that can evidence a set of written policies but which does not have the operational arrangements such as effective processes or deployment of necessary staff in place required to implement and deliver those policies in practice, is unlikely to be considered to have 'comprehensive' arrangements in place. A provider that has arrangements to prevent and stop, but not proactively detect conduct of this nature, is also unlikely to be considered to have comprehensive arrangements in place. An arrangement is 'adequate' if it can deliver its stated or implied objective. An arrangement is 'effective' if it is operated to deliver its stated or implied objective, and those objectives are delivered as a result.

For arrangements to reasonably be considered adequate and effective, the OfS will expect to see clear documentation that addresses individual risks that could potentially amount to a relevant fraud offence or inappropriate use of public funds as posed by the provider's business model. The OfS will use information submitted in relation to the requirements in E7A, E7B and E7E to understand the provider's business model, individual context and any risks that are specific to its operation. The OfS will consider any risks the provider identifies and mitigates in its risk register or business plan in relation to detecting, preventing and stopping fraud and inappropriate use of public funds as well as any additional risks that the OfS has identified.

12. Where a provider fails to identify **any** significant risks in its business model in relation to the protection of public funds, or where **the OfS considers that a provider's** arrangements do not reduce the risk of fraud or inappropriate use of public funds **appropriately**, the OfS will consider that the arrangements are not adequate or effective. **Where a provider has arrangements in place, they must operate coherently and without contradiction; arrangements that conflict with one another or fail to align will not be considered adequate or effective.**
13. **Examples are set out below to illustrate the types of arrangements** that could reasonably be considered adequate and effective ~~could include, but~~. **These examples are not limited to: exhaustive, and a provider uses recruitment agents must assess its own context and risks to recruit students, the** **determine what additional or enhanced arrangements it should have in place:**
- a. **The** provider has robust registration and enrolment processes to ensure that students hold the required academic and language qualifications and have a genuine intention to study on the course, **especially where a provider uses recruitment agents to recruit students,**
 - b. ~~Where a provider intends to subcontract courses for delivery by another provider, it~~ **The provider** has policies, processes, governance structures and staff in place to monitor the quality, standards and protection of public funds ~~at its teaching partners~~. **This is especially important where a provider intends to subcontract courses for delivery by another provider.**
 - c. ~~The provider's~~ **provider can demonstrate how its** internal control arrangements ~~controls operate, and how they~~ are regularly reviewed with external input to ensure they are ~~effective and improved.~~
 - d. The provider's risk register identifies significant areas of risk in relation to the conduct described in ~~E7E~~ **E8.2** and the provider has identified and implemented appropriate mitigations to reduce risk.
 - e. The provider's conflicts of interest policy ~~has identified any conflicts~~ **sets out what constitutes a conflict** of interest ~~between its members of staff,~~ **explains how** and ~~any third party involved in recruitment of students~~ **when conflicts should be declared and sets out mitigations to address conflicts it has identified.**
 - f. The provider has controls in place to confirm the validity of data submitted to relevant bodies such as the OfS, the Student Loans Company and UCAS (where a provider chooses to upload data on **behalf of** students' ~~behalf~~)
 - g. The provider has clear and impartial arrangements for staff, students, and third parties to report concerns regarding the provider. Arrangements should enable individuals to **safely** report concerns ~~safely and in~~ confidence.
 - h. The provider has a clear understanding of where financial transactions are taking place, including fair and transparent tender procedures and audit trails for any transactions which directly or indirectly benefit staff at the provider.
 - i. **The provider has fraud prevention and awareness training tailored to staff roles and responsibilities. Training is regularly reviewed and updated.**

- j. Where appropriate, a provider may have a designated compliance officer.

Condition ~~E7E.3~~**E8.4**

14. ~~E7E.3~~**E8.4** requires the provider to have a satisfactory track record in relation to receiving and/or accessing public funds. This requirement is **not restricted to convictions or decisions relating to higher education provision or to education and training**. The requirement is separate to that described in ~~E7E~~**E8.2**.
15. **For the purposes of** this provision, receiving public funds may include but is not limited to payments from the Student Loans Company relating to students' tuition fees, maintenance payments made to students or funding from the OfS. Accessing public funds may include, but is not limited to, receiving payment of tuition fees, maintenance payments made to students or funding paid by the Student Loans Company or the OfS through a lead provider that awards qualifications to the provider seeking registration.
16. A provider's conviction of the offence of failure to prevent fraud includes, but is not limited to, circumstances where a person associated with a body or an employee of the body commits a fraud offence which is intended to benefit the relevant body.
17. A final decision under ~~E7E.3.a.ii~~**E8.4a.ii** does not include provisional decisions, pauses or suspensions of funding. A final decision **is one that marks the end of a process which** may include but is not limited to **an investigation and results in a binding decision, even if it has been challenged by the provider**. Examples of such a decision include a decision by the Department for Education to cease payments of Student Loans Company funding to a provider or a decision by the Department for Education or the OfS that a provider must repay money previously paid out to it.
18. A direct revocation of access to funds ~~may include, but is not limited to~~ **refers to the** suspension of **public funding paid directly to a provider**. This may include, but is not limited to, tuition fee payments ~~and, core funding, or any other relevant public funds to the provider~~. An indirect revocation of ~~access to funds may include, but is not limited to,~~ **applies where public funds are paid to a lead provider in relation to students taught by a delivery partner**. In such cases, the suspension of funding **to the lead provider may result in the delivery partner no longer receiving** tuition fee payments, ~~and any core funding, or other relevant public funds paid to a provider's lead provider for the students taught at the provider~~ **it teaches**.
19. A direct repayment of public funds may include, but is not limited to, circumstances where a provider must repay a set sum directly to the relevant body from which it was originally obtained. Indirect repayment of public funds may include where a relevant body offsets the sum due to be repaid by the provider against future payments or where a provider is required to repay funds through its lead provider for students taught by the provider.
20. When determining whether a provider is operating substantially the same higher education business as another legal entity, the OfS will place particular weight on similarities between the provider and the other legal entity, including but not limited to:
- a. Relevant individuals, where a significant proportion of the relevant individuals (as defined in ~~E7D~~**initial condition E9**) are the same, even where those individuals are in different ~~managerial~~ roles.

- b. Premises, for example, campuses, offices, location of company registration.
- c. Key identifiers, for example, UKPRN,¹ company number, regulatory licences.
- d. Marketing, for example, name, branding, or public statements of affiliation (e.g. using the name of the other legal entity to market the provider).
- e. Academic community, for example, staff and student **populations**.
- f. Ownership and company structure.
- g. Transfer of assets, business and/or liabilities – where assets, business and/or liabilities have been transferred from one legal entity to another.

Exceptional circumstances

21. A provider must submit a full and complete account of any exceptional circumstances it wishes the OfS to consider if any circumstances set out in paragraph ~~E7E.3~~ **E8.4** apply to the provider.
22. When considering whether exceptional circumstances apply, the OfS will ~~focus on~~ **assess** whether the provider has ~~demonstrated that it has a satisfactory track record in relation to receiving and/or accessing public funds. A satisfactory track record is~~ **provided** ~~evidence that a provider is nonetheless considered to be suitable to access and receive public funds. Examples of compelling circumstances that may, depending on the facts, be capable of demonstrating that the provider~~ **demonstrate that it** ~~nevertheless has a satisfactory track record include:~~ **in relation to accessing and receiving public funds.**
 - a. ~~Specific circumstances which show the provider was not at fault.~~
 - b. ~~Where substantial changes in a provider's policies and processes have been implemented since which could reasonably be considered sufficient to prevent recurrence.~~
 - c. ~~Where the provider could not have reasonably prevented, detected or stopped the event from occurring.~~
23. The OfS will not consider a provider's intention to detect, prevent or stop fraud or inappropriate use of public funding as an exceptional circumstance. For example, where a final decision has been made in relation to one or more of the circumstances listed in ~~E7E.3~~ **E8.E.43**, a.i-iii it is not sufficient that the provider intended to prevent fraud. ~~It must also demonstrate that it had comprehensive arrangements in place that were adequate and effective for the purposes of preventing, detecting and stopping fraud but that there were exceptional circumstances that the provider could not reasonably have foreseen or prevented, detected or stopped.~~
24. Where a provider has accidentally submitted incorrect data that amounts to an inappropriate use of public funds, the OfS will consider the materiality of the error and whether the error was an isolated instance, to determine if the circumstances are exceptional and the provider nevertheless has a satisfactory track record.

Inappropriate use

~~Non-exhaustive examples of scenarios that the OfS would consider amount to inappropriate use are set out below:~~

25. ~~Where~~ **Inappropriate use is defined to include but is not limited to:**

- a. **Non-compliance with legally binding terms and conditions that specify or restrict how funding can be used; an example is where** a provider uses funding that is restricted for a specific purpose (such as building a new campus) for other purposes (such as paying creditors). ~~This example would amount to inappropriate use through the provider's breach of terms and conditions attached to the funding~~
- b. ~~Where~~ **Obtaining or continuing to receive funding in circumstances where any conditions or criteria that determine a recipient's eligibility to receive the funding are not satisfied; an example of this is where** a provider submits incorrect student data to the Student Loans Company, directly or through its lead provider and claims more funding than its actual student numbers would permit. ~~This example would amount to inappropriate use as the provider would be considered to have obtained funding where criteria are not satisfied.~~

~~Any such scenarios would indicate to the OfS that a provider does not have a satisfactory track record in relation to receiving and/or accessing public funds.~~

26. The OfS recognises that some types of funding in the higher education sector may be distributed on the basis of forecasts of future student numbers or activity. There may be a material difference between a provider's initial forecast and the final student numbers and this may result in a recalculation of funding. Funding recalculations and repayments that are routine and do not exceed the normal tolerance set out by the relevant funder should not be captured by the definition of 'inappropriate use of public funds' set out in this initial condition.
27. Where relevant public funds have been reclaimed by a relevant person because of a material difference between forecast and actual student numbers beyond the tolerance of the relevant funder, such circumstances will fall within the definition of inappropriate use of public funds. Where these circumstances apply, a provider's failure to reasonably forecast student numbers indicates that it may not have the overall management and governance capabilities in place to receive and manage public funds. A provider may submit information about exceptional circumstances relating to such a judgement, but the OfS will not place weight on any argument that a large difference between forecast and actual student numbers was not intentional. When considering these issues, the OfS will place greater weight on behaviours that are repeated, and where reclaimed funding represents a larger percentage of the overall amount awarded.

Public funds

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

Assessing compliance

29. In assessing whether a provider has comprehensive, adequate, and effective arrangements for preventing fraud or the inappropriate use of public funds, the OfS will consider documents submitted as part of the provider's registration application, including:
- a. Governing body documents ~~which~~ **that** set out where high level responsibilities for managing risks to public money sit within the provider's governance framework, including any relevant delegations from the governing body, and its mechanisms for retaining ongoing oversight.
 - b. The provider's business plan.
 - c. **The arrangements it has submitted for assessment of condition E8.** ~~Policies or procedures that the provider follows to prevent fraud or inappropriate use of public funds.~~
 - d. Any additional relevant information submitted by the provider.
30. When assessing a provider's arrangements for the purposes of ~~E7E-3~~ **E8.2**, the OfS will consider whether the provider has policies and processes in place to adequately and effectively manage risks relating to fraud and the inappropriate use of public funding identified within its business plan. For example, the OfS would focus particularly on the management of risks related to third-party agents or courses delivered through partnership arrangements, where a provider's business plan had indicated these would be part of its approach.
31. In assessing whether a provider has comprehensive, adequate and effective arrangements for detecting, preventing or stopping fraud or the inappropriate use of public funds, the OfS's judgement will apply to the arrangements the provider will have in place if it is registered. However, the OfS's judgement may be informed by other relevant evidence of the provider's conduct where this relates to **the** inappropriate use of public funds or relevant fraud offences. This means that for a provider seeking registration that has previously delivered, or is currently delivering, higher education, the OfS will consider relevant evidence relating to the provider's record in preventing fraud or the inappropriate use of public funds. This includes where ~~these~~ **public** funds are paid to another provider through a subcontractual arrangement or similar partnership. This is also the case where a provider seeking registration has previously delivered or is currently delivering education or training other than higher education, for example further education.
32. The OfS will draw on any relevant evidence or intelligence available to it, including information obtained through its own regulatory activity, third party notifications, or publicly available information, including action taken by other regulators, or media reporting. In cases where the OfS has concerns about a provider based on information it already holds, it may decide to undertake further investigation to establish the facts before reaching a final judgement about whether this initial condition is satisfied.
33. A provider will be required to submit a declaration as part of its application for registration confirming whether any of the circumstances in ~~E7E-3~~ **E8.4.a** apply. A provider must ensure that the information submitted in relation to this requirement is accurate and complete. If a provider submits false, inaccurate or incomplete information the OfS may determine that the

requirement set out in ~~[section 3(5) determination]~~ the Notice under section 3(5) of HERA is not met.

Annex C: Condition E9 – comparison with the condition we consulted on

Amendments to the version on which we consulted are highlighted, with text to be removed struck through, and text to be added in red font.

This includes some corrections to grammar and punctuation and for clarity and consistency.

Initial condition of registration

Condition 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 characteristics of the cohorts of students the provider has recruited and/or intends to recruit for its planned higher education provision and the academic needs of those students, as set out in its business plan~~ **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 characteristics of the cohort of students the provider has recruited and/or intends to recruit for its planned higher education provision and the academic needs of those students, as set out in its business plan; and~~ **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 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 ~~procedures~~ **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 ~~procedures~~ **processes** to provide reasonable adjustments or other support for **relevant individuals** where required under equality law).

E9.9 The provider must:

have robust policies and processes in place to check that its **relevant individuals** are fit and proper for the purposes of E9.4; and

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:

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

'**business plan**' means a business plan as required under Part 2 of condition E7;

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

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

'exceptional circumstances' means compelling circumstances which demonstrate, in the OfS's judgement, that the individual is nevertheless fit and proper for the purposes of E9.4;

'fraud and public money arrangements' means the arrangements as required under condition E8.2;

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

'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;

'independent member' means an external member of the provider's **governing body** who is independent of the provider;

'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;

'minor offences':

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

ii. do not include **relevant fraud offences**;

'parent undertaking' has the meaning given in section 1162 of the Companies Act 2006;

'public authority' has the meaning given in section 6(3) of the Human Rights Act 1998;

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

'relevant fraud offence' has the meaning given in condition E8;

'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);

'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;

'relevant public funds' ~~relevant public funds" has the meaning given in condition E7E~~ 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;

'set of governing documents' means the set of documents as required under condition E7.1;

'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.
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.

~~Where a provider intends to establish one of the roles defined as a 'key individual' but has not yet recruited an individual, the provider will need to demonstrate how it will make sure that the individual it appoints has the required knowledge and expertise.~~

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. ~~A provider's governing body is responsible for the provider complying with all its conditions of registration. A provider's accountable officer is the person accountable to the OfS on behalf of the governing body.~~ 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. ~~The OfS would not expect an individual to have exhaustive knowledge of every element of the higher education sector. Neither would an individual be expected to demonstrate knowledge of elements of the higher education system, or context of the sector, which were not relevant to the planned activities of the provider. For example, an individual at a provider that was not planning to engage in any research activities would not be expected to demonstrate knowledge about this aspect of the higher education system. As is set out in the guidance for the business plan requirement, the OfS's assessment would consider whether a key individual demonstrated significant misunderstandings, or made statements which were materially factually inaccurate, about the operation of the higher education system or context of the sector.~~ 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 charring committees.
 - b. Sufficient seniority and confidence, derived from business leadership experience and understanding of how organisations run, to enable the individual to lead and advise others.
 - c. Knowledge and understanding of the provider's business activities and the external environment to a level of detail that would allow the individual to effectively chair discussions and facilitate decision making.
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. ~~However, the OfS will consider relevant contextual information submitted by the provider when assessing the individual.~~ 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 ~~six~~ **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 ~~give particular weight to~~ **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 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. Deficient professional performance in unrelated sectors.~~
- c. 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, ~~a redundancy~~ 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 ~~procedures~~ **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 ~~procedures~~ **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. ~~An individual's self-declaration in relation to the matters listed in this condition.~~
 - f. Credit reference checks.
 - g. Regulatory body lists of non-compliant individuals and companies, for example the Solicitor's Regulation Authority's list of intervened companies and sole practitioners.
 - h. 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.



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