

Consultation

**Office for
Students**

The logo for the Office for Students, featuring a dark blue square with a yellow square in the top right corner containing the letters 'OfS' in white.

OfS

Part 1: Proposals for new initial condition C5

Treating students fairly

This consultation runs from **6 February 2025**
to **23 April 2025**.

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Introduction

What we are consulting on

1. We propose to introduce a new initial condition of registration (condition C5) that would place a requirement on a higher education provider to treat students fairly. This would replace existing initial conditions C1 and C3 for all providers seeking registration with the OfS, and for providers applying to change their category of registration. We also propose that ongoing condition C3 would not apply to any provider registered under proposed initial condition C5. Instead, after it is registered, the provider would need to publish a suite of student-facing documents, which we would review through our assessment of initial condition C5. These documents would constitute the student protection plan for these providers.
2. Under our proposals, a provider would be able to demonstrate that it meets the requirements of initial condition C5 where there is no evidence that it treats students unfairly.
3. Our proposals do not affect ongoing regulatory requirements for providers that are already registered with the OfS (except where a provider applies to change its registration category). We are not proposing any changes in relation to ongoing condition C1 (Guidance on consumer protection law) or ongoing condition C2 (Student complaints scheme), which would continue to apply to all providers registered with the OfS.
4. In this part of the consultation, we are seeking views about our detailed proposals relating to treating students fairly and the reasons for our proposals. The consultation questions are listed in full in Annex A. We have set out the alternative options we have considered in Annex B. The draft initial condition and associated guidance are in Annex C and, subject to the outcomes of this consultation, this is the text that would be published in the OfS's regulatory framework to set out entry requirements for new providers seeking registration. Annex D contains a draft 'OfS prohibited behaviours list', which forms part of the proposed initial condition. Annex E contains template text for a provider's published student protection plan, which we are proposing a provider would need to publish on its website following its registration with the OfS.

Why we are focusing our attention in this area

5. As set out in our draft strategy for the period 2025 to 2030 (pages 11 to 12), we regulate primarily in the interests of students and it is more important than ever that we explicitly identify those interests and place them at the centre of our work.¹ It is therefore appropriate to consider this when we are reviewing our initial conditions of registration. Ensuring providers get this right from the beginning will reduce the possibility of things going wrong and mean that students are treated fairly and that their interests are protected.
6. Through our work with providers seeking registration we regularly see unclear or misleading information published on their websites. This sometimes includes information about fundamental aspects of a provider's offering, such as its ability to offer recognised degrees or to call itself a university. We see contract terms that unfairly favour the rights of the provider over the rights and interests of students, for example by limiting the provider's obligations in

¹ See OfS, '[Consultation on OfS strategy for 2025 to 2030](#)'.

circumstances that are likely to be within its control. We also see complaints processes, and refund and compensation policies, that limit students' ability to seek redress when things go wrong. When we hosted a series of focus groups with students in the summer of 2024, students expressed scepticism about whether they would always be treated fairly.

7. Students should receive clear, accurate and timely information; their relationship with their university or college should be governed by fair terms and conditions; and there should be fair mechanisms for dealing with complaints, refunds and compensation. Students should be able to understand the protections available to them in circumstances where the provider can no longer deliver their course (either at all or in the manner advertised). It is important that our initial conditions of registration provide the right tests so that only providers that treat students fairly in this way are registered.

Summary of the proposals

8. To address the problems we have seen, we propose a new initial condition of registration (condition C5). This condition would require a provider seeking registration to treat its students fairly. The condition would state that a provider will be deemed not to treat students fairly if specific 'unfairness' criteria are met, or if there is evidence of detriment to students which the OfS judges is not justified. This would be assessed with reference to the provider's track record and its behaviours, as evidenced by the information it currently publishes on its website and the documents it intends to use to govern its relationships with students after it is registered. These would be the documents a provider uses (or intends to use) in its real-world relationships with students. This would move away from a requirement that tests whether a provider has had 'due regard to relevant guidance' to a requirement that tests whether the provider treats students fairly in practice. We propose that new initial condition C5 would replace existing initial condition C1.
9. We also propose that the new condition would replace initial condition C3. Under initial condition C5, a provider would submit its policy (or policies) setting out the basis on which it may make changes to its courses, qualifications, modes of study, teaching location and facilities. This policy will also set out how students will be treated fairly in these circumstances. Once registered, a provider would publish this policy (alongside its terms and conditions, refund and compensation policies and complaints processes) as its 'student protection plan'. We propose that the ongoing condition C3 would not then apply to a provider that has been assessed against the proposed condition C5 as part of its registration application. Our initial view is that this would ensure that the full range of risks to continuation of study for students would be covered in the policies of each provider, and these policies would also include a sufficiently detailed account of how the provider would respond in these circumstances to ensure that students are treated fairly. We also think that this would represent an efficient, effective and economic use of the resources of providers and the OfS.
10. We have included, as Annex B, alternative options we have considered. We welcome views on these alternatives alongside comments on our proposals. The introduction to this consultation (Annex B: Matters to which we have had regard in reaching our proposals) sets out the matters to which we have had regard in formulating these proposals.²

² See [Introduction to the consultation on new registration conditions](#).

Proposal 1	To introduce a new initial condition of registration (initial condition C5) to replace initial condition C1
Proposal 2	To focus the new initial condition on fairness for students
Proposal 3	To test fairness with reference to unfairness
Proposal 4	To determine whether a provider treats students fairly with reference to its behaviours and its track record
Proposal 5	To determine the scope of the initial condition with reference to a provider's relationships with current, prospective and former students and its provision of higher education and ancillary services
Proposal 6	To require submission of a provider's student-facing documents
Proposal 7	To remove initial condition C3 (and replace with initial condition C5)
Proposal 8	To expect a provider assessed under initial condition C5 to publish specified student-facing documents within two weeks of its registration
Proposal 9	To change the applicability of ongoing condition C3 so it would not apply to a provider assessed under initial condition C5

How we would implement the proposals

11. This consultation is scheduled to close on **Wednesday 23 April 2025**. The introduction to this consultation (How we would implement these proposals) sets out how we would implement the proposals in this consultation, including a proposed timetable for implementation.³

³ See [Introduction to the consultation on new registration conditions](#).

Proposal 1: Introduce a new initial condition to replace initial condition C1

What are we proposing?

We propose to introduce a new initial condition of registration to replace initial condition C1. This would be initial condition C5: Treating students fairly.

12. Providers seeking to register with the OfS are currently required to satisfy initial condition C1 relating to consumer protection. This condition has remained unchanged since it was introduced in 2018, and requires a provider to ‘demonstrate that in developing and implementing its policies, procedures and terms and conditions it has given due regard to relevant guidance about how to comply with consumer protection law.’
13. We are proposing to introduce a new initial condition of registration to replace initial condition C1. The new condition we are proposing is initial condition C5: Treating students fairly. This condition would place an explicit obligation on a provider to treat students fairly, which, we propose, would be assessed through the absence of ‘unfair’ behaviour. To assess whether there is evidence of unfair behaviour, the OfS would require a provider to submit relevant policies and terms and conditions.
14. A draft of the proposed condition and associated guidance is in Annex C. Subject to the outcomes of this consultation, the condition and guidance would be incorporated into the OfS’s regulatory framework and place new entry requirements on providers seeking registration with the OfS. We would welcome feedback on the clarity of the condition and the associated guidance, as drafted. We have included a specific consultation question at the end of our proposals to seek this feedback.

Why are we making this proposal?

15. The OfS has registered over 400 higher education providers and continues to assess applications for registration on an ongoing basis. Our proposals are informed by this work.
16. From our experience, requiring a provider to have had ‘due regard’ to relevant guidance about compliance with consumer protection law does not adequately ensure that the provider’s policies, contracts, terms and conditions are fair to students. A provider can have regard to Competition and Markets Authority (CMA) guidance (and therefore satisfy OfS initial condition C1) but, whether by an omission or through more deliberate means, it may nonetheless exhibit behaviour that is detrimental to students. This may include, for example, inaccurate, unclear, incomplete or misleading information about material matters; unfair terms and conditions; or unclear or unfair complaint handling processes. Such issues may hinder a student’s ability to make an informed decision about what and where to study and how to resolve, and seek redress for, problems that may arise during their studies.
17. Examples of behaviour that we have seen, and its impact, include:

- a. **Misleading omissions of material information**, such as failure to provide information about additional course costs in a timely manner (for example, the requirement to pay registration fees to a professional body). As a result, students may take a decision about what and where to study based on incomplete information.
 - b. **Contractual terms that allow the withdrawal of offers** to students who have accepted these offers (for example, where a course is over- or under-subscribed). Students may be unable to secure alternative provision until the following academic year, and may have already made financial commitments related to study in a particular location that they are obliged to honour, for example, in relation to accommodation.
 - c. **Contractual terms that seek to limit a provider's obligations to students** in circumstances that are likely to be within its control, for example, industrial disputes involving the provider's own staff. Students may not receive the teaching they are entitled to expect and any compensation due may be insufficient.
 - d. **Complaints processes that place unreasonable barriers to raising a complaint**, for example allowing too short a timeframe between when an event occurs and the submission of a complaint about it. Students may be denied legitimate opportunities to have their complaints reviewed and addressed, including their ability to seek and receive compensation to which they may be entitled.
 - e. **False or misleading claims on a website**, for example that access to student loans amounts to 'receiving money to study', or that a provider is offering 'degrees' or is a 'university' when it does not have authorisation to use these terms.⁴ This poses a risk that students may take a decision about what and where to study based on false information. A student may complete a course and obtain a certificate which does not have the value they would be entitled to expect.
18. The OfS has a partnership with National Trading Standards and, in July 2024, we published case studies and examples of terms and conditions that may be in breach of consumer law following a Trading Standards assessment.⁵ This is helping to drive up standards in the sector and, in the light of our concerns, we are proposing changes to our requirements for registration to complement this work programme.

Detail of the proposal

19. To provide more robust protections for students in light of the issues we have observed, we propose to strengthen the regulatory requirements we impose on a provider seeking registration. We are therefore proposing a new initial condition (condition C5) that replaces initial condition C1.
20. We have set out in Proposals 2 to 6 our detailed proposals for proposed new initial condition C5.

⁴ See OfS, ['Degree awarding powers'](#) and ['University title'](#).

⁵ See OfS, ['Students as consumers: Terms and conditions at risk of breaching consumer law'](#).

Alternative options considered

21. We have considered an alternative option to this proposal, which is set out in Annex B. This is to retain existing initial condition C1.

Question 1

Do you agree or disagree with our proposal to introduce a new initial condition to replace initial condition C1? If you disagree, please give reasons for your answer.

Proposal 2: Focus on fairness for students

What are we proposing?

We propose that the overarching requirement of initial condition C5 would be for a higher education provider seeking registration with the OfS to treat students fairly.

Why are we making this proposal?

22. A provider seeking registration is currently required to demonstrate that in developing and implementing its policies, procedures, terms and conditions it has given due regard to relevant guidance about how to comply with consumer protection law. However, a provider is not required to account for how it has ensured that it is treating students fairly in relation to consumer protection. As a result, we see situations where a provider may satisfy the current condition, but its policies and student-facing documents (for example, terms and conditions) may be unfair to students.
23. Our proposed requirement instead aims to test whether a provider's policies and practices protect students' consumer interests and are fair in practice, thereby providing more robust and consistent protection for students. Although there are legal routes for students to challenge potentially unfair contractual terms (and our arrangement with National Trading Standards aims to tackle issues of significant concern) our initial view is that the most effective way to protect students is to ensure that each provider acts fairly towards students from the outset.

Detail of the proposal

24. While many students do not explicitly refer to their experiences as consumers, when we ask what is important to them, words such as 'fairness' and 'honesty' are often used as they describe specific experiences and promises that have not been met.⁶ In many cases, these experiences relate to a service that has not been delivered well, or on time, or as advertised.
25. Based on our engagement with students, our initial view is that the concept of 'fairness' is important to their consumer experience. Students should receive accurate and honest information, an experience that is in line with what has been promised, and fair processes through which they can complain and seek redress where this is not the case. Students invest time, money and effort in their higher education and they should be treated fairly. We therefore propose that this should be the overarching requirement in relation to consumer and student protection.
26. While 'fairness' is also a legal concept, we are proposing that the concept, when applied to our registration requirements, should go beyond the existing legal provisions. In other words, we are proposing to introduce an OfS view of fairness in the context of higher education. We

⁶ See OfS, '[Defining our approach to student interest](#)'.

are therefore proposing that initial condition C5 is informed by legal concepts but is not limited to matters that may be strictly unlawful. (See Proposal 4.)

Alternative options considered

27. We have considered alternative options to this proposal, which are set out in Annex B. These are to:
- a. Require compliance with the law (relying solely on evidence of non-compliance to determine whether the condition is satisfied).
 - b. Focus on a provider's approach to complying with the law (requiring submission of a narrative describing a provider's approach).

Question 2

With reference to the concept of fairness:

- a. Do you agree with our proposal to focus initial condition C5 on this concept? If you disagree, please give reasons for your answer.
- b. Is there an alternative concept you think would be more appropriate?

Proposal 3: Test fairness with reference to unfairness

What are we proposing?

We propose to assess whether a provider treats students fairly through a requirement that identifies when a provider does not treat students fairly.

Why are we making this proposal?

28. While proposing a broad overarching requirement that a provider seeking registration 'must, if registered, treat each student fairly,' our initial view is that the condition should also set out explicit criteria for this test. This is to provide clarity for providers about our expectations when they apply for registration and to help students understand what they can expect from their provider.
29. Our initial view is that focusing on problematic behaviours would address the poor practices we have identified, focusing the efforts of providers and the OfS on the areas that are the most important from a consumer protection perspective. We suggest that negative behaviours, if left unchecked, risk a detrimental impact on students.
30. When assessing registration applications, the outcome of our assessment is either that an initial condition is satisfied and the provider may be registered (if all other relevant initial conditions are also satisfied) or that the condition is not satisfied and the provider may not be registered. In focusing on negative behaviours (or their absence where applicable), the proposed initial condition should allow for a streamlined registration assessment that leads more directly to a straightforward 'satisfied' or 'not satisfied' outcome. We want to ensure there is an appropriate mechanism for refusing registration to a provider exhibiting negative behaviours while maintaining an efficient assessment for providers that do not.

Detail of the proposal

31. Based on the requirements set out under Proposal 4, we are proposing that, if the OfS deems that a provider does not treat students fairly (based on evidence of behaviour that is unfair), we would conclude that initial condition C5 was not satisfied. This would allow us to protect the interests of students by refusing registration where a provider fails to treat students fairly and therefore fails to satisfy the condition.
32. If we do not observe behaviours that constitute unfair treatment of students, we propose to conclude that the provider satisfies the condition.

Alternative options considered

33. We have included an alternative option to this proposal in Annex B. This is to consider fair treatment as well as unfair treatment.

Question 3

Do you agree or disagree with our proposal to focus on negative indicators (or the absence of negative indicators)? (I.e., if there is evidence that a provider does not treat students fairly, it would not satisfy proposed initial condition C5. If there is no such evidence, the provider would satisfy the condition). If you disagree, please give reasons for your answer.

Proposal 4: Requirements of the condition

What are we proposing?

We propose to determine whether a provider treats students fairly with reference to:

- its behaviours, as evidenced by the information it publishes on its website and the documents it would use in its relationships with students after it is registered
- its track record, as in evidence (or the absence of evidence) from courts or other competent authorities.

34. This section sets out our detailed proposals for the requirements of the proposed initial condition. This refers to provisions C5.3 to C5.7 of the draft condition, as set out in Annex C. Annex C also sets out the guidance we propose to publish alongside the condition. We would welcome feedback on the clarity of the condition and the associated guidance, as drafted. We have included a specific consultation question at the end of our proposals to seek feedback in this respect.
35. We propose that the OfS would not deem a provider to treat students fairly:
- a. If its actions (or omissions) either:
 - i. Fall within one or more descriptions, which we propose to set out in a separate 'OfS prohibited behaviours list' (C5.4a).
 - ii. Give rise to a likelihood of detriment or actual detriment to the student (except where reasonable in all the relevant circumstances) (C5.4b).
 - b. Unless it can demonstrate that it has addressed the related issues to the satisfaction of the OfS, the provider has been the subject of a finding (C5.5) of either:
 - i. Non-compliance with consumer protection law.
 - ii. Wrongdoing under section 214(1) of the Education Reform Act 1988 (unrecognised degrees); section 76(6) of the Companies Act 2006 (failure to comply with a Secretary of State direction to change a company name); section 1198 of the Companies Act 2006 (name giving misleading indication of activities).

Why are we making this proposal?

36. Table 1 is an overview to explain why we are proposing to define unfair treatment with reference to these factors.

Table 1: Proposed factors for defining unfair treatment

Factor	Reason
<p>Actions or omissions that fall within an OfS prohibited behaviours list (see Annex D)</p> <p>The prohibited behaviours list is broadly informed by:</p> <ul style="list-style-type: none"> • Consumer protection law • Competition and Markets Authority published guidance for higher education providers • Our experiences as a regulator of higher education. 	<p>Our initial view is that consumer protection law and CMA guidance provide useful reference points to support a definition of unfair treatment that is likely to be familiar to providers seeking registration. The law applies to higher education providers as it does to any provider of services, and CMA guidance has been specifically written to support compliance of higher education providers with the law.</p> <p>Through our regulation, we have observed behaviours (highlighted in paragraph 17) that fall within the proposed list, and we are seeking to address these through the registration assessment by refusing registration to providers exhibiting such behaviours.</p> <p>While we expect all providers seeking registration to comply with the law, our initial view is that OfS regulation in this area has the potential to provide an additional layer of protection for students. While the list has been informed by relevant legislation, we are proposing that it is not limited to behaviours that are prohibited by law.</p>
<p>Actions or omissions that give rise to detriment (except where reasonable in all the circumstances).</p>	<p>We suggest a starting position that a provider may not be treating students fairly where their actions (or omissions) are to the detriment of students. We propose that the assessment should be sufficiently nuanced to consider detriment on a case-by-case basis, allowing for reasonable mitigating circumstances to be properly considered.</p> <p>Paragraph 54 discusses further the relevant matters we propose to consider.</p>
<p>Findings of:</p> <ul style="list-style-type: none"> • non-compliance with consumer protection law • wrongdoing under: <ul style="list-style-type: none"> – section 214(1) of the Education Reform Act 1988 (unrecognised degrees) – section 76(6) of the Companies Act 2006 (failure to comply with a Secretary of State direction to change a company name); 	<p>As above, we expect all providers seeking registration to comply with the law. We propose that the OfS should take, as its starting point, that any provider found not to have complied with consumer protection law is unlikely to treat its students fairly and should not become a registered provider in the regulated sector.</p> <p>We propose to consider relevant matters beyond this starting point and we discuss these matters in paragraphs 69 and 70.</p> <p>We recognise that providers may have taken action to address issues following findings, and are proposing that a provider would not be found to be treating students unfairly where it can satisfy the OfS about the steps it has taken.</p>

<p>– section 1198 of the Companies Act 2006 (name giving misleading indication of activities).</p> <p>Where the provider has not demonstrated that it has addressed issues related to any adverse findings to the satisfaction of the OfS.</p>	
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Detail of the proposal

37. The proposed condition requires a provider to treat all students fairly. We propose that the condition’s protections are:
- informed by consumer protection legislation, but adapted for the purpose of our regulation
 - separate to the consumer protections offered by consumer law.
38. Separately to the requirements of the proposed condition we would, of course, expect all higher education providers seeking registration with the OfS to ensure they are aware of their legal obligations and are legally compliant at the point of application and on an ongoing basis.

Actions and omissions

39. We propose to consider a provider’s actions and omissions in assessing whether it treats students fairly. This means a provider may not be deemed to treat students fairly where it takes certain actions (for example, including unfair terms and conditions in its student contract) or where it fails to take particular actions (for example, failing to provide information about additional course costs in a timely way, or at all).

Proposed or likely action or omissions

40. The draft condition includes ‘proposed or likely’ actions or omissions. ‘Proposed’ actions would include, for example, unfair terms and conditions even where these are not currently in use. Where a provider is not yet delivering higher education, our initial view is that this would provide an appropriate mechanism to assess its intended approach to the fair treatment of students.
41. ‘Likely’ is intended to cover circumstances where an action has not been expressly proposed but there is evidence that indicates a provider may act (or not act) in a certain way. For example, a provider’s contract with its students may be ambiguous, unclear or silent on a particular matter but its website may contain evidence of unfair treatment in relation to the same matter.

OfS prohibited behaviours list (C5.4a)

42. We propose to consider all reasonably available evidence to assess whether, in our reasonable opinion, any of the provider’s actions or omissions (including those that are proposed or likely) fall within one or more of the descriptions set out in the OfS prohibited behaviours list (Annex D). These descriptions fall into the following categories:

- a. Key documents (informed by the Consumer Rights Act 2015, schedule 2, 'Consumer contract terms which may be regarded as unfair', commonly known as the 'grey list').⁷
- b. Descriptions relating to conduct and omissions (informed by the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277), schedule 1, 'Commercial practices which are in all circumstances considered unfair').⁸
- c. Clarity and legibility of key documents and other information for students (informed by CMA guidance for higher education providers).⁹
- d. The provider's policies relating to the circumstances in which it may make changes to its courses.
- e. The provider's complaints processes (informed by CMA guidance for higher education providers).¹⁰
- f. The provider's refund and compensation policies.
- g. Fake reviews (informed by the Digital Markets, Competition and Consumers Act 2024 c.13, schedule 20, 'Commercial Practices which are in all circumstances considered unfair, paragraph 13 – not yet in force').¹¹

43. The approach we are proposing assumes a provider does not treat students fairly where its actions or omissions fall within one or more of these descriptions.

Creating an OfS list of prohibited behaviours that constitute unfair treatment

44. To support an efficient assessment that allows a provider that satisfies our initial requirements to be registered more quickly, we have drafted a list of OfS prohibited behaviours that offers appropriate certainty about our expectations. We expect that this would be easy to understand for all relevant stakeholders, including students, providers and interested members of the public. While some of the provisions in the proposed list are informed by legislation and CMA guidance, we propose to create an OfS definition of 'prohibited behaviour' that draws on our experience as a regulator and goes beyond legislation in some areas (as explained at paragraph 47).

45. We are not proposing to make findings in relation to consumer protection law: any judgement made in relation to initial condition C5 would be solely a regulatory judgement.

Informed by legislation

46. We have taken elements of consumer protection law that we consider most relevant to the higher education sector and adapted the language to this context. This does not mean,

⁷ See Gov.UK, '[Consumer Rights Act 2015 Schedule 2](#)'.

⁸ See Gov.UK, '[The Consumer Protection from Unfair Trading Regulations 2008 Schedule 1](#)'.

⁹ See Gov.UK, '[Higher education: Consumer law advice for providers](#)'.

¹⁰ See Gov.UK, '[Higher education: Consumer law advice for providers](#)'.

¹¹ See Gov.UK, '[Digital Markets, Competition and Consumers Act 2024 Schedule 20](#)'.

however, that we endorse behaviours not included on our list but which are covered by the legislation. For example, while they are not expressly included in our list, the OfS does not, of course, endorse pyramid schemes. We have included a list of the legislative provisions that we are not currently proposing to include in the OfS prohibited behaviours list (see Annex B: Alternative options considered, paragraph 11).

47. By drawing on legislation, many of the concepts in the list should, we suggest, be broadly familiar to providers, although we acknowledge that the effect of our regulatory provisions may differ from legislation in some areas. A provider satisfying its legal obligations may not, therefore, always satisfy the OfS's proposed initial regulatory requirements. In particular, contract terms that **may** be regarded as unfair according to the Consumer Rights Act 2015 (the 'grey list') would **always** be unfair under initial condition C5 (part a. of the OfS prohibited behaviours list). We also note that the 'key documents' referred to in the OfS prohibited behaviours list would include its policies relating to the circumstances in which it may make changes to its courses, its refund and compensation policies and its compliance processes, as well as its contract terms and conditions. We are proposing to consider documents beyond those that may ordinarily have contractual effect and the condition therefore has a wider scope than consumer protection law. Our initial view is that this is appropriate because students may rely on a wider range of documents in practice.
48. Our approach has been to consider fairness from a student's perspective, which means we are proposing a higher standard under our condition than in existing legislative provisions. We would particularly welcome views on any provisions we have included in the currently proposed OfS prohibited behaviours list (part a) that respondents may consider to be fair (and the particular circumstances to illustrate where this might be the case). Likewise, we would also welcome views on any provisions informed by legislation that we are not proposing to include in the OfS prohibited behaviours list but which respondents think should be included.

Informed by CMA guidance

49. We have drawn specifically from CMA guidance in relation to complaints processes, and clarity and legibility of information for students. The CMA's guidance continues to provide a helpful and separate reference for providers in understanding their legal duties, and we are not seeking to replace or interpret this.

Alternative options considered

50. We have included alternative options that we have considered in Annex B. These are:
 - a. An initial assumption that behaviour on the OfS prohibited behaviours list is evidence of unfair treatment but a provider has an opportunity to overturn this initial assumption (through the submission of additional contextual evidence).
 - b. A more limited OfS prohibited behaviours list (limited to matters that are always considered unfair in law).
 - c. An expanded OfS prohibited behaviours list. (Are there behaviours that should be prohibited that we are not currently proposing to include?)
 - d. Model terms and conditions. (We suggest that this may be considered as well as, rather than instead of, our proposal.)

Question 4a

What are your views on the proposed OfS prohibited behaviours list (including the way we are proposing to use consumer protection legislation and CMA guidance to inform it)?

Likely or actual detriment (C5.4b)

51. The draft condition proposes that a provider would not be regarded as treating a student fairly if, in the OfS's reasonable opinion, its actions or omissions (including those that are proposed or likely) give rise to a likelihood of detriment or actual detriment to the student, unless the OfS considers that the detriment would be reasonable in all the relevant circumstances.

Allowing flexibility for the OfS to address unforeseen circumstances

52. This element of the requirement is intended to address actions or omissions that we have not accounted for elsewhere in the condition but that may be to the detriment of students, including those elements of legislation that we have not included in the OfS prohibited behaviours list. The proposed 'detriment test' is designed to allow a degree of flexibility and 'futureproofing' in case new practices that cause concern emerge.

Allowing flexibility for a provider to explain mitigating circumstances

53. We propose that a provider **may** not be treating students fairly where its actions (or omissions) are to the detriment of students. However, we propose to consider this on a case-by-case basis, considering whether the detriment (or likely detriment) is reasonable in the circumstances and allowing for reasonable mitigating circumstances to be properly considered.

Factors in determining likely or actual detriment

54. Draft guidance on the proposed condition sets out the following non-exhaustive factors we propose to consider in determining whether an act or omission that gives rise to a likelihood of detriment (or actual detriment) is likely to be considered reasonable in the circumstances:
- a. Whether it is reasonable to argue that the course of action proposed or taken is, or was, necessary in the circumstances.
 - b. Whether these circumstances are, or were, in the control of the provider.
 - c. Whether the provider is doing, or has done, everything possible to limit the extent of the detriment.

Question 4b

What are your views on the way we propose to consider detriment to students (including the non-exhaustive factors we propose to consider to determine whether detriment is 'reasonable in all the relevant circumstances')?

Non-compliance with consumer protection law or evidence of other wrongdoing (C5.5)

55. The OfS expects all providers to comply with the law and we propose to take as our starting position that any provider found not to have done so is unlikely to treat students fairly. Where a provider has been subject to adverse findings in relation to any of the following legislation, we propose that this would indicate it does not treat students fairly:

- Consumer protection law (findings by a UK court or competent authority)¹²
- Section 214(1) of the Education Reform Act 1988 (unrecognised degrees)¹³
- Section 76(6) of the Companies Act 2006 (failure to comply with a Secretary of State direction to change a company name)¹⁴
- Section 1198 of the Companies Act 2006 (name giving misleading indication of activities).¹⁵

56. We propose to consider findings that have been made directly or indirectly in relation to the provision of education and ancillary services (see Proposal 5 for our proposed definition of ancillary services).

Consumer protection law

57. We propose to interpret 'consumer protection law' broadly, including (but not limited to) the following legislation (as may be amended from time to time):

- The Consumer Rights Act 2015¹⁶
- The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013¹⁷
- The Provision of Services Regulations 2009¹⁸
- The Consumer Protection from Unfair Trading Regulations 2008¹⁹

¹² As set out at paragraph 57.

¹³ See Gov.UK, Education Reform Act 1988.

¹⁴ See Gov.UK, Companies Act 2006.

¹⁵ See Gov.UK, Companies Act 2006.

¹⁶ See Gov.UK, Consumer Rights Act 2015.

¹⁷ See Gov.UK, The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

¹⁸ See Gov.UK, The Provision of Services Regulations 2009.

¹⁹ See Gov.UK, The Consumer Protection from Unfair Trading Regulations 2008.

- Digital Markets, Competition and Consumers Act 2024²⁰
- The Protection from Harassment Act 1997.²¹

58. We propose to include the Protection from Harassment Act 1997 to address circumstances where a provider imposes academic sanctions for non-payment of non-tuition fee debts, which it aggressively pursues and which may amount to harassment.

59. We propose that a relevant adverse finding would be one made by a UK court or other competent authority, meaning the CMA or any other body empowered to make decisions under section 182 of the Digital Markets, Competition and Consumers Act 2024.

Unrecognised degrees

60. Section 214(1) of the Education Reform Act 1988 sets out that any person who, 'in the course of business, grants, offers to grant or issues any invitation relating to' an unrecognised degree is guilty of an offence.

61. Only the following are **recognised** degrees:

- those taught by providers with degree awarding powers²²
- those taught by providers via a contractual arrangement with a provider that has degree awarding powers.

62. Where there is a finding of wrongdoing under section 214(1) the Education Reform Act 1988, we propose there should be a presumption that the provider does not treat students fairly.

Additional provisions in the proposed OfS prohibited behaviours list

63. Where, at the time of its application to register with the OfS, a provider claims to offer unrecognised degrees but there is no formal finding of wrongdoing, we also propose to treat this as unfair according to the OfS prohibited behaviours list. This is because we think it would be inappropriate for the OfS to register a provider in these circumstances. We have drafted specific provisions in the OfS proposed prohibited behaviours list (part b) (Annex D) to reflect activities related to the offering of unrecognised degrees.

Misleading company names (use of the term 'university')

64. Section 76(1) of the Companies Act 2006 allows the Secretary of State to direct a company to change its name where it gives a misleading indication of the nature of its activities. Section 76(6) states that an offence is committed where a company fails to comply with such a direction made by the Secretary of State.

²⁰ See Gov.UK, [Digital Markets, Competition and Consumers Act 2024](#), The Digital Markets, Competition and Consumers Act 2024 is not yet in force, but the government expects the consumer protection elements to come into force in April 2025. If the OfS decides to introduce proposed initial condition C5 (including any amendments that may be made following this consultation process), we propose that references to other legislation may be removed from the above list, where the Act supersedes such legislation.

²¹ See Gov.UK, [Protection from Harassment Act 1997](#).

²² See OfS, ['Degree awarding powers'](#).

65. Section 1198A(1) of the Companies Act 2006 states that a company must not carry on business in the UK under a name that it has been directed or ordered to change. Section 1198A(3) states that an offence is committed if a company uses a name in contravention of this section.
66. Where there is a finding of wrongdoing under the Companies Act in the context of the provision of education or ancillary services, we propose that this should be taken as evidence of unfair treatment, in particular to address circumstances in which a provider uses the word 'university' inappropriately. Inappropriate use would be in circumstances other than:
- a. Where the OfS has approved the use of the word 'university' in the name of a registered higher education provider.²³
 - b. Where the Secretary of State has given approval for the sensitive word 'university' to be used in the name of a company or limited liability partnership, or in a business name.²⁴

Additional provisions in the proposed OfS prohibited behaviours list

67. Where, at the time of its application to register with the OfS, a provider uses the word 'university' inappropriately, we propose to treat this as evidence of unfair treatment according to the OfS prohibited behaviours list, even where the Secretary of State has not directed the provider to change its company name and there is no finding of wrongdoing. This is because we think the OfS should not register a provider in these circumstances. We have drafted specific provisions in the proposed OfS prohibited behaviours list (part b) (Annex D) to reflect activities related to the use of the word 'university'.

Findings in relation to any form of education

68. We propose to consider as relevant any finding that directly or indirectly relates to the provision of any form of education (or ancillary services). For example, some providers that seek to register with the OfS already deliver further education and have taken a strategic decision to expand their business. Our initial view is that evidence in relation to such provision would be relevant, because of the similarities between higher education and other forms of education.

Presumption that adverse findings indicate the provider does not treat students fairly

Where there is an adverse finding

69. We propose that a provider should have an opportunity to explain the circumstances of any adverse findings. We propose that a provider would be required to submit a form to declare any findings, including a summary of the circumstances and, where relevant, any mitigations in place following the event (Proposal 6).
70. We propose to consider the following non-exhaustive factors in determining whether the provider has successfully overturned our initial presumption:

²³ See OfS, 'University title'.

²⁴ See Gov.UK, 'Use of university, polytechnic and higher education in business and company names (other than for university and university college title)'.

- a. The recency of the findings.
- b. Whether the findings relate to matters that were repeated or sustained.
- c. Whether the findings include a view about the deliberateness of the provider's actions or inaction.
- d. How the provider has engaged with the issue since the finding was made.
- e. The steps it has taken to address the issue and ensure it does not happen again in future.

Where there has been no finding

71. Where there has not been a relevant finding, but the provider's behaviour falls within one or more provisions in the OfS prohibited behaviours list, we are proposing to treat this as evidence that the provider does not treat students fairly, without an opportunity to overturn this assumption; for example, where there has not been a finding under the Education Reform Act or the Companies Act but the provider is offering unrecognised degrees or using the sensitive word 'university' without the necessary permissions. For the avoidance of doubt, this proposal does not remove a provider's right to submit representations in response to any provisional decision taken by the OfS to refuse registration on the basis that the provider does not satisfy one or more of the initial conditions.²⁵

Alternative options considered

72. We have included alternative options that we have considered in Annex B. These are to:
- a. Consider findings only in the context of higher education.
 - b. Consider findings in any context.
 - c. Consider findings only within a given time period. (Is there a single appropriate 'cut off' point prior to the provider's application register, before which the OfS should disregard findings?)
 - d. Consider each case on its merits (a neutral starting position rather than an assumption that adverse findings indicate unfair treatment).

Question 4c

What are your views on the adverse findings we propose to consider and the way in which we propose to consider them?

²⁵ See paragraph 110 of the OfS's [Regulatory framework](#).

Consideration of actions by an enforcement body (C5.6)

73. We propose to consider evidence that:

- a. An undertaking has been accepted by an enforcement body in connection with behaviour that relates to the provision of education or ancillary services.
- b. There is an outstanding application for an enforcement order made by an enforcement body where this relates to the provision of education or ancillary services.

Undertaking

74. An undertaking is a formal agreement by a business to comply with consumer protection law. This may be by stopping or not repeating certain behaviours. It may also include a requirement for the business to take additional measures, including providing documents or information to the enforcement body. There is no obligation on an enforcement body to accept an undertaking and it may instead apply for an enforcement order.

Enforcement order

75. An enforcement body may apply to a court for an enforcement order where it considers a business has carried out, or is carrying out, activities contrary to consumer protection law. If the court finds that the provider's actions are not compliant with the law, it may issue an enforcement order requiring the business to comply with the law. Where a business fails to comply with an enforcement order, it would be in contempt of court.

Enforcement body

76. The draft condition defines an 'enforcement body' as it is set out in:

- Schedule 6 of the Consumer Rights Act 2015
- Part 8 of the Enterprise Act 2002
- Section 164 of the Digital Markets, Competition and Consumers Act 2024 (where such a body is defined as an 'enforcer').

77. Trading Standards is an enforcement body as defined in the Enterprise Act 2002 and the Digital Markets, Competition and Consumers Act 2024.

Factor to be considered in the assessment

78. We propose that a provider would be required to make a declaration about any undertakings or applications for enforcement orders, including any information the provider considers relevant ([see Proposal 6](#)). We are not proposing to automatically conclude that the provider does not treat students fairly based on this evidence, but rather to take this into account alongside other reasonably available evidence (for example, the provider's documents or information published on its website).

Enforcement orders issued by a court

79. For the avoidance of doubt, this proposal relates to applications for enforcement orders by enforcement bodies, and not where enforcement orders have been issued. Where an enforcement order has been issued, the court or other competent authority will also make a

finding of non-compliance with consumer protection law. According to our current proposals, such a finding would be considered under C5.5a.

Behaviour that relates to any form of education

80. We are proposing to consider as relevant any undertakings or applications for enforcement orders where these relate to the provision of any form of education (or ancillary services), not just those that relate to higher education. Our initial view is that such evidence would be relevant because of the similarity between the delivery of different types of education.

Alternative options considered

81. We have included alternative options that we have considered in Annex B. These are to:
- a. Consider behaviour only in the context of higher education.
 - b. Consider behaviour in any context.
 - c. Disregard undertakings and applications for enforcement orders.

Question 4d

What are your views on the way we propose to consider undertakings by enforcement bodies and applications for enforcement orders?

Removal of concerning terms or information from documents (C5.7)

82. The draft condition sets out a presumption that, in the course of its application, where a provider removes concerning terms or information from any of its documents or published information, mere removal would not be sufficient to conclude that the provider treats student fairly. This would be relevant, for example, where a provider removes a term after the OfS has provisionally determined that it is unfair. In such circumstances, we propose that it would be for the provider to submit evidence to the OfS that it has also considered and addressed any underlying issues that led to the unfair term being included to overturn the presumption.
83. Where a provider removes concerning terms from its documents without demonstrating it has addressed underlying issues, we propose this would be insufficient.
84. We propose to consider:
- the consequences of the removal of the term or information
 - whether the removal addresses the issues
 - whether any other related issues remain
 - whether the removal itself leads to other concerns.
85. We also propose to consider:

- the extent to which the provider has demonstrated it understands why the term or information that it has removed was of concern
- other actions beyond removal that the provider has taken, and the extent to which these address the concern
- whether the provider has replaced the terms with more suitable terms.

86. We propose to take more assurance from evidence that demonstrates the provider has understood the concern and taken actions to fully address the issue. We propose to consider the nature and range of the provider's actions relevant to the nature and extent of the original concerns.

87. We propose to consider all available reasonably evidence, including information published on the provider's website. For example, where a provider removed an unfair term from a student contract but continued to make similar statements elsewhere on its website, our initial view is that we would be likely to conclude that our concerns had not been properly or fully addressed.

Alternative options considered

88. We have included alternative options that we have considered in Annex B. These are:

- a. A binary approach (whereby the removal of concerning terms or information would either never be, or always be, sufficient).
- b. Considering each case on its merits (a neutral starting position rather than an assumption that adverse findings indicate unfair treatment).

Question 4e

What are your views on the way we propose to consider a provider's removal of concerning terms or information from its documents?

Proposal 5: Scope of the condition

What are we proposing?

We propose to determine the scope of the condition with reference to a provider's relationships with students (current, prospective and former) and its provision of higher education and ancillary services, including offering and marketing higher education and associated services. We propose that the condition would apply to all providers seeking registration.

89. This section sets out our detailed proposals for the scope of the proposed condition. This refers to provisions C5.1 and C5.2 of the draft condition, as set out in Annex C and, where relevant, to the proposed definitions that are set out at C5.8. Annex C also sets out the guidance we propose to publish alongside the condition. We would welcome feedback on the clarity of the condition and the associated guidance, as drafted. We propose that the provisions in the new initial condition would apply to:
- a. All students regardless of mode or level of study and the manner of delivery (for example, education that is delivered online, face-to-face or a combination of both). This includes prospective, current and former students.
 - b. The provision of higher education and ancillary services.
 - c. Offering higher education and providing information to students (including for marketing and advertising purposes).
 - d. All providers seeking registration with the OfS, including those delivering (or intending to deliver) higher education through any form of partnership.

Why are we making this proposal?

90. Paragraphs 91 to 109 set out why we are proposing to define each proposed element of the scope of the condition in the suggested way.

Detail of the proposal

Students

Prospective students

91. We propose that a provider's relationship with a prospective student should be in scope from the point an offer has been made, as we think this is when the provider's actions or omissions have the most potential to affect a student. For example, if the provider omits to inform the individual about additional course costs by the point of offer, this omission may influence (and could be decisive in) the individual's decision about whether to accept the offer. We are proposing to limit the application of the condition to those individuals where it is reasonably foreseeable for them to be affected by a provider's actions or omissions.

Former students

92. We propose that a provider's relationships with its former students should be in scope insofar as there is a current relationship based on the individual having previously been a student of the provider (for example, where there is an ongoing complaint). Our initial view is that a provider's responsibility towards a student may not end strictly on the day the student completes their course. For the avoidance of doubt, the intended scope of 'relationship' under this condition is similar to that between a consumer and a service provider and 'former student' is not intended to refer to other types of relationship that may exist between a provider and its alumni on an ongoing basis.

Students studying as part of their employment

93. We propose that the condition should apply to all students, regardless of arrangements for tuition or other related fees and whether or not the student is studying as part of their employment. This includes, but is not limited to, apprenticeship students. All students make significant investments in their study in the form of time and effort, even those who are not charged tuition fees directly. They may have many of the same legitimate expectations as any other students, for example:

- a. While the legal contractual responsibility of a provider may be to a student's employer in relation to the educational services delivered, students studying as part of an apprenticeship may expect, for example, to receive accurate and unambiguous information about their course.
- b. The mechanisms for making complaints (and options for redress) may legitimately differ from those for other students (for example, apprentices may not be entitled to claim or receive refunds of tuition fees), but apprentices may expect a complaints process to be available, accessible and managed fairly, and for their provider to make provision for appropriate redress.
- c. A student undertaking a course as part of their employment may independently contract with a higher education provider in relation to non-academic services (for example, sports facilities owned and managed by the provider). While a provider's contractual responsibility for academic services may typically be to an employer, the provider may have other non-academic contractual responsibilities to a student.

Alternative options considered

94. We have included alternative options that we have considered in Annex B. These are to:

- a. Exclude prospective and former students.
- b. Use alternative definitions for prospective and former students (either more narrow or more broad: for example, a prospective student might be defined from the point at which they submit their application, which may be particularly pertinent where a student is applying through UCAS, which limits the number of providers to which an individual can apply)
- c. Exclude students studying as part of their employment.

Question 5a

What are your views on the definition of students in the proposed condition (to include current, prospective and former students)?

Higher education and ancillary services

Higher education

95. We propose that the 'provision of higher education' should apply broadly and include all higher education courses, at any level and with any volume of learning (including standalone modules and microcredentials). We propose that this would include higher education provided face-to-face, by distance learning, or through a combination of both methods.
96. We propose to refer to the provision of higher education as a 'service', whether or not tuition or other fees are charged and whether the education is provided on a 'for profit' or a 'not for profit' basis.

Ancillary services

97. Alongside higher education, we propose to include the provision of 'ancillary services' in the scope of the condition. We define these as services where a contract exists between a provider and a student as part of their higher education experience (including but not limited to the provision of library services, disability support packages, scholarships, accommodation and sports facilities). This proposal recognises that there may be several factors influencing a student's decision about what and where to study (and influencing their experience of higher education once they are studying). We suggest that these may include the educational and financial support available to them, where they might live and the non-academic facilities on offer. Where the information provided about ancillary services is unclear or inaccurate, this may impact a student's choice of provider or course, and where the associated terms of service are unclear or unfair, this may influence a student's higher education experience.

Illustrative list of ancillary services

98. The illustrative list of ancillary services proposed reflects those we think may be the most important to students. We do not propose that a provider would normally be required to submit contracts to us beyond those associated with this list (Proposal 6). However, where we are made aware of other contracts and these appear to contain unfair terms, we propose to request further information from the provider to verify any additional information we have received. For example, we may be made aware of such contracts through concerns raised with us by students. We propose this approach to ensure we take account of all relevant evidence, while considering the time needed for a provider to compile and submit documentation for assessment.

Third party services excluded

99. We are not proposing to include ancillary services that are available to the provider's students where the contract is between a student and a third party. Our initial view is that a provider should undertake due diligence on any third parties it allows to offer services to its students on its premises (and it is responsible for any contracts it enters into itself with any such third parties). However, our initial view is that it is a more proportionate and pragmatic approach to

limit the scope of this aspect of the condition to instances where a provider holds a contract directly with a student.

Alternative options considered

100. We have included alternative options that we have considered in Annex B. These are to:

- a. Focus on the provision of teaching (and therefore not include ancillary services in the scope of the condition).
- b. Provide an exhaustive list of ancillary services (not including flexibility for the OfS to consider a broader range of ancillary services).
- c. Include third party ancillary services.

Question 5b

What are your views on the inclusion and definition of ancillary services?

Offering higher education and providing information for students

Defining information for students broadly

101. The scope of the draft condition includes the offering of higher education and ancillary services; for example, by making arrangements to 'attract students, encourage applications to become students, or to otherwise communicate with students'. The condition further defines 'information for students' as 'including, but not limited to, advertising and marketing material, and actual or proposed information that may be published on [the provider's] website.'

102. We want to test whether the information the provider shares with students is clear and accurate, and the proposed provision has been drafted widely to capture any information a student might rely on in this respect. Information for students could include, for example, emails or other forms of communication with individual students, presentations delivered at open days, or any written material distributed or otherwise used to inform communications with students (for example, scripts for recruitment phone calls). We are not proposing that all providers would be required to submit such materials as a matter of course as part of their application (Proposal 6). However, we are proposing that the condition should allow consideration of these, for example:

- a. Where such materials are publicly available (for example, where these are published on the provider's website).
- b. Where we request or require additional evidence from the provider through the course of the assessment (for example, where a third party notification raises a concern which prompts us to investigate further).

103. The OfS occasionally receives third party notifications about unregistered providers, or receives other evidence or intelligence through its regulation of other providers, media reporting or other publicly available information. We propose that any such information may be considered, to ensure that we make use of all relevant information to inform our assessment.

Where we consider such information, we propose that we may undertake further investigatory work to verify the information and establish the facts.

104. Where the draft condition refers to arrangements a provider ‘plans to make’ and ‘proposed information’ that may be published on its website, this is primarily to capture circumstances in which a provider is not yet in operation (or in operation but not yet offering higher education or ancillary services), and may not yet have published key documents or information.

Alternative options considered

105. We have included alternative options that we have considered in Annex B. This is to use a narrower definition of ‘information for students’.

Question 5c

What are your views on the definition of ‘information for students’?

Partnerships

All providers in scope

106. We propose that initial condition C5 would apply to any higher education provided ‘by, or on behalf of, a provider’. We propose that the condition would apply to any provider seeking registration, regardless of whether it registers (or will register) any students. For the avoidance of doubt this means, for example, that the condition would apply to a provider where it only delivers (or intends to deliver, if registered) higher education:

- through a subcontractual (often referred to as a ‘franchise’) partnership where students are ordinarily registered at the lead provider
- through a validation partnership.

107. Likewise, we propose that the condition would apply to the ‘lead’ provider in any such relationships; in other words, those providers that subcontract (franchise) or provide validation services to other providers. These providers may not deliver the teaching but do have other responsibilities and duties towards students.

108. This proposal is in line with the OfS’s existing approach to regulating quality, standards and student outcomes through the B conditions of registration, and we propose that our existing approach to regulating providers in partnership arrangements should apply equally to consumer protection matters and the fair treatment of students. As with our other conditions, the effect of the proposal is that, in practice, more than one provider seeking registration may be responsible for compliance with this condition in relation to the same students.

Flexible approach to submission requirements

109. We are proposing that a provider working in partnership with other providers or organisations may be able to satisfy submission requirements by submitting a combination of its own and other providers’ or organisations’ documents, based on the responsibilities of each partner as these are set out in the contractual agreements in place between them (and with a student). We have set out further detail under Proposal 6.

Question 5d

What are your views on our proposed approach to providers delivering higher education through partnerships?

Proposal 6: Document submission requirements

What are we proposing?

We propose to require submission of a provider’s student-facing documents, including terms and conditions, policies for making changes to courses, complaints processes and refund and compensation policies.

110. Part 3 (Proposed changes to registration application requirements) sets out our proposals for what would constitute a complete submission of documents and other information that we are proposing to determine via a section 3(5) Notice. Proposal 1 of Part 3 covers our proposed document submission requirements for **all** initial conditions.

111. Proposal 6 in this document sets out detailed information about our proposed submission requirements for initial condition C5 for any new application for registration made after the date that we publish our decisions following this consultation. As explained in Proposal 1 of Part 3, for applications to change category of registration, we propose to issue a bespoke section 3(5) Notice setting out the information we require from each provider according to its particular circumstances. In general, we require a provider that is already registered with the OfS to submit less information for this type of registration application, because we already hold regulatory information about that provider as a result of our routine monitoring. A registered provider seeking to change registration category may still refer to the information in the table below (and as detailed in the section 3(5) Notice in Proposal 1 of Part 3) to understand the maximum information we are proposing to require for any application.

112. Table 2 compares the documents we currently require a provider to submit in relation to initial condition C1, and the documents we are proposing to require for initial condition C5 for any new application for registration.

Table 2: Comparison of existing and proposed submission requirements (C5)

Current initial condition C1: Documents we require	Proposed initial condition C5: Documents we propose to require
<p>Provider’s self-assessment about how it has had due regard to relevant guidance, including information about its approach to complying with consumer protection law and providing information to applicants and students.</p> <p>The OfS may also consider information published by the provider or otherwise provided to students.</p>	<p>We are not proposing to require submission of a self-assessment. We are proposing instead to assess the policies and student-facing documents described below. We also propose to review a provider’s website and other publicly available information.</p>
<p>Explanation (within the self-assessment) of the contracts the provider uses to govern relationships with students and how it ensures that these are fair and transparent.</p>	<p>We are not proposing to require submission of a narrative describing the provider’s contracts or its approaches to fairness and transparency. We are instead proposing to assess the contracts themselves directly, and judge for ourselves</p>

<p>The OfS may also consider ‘the contracts a provider uses to govern its relationship with students and the terms and conditions for these’. This includes ‘the contract for academic services and other contracts into which a student may enter as part of the higher education experience, including but not limited to contracts governing the provision of accommodation, disability support packages, scholarships, sports facilities and additional course costs’.</p>	<p>whether we consider they contain problematic behaviours under the condition. We propose to consider the following:</p> <ul style="list-style-type: none"> • Template contract(s) that set out terms and conditions for the provision of higher education, including terms related to any tuition fees payable and any additional costs that may apply (including but not limited to additional fees to resit exams). • Any template contracts (including terms and conditions) between a student and the provider for the following ancillary services or facilities (where the provider offers these and there is a separate contract that students are required to sign): <ul style="list-style-type: none"> – library services – disability support packages – scholarships – accommodation – sports facilities. <p>We also propose to require submission of any policy (or policies) relating to the circumstances in which the provider may make changes to:</p> <ul style="list-style-type: none"> • courses • qualifications to be awarded • modes of study • teaching location and facilities • course fees and other related fees or charges. <p>We propose to consider whether these policies contain problematic provisions. We have set out further detail about the requirements for these policies under Proposal 7 and below (paragraphs 128 to 134).</p>
<p>Explanation (within the self-assessment) of how the provider ensures that its complaint handling processes are clear, accessible and fair.</p>	<p>We are not proposing to require submission of a narrative describing the provider’s approaches to complaints. We are proposing instead to assess the provider’s higher education complaints processes directly, and judge for ourselves whether they raise any concerns in accordance with the condition. We propose that, where there are different processes for different categories of student, all would need to be submitted.</p>
<p>The initial condition C1 self-assessment template does not require the provider to comment specifically on refunds and compensation, though the condition itself indicates that the provider may reference</p>	<p>We propose to require submission of any policies that set out the terms for refund and compensation for higher education students, judging for ourselves whether they contain any concerning provisions.</p>

its refund and compensation policy as supporting evidence in its self-assessment.

113. We also propose that a provider would need to submit a declaration about relevant matters and a submission checklist. We have provided proposed templates for the checklist and declarations. These templates and a draft section 3(5) Notice are in Annex A (Appendices 1 and 2) of Part 3.²⁶

Why are we making this proposal?

114. Through the proposed new initial condition, we want to test the documents a provider uses (or intends to use) in its real-world relationships with students. We think this will support our proposed move away from requirements that test whether a provider has had ‘due regard to relevant guidance’ and towards those designed to test whether the provider treats students fairly in practice.

Detail of the proposal

Overarching principles

Provider intentions, if registered

115. When assessing eligibility for registration, the OfS considers a provider’s intended higher education provision if it is registered.²⁷ It is important that a provider seeking registration is sufficiently prepared to offer higher education, even if it is not yet offering such education. We therefore propose that all providers should be required to submit the required documents, even where a provider seeking registration is not yet in operation or not yet delivering higher education.

116. Our initial view is that the proposed documents represent the minimum a provider would need to manage a consumer relationship with a student. While this may mean that a provider in the early stages of development (as a ‘startup’ or as an existing organisation diversifying into higher education) may need to develop these documents before it can apply to register, we consider that this preparation is needed for a provider to be ready to offer higher education and therefore that it is appropriate that these documents are assessed at registration. Our initial view is that this would not create additional work for providers seeking registration beyond that which would be required, in any case, in the normal operation of its future business.

Approach to providers that do not intend to charge fees or register students

117. Even where a provider does not intend, itself, to charge fees to any students or register students for whom it would deliver higher education if successfully registered, we propose it

²⁶ See OfS, ‘[Annex A: Proposed notice under Section 3\(5\) of HERA](#)’.

²⁷ ‘Only a provider that is, or intends to become, an English higher education provider, as defined in section 83 of [the Higher Education and Research Act 2017], can apply to register with the OfS. (OfS’s [Regulatory framework](#) paragraph 74).

must still submit all the required documents. We suggest this may be relevant to the following providers in particular:

- providers that intend only to provide higher education via a subcontractual partnership²⁸
- providers that intend only to deliver higher education as part of an apprenticeship or other employer-sponsored provision.

118. Our initial view is that, to properly assess whether students are treated fairly, we need to assess all documents relevant to the higher education a provider will deliver if it is successfully registered. To meet the requirement, we therefore propose that a provider may need to submit its own documents and those of other higher education providers or organisations connected with the higher education provision that it intends to deliver. We have specified below (paragraphs 123 to 141) where we think this will be most relevant to particular documents.

119. For a provider intending to deliver higher education through a subcontractual partnership or as part of an apprenticeship (or similar), our proposals may therefore require it to liaise with other organisations to prepare its submission. Though our proposals should not directly affect registered providers, the proposed document submission requirements may have an indirect effect on those providers that have (or intend to have) partnerships with providers seeking registration.

120. Where more than one provider has a relationship with a student, we would expect both providers to ensure any information published or otherwise shared with students is consistent, particularly where this relates to each provider's duties and responsibilities. We propose that the OfS would consider evidence of any contradictory or inconsistent information it identifies in its assessment of the condition. We are making this proposal in the context of recent investigations by the Public Accounts Committee into higher education delivered via subcontractual (or 'franchise') arrangements, which concluded, among other matters, that arrangements currently do not 'give students the information they need to make well informed decisions'.²⁹

121. Where a provider does not intend to register any students when it submits its application to register (because students will register with another provider), we may require it to report a change of circumstances if this position changes following its registration. This may include a

²⁸ In the OfS's Regulatory framework paragraph 64, we define a course to be part of a subcontractual arrangement if, typically:

- a. 'There is a written, legally binding agreement in place between the lead provider and the delivery provider that sets out the conditions of the arrangement.
- b. The student has a contractual relationship with the lead provider.
- c. The fee and/or fee loan is paid to the lead provider.
- d. The student is registered as a student of the lead provider and is included in its data returns.'

²⁹ See UK Parliament, 'Student loans issued to those studying at franchised higher education providers', page 5, paragraph 1.

requirement to submit the contractual and other documents it would intend to use in its relationships with future students.

122. Where a provider does not register any students when it submits its application to register with the OfS but it intends to do so following its registration, we propose it would need to submit the contracts that it intends to use in these relationships.

Documents

Contracts for the provision of higher education

123. We propose to consider the relevant contracts directly rather than, for example, a narrative description of these documents or of the provider's approach to drafting its contracts. We propose that 'contracts' should cover any document setting out terms and conditions for students as these relate to the provision of higher education. Where there is more than one document, we propose that all should be submitted. Where a provider applying for registration shares (or intends to share) contractual responsibility for students with other providers or organisations, we propose that it should submit all documents that would apply if it is successfully registered, regardless of whether it or another provider or organisation holds or maintains these documents.
124. We propose to assess these documents against the requirements of C5.4a (OfS prohibited behaviours list) and C5.4b (likely or actual detriment). We propose to pay particular attention to parts a. and c. of the OfS prohibited behaviours list which sets out behaviours in relation to key documents.

Other contracts

125. While the proposed scope of ancillary services does not limit our potential consideration of these services, we propose to limit document submission requirements to those contracts identified in Table 2. Our initial view is that this is a proportionate approach, which would allow us to assess, as standard, contracts for the provision of those services we think are likely to be most important to students, while not requiring submission of contracts for every service offered by a provider. In line with the proposed scope of the condition, this would not include contracts for services offered by a third party.
126. We are proposing that the submission of documents would be required only where there is a separate contract. For example, a provider's terms and conditions for library services may be incorporated into its contract for the provision of higher education and, where this is the case, a provider would not be required to create a separate contract for library services solely for the purpose of OfS registration.
127. We propose to assess these documents against the requirements of C5.4a (OfS prohibited behaviours list) and C5.4b (likely or actual detriment). We propose to pay particular attention to parts a. and c. of the OfS prohibited behaviours list which sets out behaviours in relation to key documents.

Policies setting out conditions under which changes can be made

128. Our initial view is that the circumstances under which a provider may make changes to courses, qualifications, modes of study, teaching location, facilities and fees are important to our assessment, as they describe the circumstances in which students may not receive the

services they expect, and are necessary to explain for students how the provider would intend to manage these situations fairly.

129. We propose that the provider would need to submit a policy (policies) detailing the circumstances in which it may make changes to all of the following:
- a. Courses (including changes to material components or content of a course, changes to subjects offered and course closure).
 - b. Qualifications to be awarded (including circumstances where a validating partner has withdrawn validation).
 - c. Mode of study (including full-time, part-time, online and hybrid provision, and including measures to address the needs of specific student groups, including accessibility needs).
 - d. Teaching location and facilities (including closure of a campus, building or other facilities and including measures to address the needs of specific student groups, including accessibility needs).
130. This would not need to include information about the provider's plans in the event that it is at risk of fully or substantially ceasing the provision of higher education. As explained further below under Proposal 7 (paragraph 147) and Proposal 9 (paragraph 165), through existing ongoing condition of registration C4 (Student protection directions) we can compel a provider to produce a detailed market exit plan in these circumstances. In our experience of working with providers at risk of closure, this greater level of detailed planning is necessary.
131. We propose that a provider's policies should include measures to address the needs of specific student groups, including accessibility needs. We have drafted the submission requirement to reflect our initial view that this may be particularly important where a provider makes changes to modes of study, teaching location or facilities. For example, where a provider ceases to deliver part-time provision, this may have a significant impact on students who have registered for this mode of study because it fits with their existing caring responsibilities, working patterns and other commitments. Where a provider moves its teaching from one geographical location or building to another, there may be accessibility issues for a range of students and for a number of reasons, including but not limited to access for disabled students.
132. As set out in the OfS prohibited behaviours list in Annex D (part d.), we propose that the provider's policies would not meet the requirements of the condition where they do not contain provisions that would ensure all students are treated fairly in practice.
133. We propose to assess the provider's policy (or policies) against the requirements of C5.4a (OfS prohibited behaviours list) and C5.4b (likely or actual detriment). We propose to pay particular attention to parts a., c. and d. of the OfS prohibited behaviours list which set out behaviours in relation to key documents generally (parts a. and c.) and policies for the circumstances in which a provider may make changes to its courses specifically (part d.).
134. We propose that any provider applying to register would be required to submit its own policy or policies setting out the circumstances in which it may make changes to courses, qualifications, modes of study, teaching location or facilities. We recognise that the content of

these policies would need to be tailored to a provider's circumstances, including where there is shared contractual responsibility for the provision of higher education. For this reason, we propose that a provider's policies may refer, where relevant, to the roles and responsibilities of other providers or organisations. For example, a teaching provider in a subcontractual partnership may refer to its partner, and a provider delivering an apprenticeship or other employer-sponsored course may refer to the role of a student's employer, according to the terms set out in the contract between the provider and the employer (and between the employer and student).

Complaints processes

135. Rather than through a narrative about a provider's approach to complaints as is currently required for initial condition C1, we would want to be able to assess these aspects of a provider's practices directly. Where a provider has different complaints processes for different categories of student (for example, for applicants compared with registered or enrolled students), we propose that the provider should submit all its complaints processes.
136. We propose to assess the provider's complaints processes against the requirements of C5.4a (OfS prohibited behaviours list) and C5.4b (likely or actual detriment). We propose to pay particular attention to part a., part c. and part e. of the OfS prohibited behaviours list which set out behaviours in relation to key documents generally (parts a. and c.) and complaints process specifically (part e.).
137. We propose that each provider would be required to submit its own complaints processes. We recognise that the content of these processes would need to be tailored to a provider's circumstances, including where there is shared contractual responsibility for the provision of higher education. For this reason, we propose that a provider's processes may refer, where relevant, to the roles and responsibilities of other providers or organisations. For example, a delivery provider in a subcontractual partnership may refer to its partner, and a provider delivering an apprenticeship or other employer-sponsored course may refer to the role of the student's employer, according to the terms set out in the contract between the provider and the employer (and between the employer and student).

Refund and compensation policies

138. Our initial view is that a provider's financial recompense and redress policies are important in assessing whether it treats students fairly in practice. We suggest that this is closely connected to a provider's complaints process, in particular where it is unable to deliver courses as advertised. Rather than referencing its refunds and compensation policy as supporting evidence, as is currently the case for initial condition C1, we would want to be able to assess these aspects of a provider's practices directly.
139. We propose to assess the provider's refund and compensation policies against the requirements of C5.4a (OfS prohibited behaviours list) and C5.4b (likely or actual detriment). We propose to pay particular attention to parts a., c. and f. of the OfS prohibited behaviours list which set out behaviours in relation to key documents generally (parts a. and c.) and refund and compensation policies specifically (part f.).
140. We recognise that some providers may not charge tuition fees to students including, for example, where a student's employer pays these fees to the provider on their behalf, or where

students are liable to pay tuition fees to another provider (as may be the case in a subcontractual partnership). In circumstances where the provider applying to register does not intend, if registered, to charge tuition fees to students, we propose that it may submit a combination of its own documents and those of other providers or organisations, in order to satisfy this submission requirement.

141. We note that, even where students are not charged tuition fees by their teaching provider, they may be liable for other types of fees or payments that the teaching provider charges them directly. For the avoidance of doubt, we are proposing that the documentation submitted should reflect the entirety of the refund and compensation arrangements that apply for the responsibilities the provider would have towards students, if successfully registered.

Initial condition C5 declaration form

142. We have provided a template in Annex A (Appendix 1) of Part 3 (Proposed changes to registration application requirements) that we propose a provider would need to complete and submit. To inform the assessment of C5.5 and C5.6, we propose that a provider would be required to declare:

- a. Any findings of non-compliance with consumer protection law.
- b. Any findings of wrongdoing provided for in sections:
 - i. 214(1) of the Education Reform Act 1988 (unrecognised degrees).³⁰
 - ii. 76(6) of the Companies Act 2006 (failure to comply with a Secretary of State direction to change a company name).³¹
 - iii. 1198 of the Companies Act 2006 (name giving misleading indication of activities).³²
- c. Whether an undertaking has been accepted by an enforcement body in connection with behaviour that relates to the provision of education or ancillary services.
- d. Whether there is an outstanding application for an enforcement order made by an enforcement body that relates to the provision of education or ancillary services.

Submission checklist

143. We have provided a template in Annex A (Appendix 2) of Part 3 (Proposed changes to registration application requirements) that we propose a provider would need to complete and submit. The purpose of this would be twofold:

- to assist the provider in submitting a complete application

³⁰ See Gov.UK, '[Education Reform Act 1988 Part IV Section 214](#)'.

³¹ See Gov.UK, '[Companies Act 2006 Part 5 Chapter 4 Section 76](#)'.

³² See Gov.UK, '[Companies Act 2006 Part 41 Chapter 1 Section 1198A](#)'.

- to assist the OfS in determining whether the provider has submitted a complete application, including understanding any relevant context to the documents submitted.

Alternative options considered

144. We have included alternative options that we have considered in Annex B. These are to:

- a. Require a narrative submission (as well as student-facing documents).
- b. Consider only a provider's current position (rather than its stated intentions, if registered).
- c. Set out different submission requirements for different types of provider (to distinguish between providers that intend to charge tuition fees to students if successfully registered and those that do not or those that share contractual responsibility for the provision of higher education to students and those that have sole responsibility).
- d. Require all providers to submit their own documents regardless of future intentions (requiring a provider to produce and submit documents that it may never need, solely for the purpose of registering with the OfS).

Question 6

What are your views on:

- a. Our proposed document submission requirements?
- b. Our proposed approach to providers that do not intend to charge fees or register students?

Proposal 7: Remove initial condition C3 (and replace with initial condition C5) and Proposal 8: Publication of documents after registration

What are we proposing?

We propose that initial condition C5 would replace initial condition C3 (Student protection plan) and a provider assessed under initial condition C5 would publish its student-facing documents within two weeks of its registration.

145. Under current initial condition C3, a provider's student protection plan sets out its assessment of risks to continuation of study for students and the measures it will deploy to respond where it considers these risks are 'reasonably likely to crystallise'. We approve the plan if we consider it is 'appropriate for [the OfS's] assessment of the regulatory risk presented by the provider and for the risk to continuation of study of all of its students'.

146. If a provider is registered, it must publish its approved student protection plan to satisfy ongoing condition C3 and, if risks to continuation of students crystallise, the provider must 'take all reasonable steps to implement the provisions of the plan' and inform the OfS.

147. On 1 April 2021 we introduced ongoing condition C4, which applies to most registered providers and which we can use when we assess that there is a material risk that a provider will fully or substantially cease the provision of higher education in England.³³ Using ongoing condition C4, we can issue student protection directions, including requiring a provider to produce and comply with the provisions of a market exit plan. A market exit plan is a detailed document setting out plans and arrangements for any or all of the following:

- teach-out
- student transfer
- exit awards
- information, advice and guidance
- complaints
- refunds and compensation
- archiving of academic records.

148. This means that we no longer rely on the provisions in condition C3, and in a provider's student protection plan, to ensure that it is taking steps to protect the interests of students if it

³³ See OfS, '[Regulatory notice 6: Condition C4 – Student protection directions](#)'. Condition C4 applies to all registered providers, except further education bodies (as defined in section 4 of the Technical and Further Education Act 2017) as these can be subject to the special administration regime in place for further education (detailed in Part 2 chapter 4 of that Act).

is facing a material risk of market exit; condition C4 gives us a much more powerful tool to act in these circumstances.

149. Our proposal to implement new initial condition C5, means that each provider seeking registration would be submitting a suite of student-facing policies and documents. This would include a policy (or policies) setting out the circumstances in which the provider may make changes to courses (including qualifications, modes of study, teaching location and facilities). It would also submit further detailed contractual information, and its refund and compensation policy. Our view is that, collectively, these documents cover the issues that present risks to continuation of study for students, and the measures a provider would put in place in response to these risks. Our proposals mean that we would assess the content of these documents at registration to ensure that they are clear, comprehensive and fair.
150. Taken together, this suite of student-facing documents would therefore constitute a provider's student protection plan, and this proposed approach would provide improved protection for students if their course was not deliverable, either at all or in the manner advertised. We are also therefore proposing (Proposal 8) that a provider should publish these documents as its student protection plan in an easily accessible location for students to access, following its successful registration.
151. We are not proposing that this would include policies relating to a scenario in which a provider fully or substantially ceases the provision of higher education. We have set out how we will continue to use ongoing condition C4 to manage the risk of whole provider closure under Proposal 9.
152. Expecting a provider to publish the suite of student-facing documents that we have assessed as part of its registration application would replace the need for a separate student protection plan. We would therefore remove initial condition C3 and replace it with the requirements of initial condition C5. This would remove the need for a provider seeking registration to submit an assessment of the risks to continuation of study for its students and tailor its response to these risks in a (condition C3) student protection plan. We consider that our proposed approach would offer stronger protection because it would ensure that information available to students is more comprehensive, rather than focused on a risk assessment that may become out-of-date over time. At the same time, our proposal would reduce the burden placed on a provider during the registration process, as a detailed assessment of risk, and a separate student protection plan, would no longer be required.

Why are we making these proposals?

153. Current student protection plans rely on a provider's self-assessment of risks to continuation of study for students that it may not accurately represent, whether deliberately or because of its own optimism biases or oversights. Where risks are identified as low, measures to mitigate them may be minimal.
154. In the current environment, circumstances may change quickly and even a student protection plan that accurately represents risks at the point of registration may later become out-of-date and inaccurate. The current approach therefore risks giving a false impression of stability in what is now an increasingly changing environment. In practice, the process of updating and

reapproving a student protection plan approved under initial condition C3 is not always sufficiently dynamic to keep up with the changes we are seeing in the sector at present.

155. In our experience of working with providers at risk of closure (and our experience of using the provisions in ongoing condition C4), far more detailed planning is necessary in these circumstances than is possible in hypothetical terms when a provider applies for registration and is required to meet the requirements of initial condition C3.

Detail of the proposals

Proposal 7: Remove initial condition C3 (and replace with initial condition C5)

156. There is a substantial overlap between the documents we propose to assess for initial condition C5 and the content of a student protection plan approved under current initial condition C3. We suggest that replacing initial condition C3 with the requirements of initial condition C5 would therefore represent a streamlined (as well as a strengthened) approach. Table 3 compares the content of a student protection plan (initial condition C3) and the proposed submission requirements for initial condition C5.

Table 3: Comparison of student protection plan requirements (C3) and proposed submission requirements (C5)

Current initial condition C3: Student protection plan requirements	Proposed initial condition C5: Documents we propose to require
<p>Provider’s self-assessment of the risks to continuation of study for its students (likelihood of risk crystallisation and severity of impact). Range of risks to be included:</p> <ul style="list-style-type: none"> • [The provider as a whole is no longer able to operate or no longer intends to operate.]³⁴ • The provider is no longer able to award the qualifications for which its students are registered because the OfS has varied or revoked the provider’s degree awarding powers, or a validating partner has withdrawn validation. • One or more of the locations at which the provider delivers courses to students is no longer available. • The provider is no longer able to deliver courses to students in one or more subject areas and/or departments. • The provider is no longer able to deliver one or more courses to students, particularly if course closures are likely in the next three years. 	<p>We are not proposing to require submission of a risk assessment.</p> <p>Template contracts that set out terms and conditions for the provision of higher education, including terms related to any additional costs that may apply (including but not limited to additional fees to resit exams).</p> <p>Policy (or policies) relating to the circumstances in which the provider may make changes to:</p> <ul style="list-style-type: none"> • Courses (including changes to material components or content of a course, changes to subjects offered and course closure). • Qualifications to be awarded (including circumstances where a validating partner has withdrawn validation). • Mode of study (including full-time, part-time, online and hybrid provision, and including measures to address the needs of specific student groups, including accessibility needs).

³⁴ We have set out further information about how we will continue to manage the risks of whole provider closure under [Proposal 9](#).

<ul style="list-style-type: none"> • The provider is no longer able to deliver material components of one or more courses, particularly if there are areas of vulnerability, such as single person dependencies for teaching. • The provider is no longer able to deliver one or more modes of study to students, particularly if withdrawal of a mode of study is likely. • The provider is no longer able to recruit or teach a particular type of student. 	<ul style="list-style-type: none"> • Teaching location and facilities (including closure of a campus, building or other facilities and including measures to address the needs of specific student groups, including accessibility needs). • Course fees and other related fees or charges (for example, additional fees to resit exams).
<p>For those risks that the provider considers are reasonably likely to crystallise:</p> <ul style="list-style-type: none"> • Mitigations that are in place to respond to risks, should they crystallise. • Including steps the provider will take to ensure that mitigations are fair and reasonable for students, taking into account the diversity of students and their needs. 	
<p>Information about the provider’s refund and compensation policy</p>	<p>Policy (or policies) that set out the terms for refund and compensation for higher education students.</p>

157. We are not proposing to require a provider’s self-assessment of risks to continuation of study. Instead it would need to have policies that cover all the matters set out in Table 3. This is because:

- a. A provider’s own statement of risk may not accurately reflect its situation in reality.
- b. The current risk environment is different from, and more dynamic than, in 2018 when initial condition C3 was introduced, and a provider’s risk assessment can quickly become out-of-date as its circumstances and operating environment change. This can mean that the measures in its student protection plan are no longer sufficient.

158. Our initial view is that decoupling our proposals for student protection plans from a provider’s risk assessment would provide a more consistent and robust approach. This is because a provider would be required to set out specific and explicit approaches to circumstances, such as course changes, more comprehensively than would be the case if it were focusing only on areas for which it has identified higher risks. Our initial view is that these additional requirements are balanced by the proposal that no self-assessment would be required, which represents a reduction in burden. We have set out our approach to whole provider closure under Proposal 9.

159. While current initial condition C3 does not require submission of a refund and compensation policy, our initial view is that each provider should have such a document, and it is arguably easier to submit this to the OfS than to summarise or explain the provisions as is the current requirement under condition C3. In practice, we currently request submission of refund and

compensation policies during the assessment process for initial condition C3, particularly where provisions are unclear in a provider's draft student protection plan. We suggest that our proposals represent a more streamlined approach for a provider and for the OfS in using resources in an efficient, effective and economic way.

Proposal 8: Publication of documents after registration

160. We propose a provider would be expected to publish its suite of student-facing documents (or a collated list of active and publicly accessible links to these documents) on a single page on its website, to allow easy access and a 'one stop shop' for students. We propose that these documents would be expressly labelled as the provider's student protection plan, and we have included a template with standard wording that we propose a provider would publish, alongside its documents (see Annex E). By 'student-facing documents' we mean those documents identified under Proposal 6, except a provider's declarations and submission checklist. In publishing its documents, a provider would be making a public statement about the services students should expect to receive. Our view is that this would provide transparency for students and assist them in holding their provider to account where services are not delivered as promised.

161. We are proposing that each provider would be asked to provide evidence of publication (a web link to the relevant publicly accessible web page) to the OfS within two weeks of its registration. Where a provider does not do so, and we are concerned that it has not published its student-facing documents, we would consider imposing a specific ongoing condition to compel publication.

Alternative options considered

162. We have included alternative options that we have considered in Annex B. These are to:

- a. Continue to impose initial condition C3 alongside proposed initial condition C5.
- b. Continue to impose initial condition C3 alongside proposed initial condition C5 but with amended submission requirements.

Question 7

Do you agree or disagree with our proposal to remove initial condition C3 (student protection plan) and replace it with the requirements of proposed initial condition C5? If you disagree, please give reasons for your answer.

Question 8

Do you agree or disagree with our proposal that, following successful registration, a provider should be expected to publish the student-facing documents it submits as part of its application to register? If you disagree, please give reasons for your answer.

Proposal 9: Change the applicability of ongoing condition C3

What are we proposing?

We propose that the OfS would not apply ongoing condition C3 for a provider assessed under initial condition C5.

163. Our current regulatory requirements mean that if a provider is registered it must publish an approved student protection plan to satisfy ongoing condition C3 and then implement the plan if any of the risks it sets out crystallise.
164. We are proposing to change the applicability of ongoing condition C3, such that it would not apply to a provider that had been registered on the basis of initial condition C5. We are proposing to replace ongoing publication of a condition C3 student protection plan with the publication of the suite of student-facing documents identified under Proposal 8. These documents would constitute a provider's student protection plan and would be expressly labelled as such in an easily accessible place on its website. We would expect a provider to implement these policies as needed and to ensure that any amendments it makes to these policies after registration increase rather than decrease the level of protection provided to students. We would be likely to take further regulatory action if we identify concerns that student protection has been weakened such that students are not treated fairly.
165. Where we consider a relevant provider to be at material risk of market exit, we will continue to use the provisions in ongoing condition C4 (Student protection directions) to require it to plan and implement appropriate student protection measures.

Why are we making this proposal?

166. If, as proposed, we remove initial condition C3 for a provider seeking registration, it would not submit, at registration, the student protection plan that is required for that condition. We could nevertheless continue to impose ongoing condition C3 and that would mean requiring a provider, after its registration, to submit for approval the risk assessment and plan required by that condition. We think this would create additional work for the provider and the OfS without providing additional benefit in terms of student protection. This is because the documents a provider would publish following its registration under proposed initial condition C5 would form the provider's student protection plan and, for the reasons set out above, would provide more comprehensive protection for students.

Detail of the proposal

Published information available for students about student protection measures

167. Our proposals for the post-registration publication of student-facing documents to constitute a provider's student protection plan (Proposal 8) would ensure students have access to practical and comprehensive information about a provider's plans and obligations in relation to risks to continuation of study.

168. We do not foresee a reason that a provider would not wish to publish its student-facing documents on successful registration, but, if necessary, we may consider introducing an ongoing condition of registration compelling publication for all providers registered under proposed initial condition C5. To do so, we would conduct further consultation activity.
169. This proposed new-style student protection plan would not rely on a provider's risk assessment (which may be inaccurate or out-of-date as described at paragraph 154). We therefore think that this would produce a more comprehensive and consistent approach across providers than is currently the case for condition C3 student protection plans. We suggest that the decoupling of a provider's student protection plan from its assessment of related risks should also ensure that the student protection plan retains its currency after registration. We think the time and effort saved in updating and reapproving student protection plans could be more valuably spent on implementing student protection measures where needed, and this would be a more efficient, effective and economic use of the resources of providers and the OfS.

Managing the risk of whole provider closure

170. We have considered how we would manage the risk of market exit for a provider registered under initial condition C5, given that it would not be required at registration to submit its plans for this eventuality as part of its condition C3 student protection plan. As explained above, we no longer rely on condition C3 in these circumstances and, instead, use the stronger provisions in condition C4 or impose targeted specific ongoing conditions of registration.
171. We plan to continue this approach for any provider registered on the basis of proposed initial condition C5. Our experience of working with providers at risk of exit is that far more detailed planning is necessary than is currently required (or possible in hypothetical terms at registration) within a condition C3 student protection plan.

No proposed change for providers that are already registered

172. On 2 December 2024, the OfS announced temporary changes to its operations to allow a greater focus on the financial sustainability of the sector and of individual providers. In the context of increased financial risk, it is particularly important that the OfS gives careful thought to its regulatory approaches in relation to student protection, and we are actively considering this for providers that are already registered.³⁵
173. The proposals in this consultation would have no direct effect on a provider registered under existing initial condition C3, as ongoing condition C3 would continue to apply in this situation. However, we recognise that proposing to strengthen protections and ensure consistency of information for students of providers registered under proposed initial condition C5 would mean that different arrangements would be in place for different groups of students, depending on when their provider was registered.
174. Changes to ongoing regulatory requirements for registered providers are not within the scope of the current consultation. However our ultimate aim is to strengthen protections and ensure consistency of information for all students at all OfS-registered providers. In doing so, we would aim to align ongoing requirements for all registered providers, and we therefore

³⁵ OfS, "Bold and transformative action" needed to address financial sustainability'.

envisage that having different requirements for different providers would be an interim position. Proposals to achieve this alignment, and to ensure that all students are treated fairly on an ongoing basis, would form part of a future consultation on ongoing requirements for currently registered providers.

Question 9

Do you agree or disagree with our proposal to change the applicability of ongoing condition C3 such that it would not apply to a provider registered under proposed initial condition C5? If you disagree, please give reasons for your answer.

Other questions about this consultation

Question 10

How clear are the requirements of proposed initial condition C5 as drafted at Annex C? If any elements of the proposed initial condition are unclear, please specify which elements and provide reasons.

Question 11

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

Question 12

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.

Question 13

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

Question 14

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?

Question 15

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

Annex A: List of consultation questions

1. Do you agree or disagree with the proposal to introduce a new initial condition to replace initial condition C1? If you disagree, please give reasons for your answer.
2. With reference to the concept of fairness:
 - a. Do you agree or disagree with our proposal to focus initial condition C5 on this concept? If you disagree, please give reasons for your answer.
 - b. Is there an alternative concept you think would be more appropriate?
3. Do you agree or disagree with our proposal to focus on negative indicators (or the absence of negative indicators)? (I.e. if there is evidence that a provider does not treat students fairly, it would not satisfy proposed initial condition C5. If there is no such evidence, the provider would satisfy the condition). If you disagree, please give reasons for your answer.
4. What are your views on:
 - a. The proposed OfS prohibited behaviours list (including the way we are proposing to use consumer protection legislation and CMA guidance to inform it)?
 - b. The way we propose to consider detriment to students (including the non-exhaustive factors we propose to consider to determine whether detriment is 'reasonable in all the relevant circumstances')?
 - c. The adverse findings we propose to consider and the way in which we propose to consider them?
 - d. The way we propose to consider undertakings by enforcement bodies and applications for enforcement orders?
 - e. The way we propose to consider a provider's removal of concerning terms or information from its documents?
5. What are your views on:
 - a. The definition of students in the proposed condition (to include current, prospective and former students)?
 - b. The inclusion and definition of ancillary services?
 - c. The definition of 'information for students'?
 - d. Our proposed approach to providers delivering higher education through partnerships?
6. What are your views on:
 - a. Our proposed document submission requirements?

- b. Our proposed approach to providers that do not intend to charge fees or register students?
7. Do you agree or disagree with our proposal to remove initial condition C3 (student protection plan) and replace it with the requirements of proposed initial condition C5? If you disagree, please give reasons for your answer.
 8. Do you agree or disagree with our proposal that, following successful registration, a provider should be expected to publish the student-facing documents it submits as part of its application to register? If you disagree, please give reasons for your answer.
 9. Do you agree or disagree with our proposal to change the applicability of ongoing condition C3 such that it would not apply to a provider registered under proposed initial condition C5? If you disagree, please give reasons for your answer.
 10. How clear are the requirements of proposed initial condition C5 as drafted at Annex C? If any elements of the proposed initial condition are unclear, please specify which elements and provide reasons.
 11. How clear and helpful is the guidance as drafted at Annex C? If any elements of the draft guidance are unclear or could be more helpful, please specify which elements and provide reasons?
 12. 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.
 13. Are there any aspects of these proposals you found unclear? If so, please specify which, and tell us why.
 14. 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?
 15. Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

Annex B: Alternative options considered

1. We would welcome views on these alternative options alongside comments on the proposals we have set out.

Proposal 1: Introduce a new initial condition to replace initial condition C1

Retain existing initial condition C1

2. We have considered whether it is necessary to replace the existing initial condition, given that any proposed change to our requirements will require a provider seeking registration to familiarise itself with new requirements, including submitting documents it may not currently be required to submit. We take the initial view that it is important to introduce a new and stronger initial condition of registration for the reasons set out in the consultation.

Proposal 2: Focus on fairness for students

Require compliance with the law

3. We have considered a requirement that more simply requires compliance with consumer protection law, rather than the proposed requirement to treat students fairly. We have considered whether this might represent a more straightforward regulatory requirement, as a provider seeking registration should already be complying with the law.
4. Our initial view is that a condition that focuses strictly on consumer protection law may lose the spirit and simplicity of what is fair for students. The proposal we are putting forward aims to encourage this 'bigger picture' thinking in consideration of the feedback we have received from students about what they expect from providers and from their higher education experience.

Focus on provider's approach to complying with consumer protection law

5. We have considered whether a new initial condition could focus on the law by testing a provider's **approach** to compliance. Instead of describing how it has had due regard to relevant guidance (as currently), we could require a provider to describe the systems and processes it has in place to support compliance. Such an approach might be tested through a self-assessment or narrative, as is currently the case for initial condition C1.
6. Our initial view is that this would not provide the strengthened protections for students we are seeking. We do not envisage that a narrative about how a provider ensures compliance with the law is likely to be substantially different from its description about how it has had due regard to relevant guidance. In assessing provider self-assessments for initial condition C1, we have seen examples of a provider setting out appropriate processes while in practice its student contracts contain unfair terms or its published information is misleading. When a provider assesses its own practices, it may write what it thinks the regulator wants to hear, which may not genuinely reflect its policies and processes, or may expose that its processes are not working in practice.

Proposal 3: Test fairness with reference to unfairness

Consider fair treatment as well as unfair treatment

7. We have considered whether to include positive behaviours in the condition to illustrate fair treatment. Our initial view is that, for the purposes of registration, fair treatment may most helpfully be described as the opposite of unfair treatment. For example, if it is unfair to provide documents to students that are not written in clear and understandable language, it would be fair to provide documents that are clear and easy to read. Our initial view is that adding positive criteria of fairness may not add considerable benefit for registration, but could make the assessment longer and more complex.

Proposal 4: Requirements of the condition

Prohibited behaviours

An assumption that the provider can overturn

8. The approach we are proposing automatically assumes a provider does not treat students fairly where its actions or omissions fall within one or more of the descriptions set out in the proposed OfS prohibited behaviours list. An alternative approach would be a provision that makes the same assumption, but with an explicit opportunity for the provider to submit evidence to overturn this assumption. This would be similar to other proposals within the draft condition (C5.5 and C5.7). Because the content of the OfS prohibited behaviours list would be known to a provider and, we suggest, it clearly sets out the behaviours we propose are unacceptable, we currently think it is reasonable a provider should be expected not to exhibit any of the listed behaviours at the time it submits its application. We also note that a provider would always have a right to submit representations in response to any provisional decision taken by the OfS to refuse registration.³⁶

A more limited OfS prohibited behaviours list

9. We have considered whether we might determine whether a provider treats students unfairly with reference to a more limited list of behaviours that only reflect behaviours that are ‘in all circumstances considered unfair’ in consumer protection legislation. This could be either:
 - a. By transposing the provisions of the legislation directly.
 - b. As proposed, informed by legislative provisions but translated for the higher education context.
10. Either way, this would be within the parameters of existing legal requirements that providers should already be aware of and complying with. However, our initial view is that not including the ‘grey list’ of ‘contract terms which may be regarded as unfair’ in the Consumer Rights Act 2015 would leave a gap in coverage of behaviours that may, in practice, be unfair.

³⁶ See paragraph 110 of the OfS’s [Regulatory framework](#).

An expanded OfS prohibited behaviours list

11. We would particularly welcome views on any provisions informed by legislation that we are not proposing to include in the OfS prohibited behaviours list but which respondents think should be included. These are:

- a. Consumer Rights Act 2015, schedule 2, 'Consumer contract terms which may be regarded as unfair', commonly known as the 'grey list':
 - i. A term which has the object or effect of excluding or limiting the trader's liability in the event of the death of or personal injury to the consumer resulting from an act or omission of the trader or someone acting for or on behalf of the trader.
 - ii. A term which has the object or effect of enabling the trader to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so.
- b. Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277), schedule 1, 'Commercial practices which are in all circumstances considered unfair':
 - i. Stating or otherwise creating the impression that a product can legally be sold when it cannot.
 - ii. Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product.
 - iii. Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.
 - iv. Claiming that the trader is about to cease trading or move premises when it is not.
 - v. Claiming that products are able to facilitate winning in games of chance.
 - vi. Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.
 - vii. Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not.
 - viii. Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.
 - ix. Creating the false impression that after-sales service in relation to a product is available in [the UK (if the product is sold there) or in] another country European Economic Area state other than the one in which the product is sold.

- x. Creating the impression that the consumer cannot leave the premises until a contract is formed.
 - xi. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights.
 - xii. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.
 - xiii. Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer.
 - xiv. Explicitly informing a consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy.
- c. Digital Markets, Competition and Consumers Act 2024 c.13, schedule 20, 'Commercial Practices which are in all circumstances considered unfair. Provisions related to the following:
- i. Drip pricing.
 - ii. Subscriptions.

Model terms and conditions

12. As set out in our recently published strategy consultation, we are considering developing a model contract that sets out students' rights and obligations, alongside the obligations of providers.³⁷ We may therefore explore development work in this area through further discussion and engagement with the sector, outside the current consultation process and alongside, rather than instead of, the introduction of a new initial condition of registration.

Non-compliance with consumer protection law or other evidence of other wrongdoing (C5.5)

Consider findings only in the context of higher education

13. We have considered whether findings should be restricted only to those that relate to the provision of higher education (and services ancillary to higher education), given that this would be more directly relevant to the services the provider would intend to deliver, if registered. Our initial view is that there are likely to be similar consumer issues and considerations in the provision of other educational services.

Consider findings in any context

14. We have considered whether findings should be broadened to findings in any context. For example, while we have specifically identified inappropriate use of the word 'university' as a concern, as this is an issue we have seen in the unregulated part of the sector, there may be

³⁷ See OfS, 'Consultation on OfS strategy for 2025 to 2030'.

other circumstances in which a provider has been directed to change a misleading company name. However, where a provider has previously provided services unrelated to education, we currently think this would be less relevant to our considerations.

15. The current proposal seeks to balance between drawing the parameters of legal findings broadly enough to capture what we think is likely to represent the most relevant evidence, while not requiring disclosures from providers that may be less relevant. We would particularly welcome views on whether respondents consider that our current proposal strikes the balance we are seeking.

Consider findings only within a given time period

16. We have considered whether findings should be limited to those within a given period of time preceding the provider's application to register with the OfS. This could be within the proposed framework of a presumption that the provider is able to overturn or otherwise (and within the context of higher education, education in general, or otherwise). For example:
 - a. There could be a presumption that findings from the preceding [X years / months] would be treated as initial evidence that the provider does not treat its students fairly, but with the opportunity for providers to submit information that may mitigate this initial view.
 - b. There could be a presumption that findings from the preceding [X years / months] would be treated as evidence that the provider does not treat its students fairly, with no opportunity for the provider to submit mitigating evidence.
17. Our current proposal would allow us to consider the recency of any findings on a case-by-case basis (and this is a factor we are expressly proposing to take into account and that a provider may include in its evidence). We would welcome views about whether there is, in the view of respondents, a single appropriate 'cut off' point prior to the provider's application register, before which the OfS should disregard findings, and whether particular findings may remain relevant for a longer period of time than others. This would determine whether or not a provider would be required to make a declaration about relevant findings. Should the OfS otherwise become aware of undeclared findings, it would also determine whether we should take such findings into account in our assessment of initial condition C5.

Consider each case on its merits

18. We have considered an approach whereby we would consider each case on its merits. This means we would not start with the assumption that a finding of non-compliance with consumer protection law (other wrongdoing) was evidence of unfair treatment. Rather, each instance would be considered on a case-by-case basis. As we would in any case always consider any additional evidence the provider submits, our initial view is that the effect of this alternative may not be considerably different from our current proposal. The key difference would be our starting assumption and whether this would be negative (current proposal) or neutral (alternative proposal). We think it is appropriate, in the first instance, to place more weight on adverse findings than other evidence, because of to the serious nature of such findings.
19. If taking a more neutral approach to adverse findings, we propose to consider the same non-exhaustive factors as we have set out under Proposal 4 (Non-compliance with consumer protection law or other evidence of other wrongdoing (C5.5)).

Consideration of actions by an enforcement body (C5.6)

Consider behaviour only in the context of higher education

20. We have thought about limiting our consideration of undertakings or applications for enforcement orders to behaviours that relate to the provision of higher education (and ancillary services), given that this would be more directly relevant to the services the provider would deliver, if registered. Our initial view is that there are likely to be similar consumer issues in the provision of other educational services when compared with the provision of higher education, particularly in relation to further education.

Consider behaviour in any context

21. We have thought about broadening our consideration of undertakings or applications for enforcement orders to any context. The current proposal seeks to balance between drawing the parameters broadly enough to capture what we currently think is likely to represent the most relevant evidence, while not requiring disclosures from providers that may, in some circumstances, go beyond this. We would particularly welcome views on whether our current proposal strikes the balance we are seeking.

Disregard undertakings and applications for enforcement orders

22. An alternative option would be to disregard evidence of undertakings and applications for enforcement orders, as these do not constitute adverse findings by a court or other competent authority. Our aim is to create a condition that allows us to consider all reasonably available evidence that we consider relevant while balancing the weight placed on it. Where there are adverse court findings, we propose an initial presumption that the provider does not treat students fairly (which the provider may be able to overturn). In other words, we propose to place weight (though not unlimited weight) on court findings. In contrast, where there is an undertaking or an application for an enforcement order, we propose to consider this in our assessment, but without a presumption that this means a provider does not treat students fairly.

Removal of concerning terms or information from documents (C5.7)

A binary approach

23. We have considered whether the removal of concerning terms from a document should:
- always be sufficient to conclude that the provider treats students fairly
 - always be insufficient, leading to a conclusion that the provider does not treat students fairly.
24. Our initial view is that the first option may be too permissive and the second option may be too restrictive.
25. Our initial view is that the first option would not necessarily increase our confidence about the provider's approach to the fair treatment of students, as we would not receive assurance that the provider had understood the concerns raised. Our initial view is that understanding a concern is the first step to improving practices and ensuring fair approaches are applied in future. In contrast, we think the second option would be unreasonably restrictive on a provider's ability to provide evidence of meaningful changes.

Consider each case on its merits

26. We have considered an approach whereby we would consider each case on its merits. This means we would not start with the assumption that the mere removal of a concerning term or information was insufficient; rather, each instance would be considered on a case-by-case basis. As we would, in any case, always consider any evidence a provider submits, our initial view is that the effect of this alternative proposal may not be considerably different from our current proposal. The key difference would be our starting assumption and whether this would be negative (current proposal) or more neutral (alternative proposal).
27. If taking a more neutral approach in considering whether the mere removal of a term or information was sufficient, we would propose to consider the same non-exhaustive factors as we have set out under Proposal 4 (Removal of concerning terms or information from documents (C5.7)).

Proposal 5: Scope of the condition

Students

Exclude prospective and former students

28. We have considered whether 'students' should be limited to current students, in other words those individuals who are enrolled to study higher education at the provider, for the length of time that they are formally enrolled. Our initial view is that this would leave a significant gap in coverage in the condition, and would not allow us to consider all relevant matters related to the student journey. We take the initial view that students should be protected by our regulation when they are making their decision about what and where to study, through their experiences while studying and, in some scenarios, beyond (for example where they have completed their studies but have a complaint to raise or refunds to pursue where services have not been delivered as promised or as expected).

Use alternative definitions for prospective and former students

29. We have considered whether the definition of prospective students could be more narrowly defined to include only circumstances in which an individual has already accepted an offer. We are of the initial view that the provider's actions or omissions may affect an individual before they accept an offer, as they may affect decision-making which takes place between offer and acceptance.
30. The definition could alternatively be drawn more widely to capture pre-offer circumstances, for example where an individual has submitted an application (or is considering doing so) but has not yet received an offer. It is possible that, in applying for a course at one provider, an individual is therefore choosing not to apply for a course at another provider and, if an individual is making this choice on the basis of inaccurate or misleading information, this may be particularly important. This may be particularly relevant where the individual is applying via the UCAS, which limits the number of providers to which they can apply. In the case of an individual who is only considering applying but has not yet done so, we think this at least would be unmanageably broad, as it would capture anyone and everyone who may be interested in applying to study higher education. We suggest that the condition should limit the application of the condition to circumstances that are reasonably foreseeable.

Exclude students studying as part of their employment

31. Where a student is studying as part of their job and the contracting party is their employer, they may not fall within the relevant definition of ‘consumer’ for the purpose of consumer law. We have considered whether such students should be excluded from the scope of the condition on this basis. While our proposals situate fair treatment broadly within a consumer framework and we have taken inspiration from consumer protection law, the aim of our regulation is to protect students, which means all individuals undertaking a course of study, including as part of their employment.

Higher education and ancillary services

Focus on the provision of teaching

32. We have considered whether the condition should focus solely on arrangements relating to the provision of teaching, given that it is the primary activity of higher education providers. Library services, disability support packages and scholarships are, we think, closely connected to the provision of teaching and the student’s ability to participate in, and achieve positive outcomes from, the teaching they receive. We recognise that other services are less closely connected to the provision of teaching. We think that other ancillary services – particularly those we propose to specify in the condition (accommodation and sports facilities) – may be important to students’ choices about what and where to study and their experiences while studying, even while they may not be directly connected to the provision of teaching and the academic experience.

Provide an exhaustive list of ancillary services

33. We have considered whether the condition should provide an exhaustive list of ancillary services. However, we recognise that the services and facilities each provider offers will differ, and we may not be able to capture all services offered by all providers in a predetermined list. Our initial view is that the condition should allow the OfS the flexibility to consider all relevant information, including that which is publicly available or which we may be provided with, for example by a student or other third party. A predetermined and exhaustive list may not allow us to do this.

Include third party ancillary services

34. We have considered whether the scope of the proposed condition should include services offered by a third party on the provider’s campus, site or premises where that third party holds the contract with the student. While we have not proposed to include third party services within the scope of the condition, we would like to emphasise that, where a provider has or could have influence over arrangements provided by third parties, we would, of course, expect it to act in the interests of students.

Offering higher education and providing information for students

Use a narrower definition of information for students

35. We have considered whether ‘information for students’ should be defined more narrowly through an exhaustive list of things we would consider in our assessment. This approach would have the benefit of certainty for providers. However, our initial view is that there is likely to be a wide range of approaches used by providers and we are unlikely to be able to reflect this diversity through a predetermined list. It may also risk appearing to suggest that all

providers are likely to take (or should take) the same approaches and have (or should have) similar suites of marketing documents.

36. As is consistent with our views stated elsewhere, we also think the condition should allow the OfS to consider all information and materials that are relevant to each provider, including an ability to act responsively (and undertake further verification and investigation where necessary) on a case-by-case basis to any information that is provided to us by a third party.

Proposal 6: Document submission requirements

Require a narrative submission

37. We have considered whether to require a narrative document describing a provider's theoretical approach to treating students fairly, as well as (rather than instead of) other documents. Our initial view is that this would create additional burden for providers and a less efficient assessment process overall without providing additional benefit.

Only consider provider's current position

38. Our current proposal looks at a provider's intended course delivery model, if registered (for example, whether it only intends to deliver via a subcontractual partnership). We have considered, instead, whether we should only consider the provider's current higher education provision in determining whether it has submitted all the required documentation. Our initial view is that this would not allow us to make a meaningful assessment of a provider that is not yet in operation or otherwise delivering higher education, whereas, we suggest, our current proposal would allow us to assess all providers.

Set out different document submission requirements for different types of providers

39. We have considered whether to set out different document submission requirements to distinguish between providers that intend to charge tuition fees to students if successfully registered and those that do not, or between those that share contractual responsibility for the provision of higher education to students and those that have sole responsibility. We are of the initial view that it would be challenging to set out all the various permutations of contractual and fee charging arrangements that might be in place among providers in the sector, and not all providers may fit into predetermined 'boxes' in this respect.

Require all providers to submit their own documents regardless of future intentions

40. We have considered taking a less flexible approach whereby all providers would be required to submit their own documents in all cases, given that all providers have access to all the same benefits of registration, if successfully registered. Our initial view is that this may create additional unnecessary burden for providers that have no intention of, for example, charging students directly for tuition fees if registered. In these circumstances, some providers might need to draft documents solely for the purpose of OfS registration.
41. Our aim in drafting the proposed submission requirements is to create a list that is sufficiently broad that all providers wishing to register with us can meet the requirements by submitting a variety of documents, some of which may be the documents of another provider or organisation that shares responsibility for the provision of higher education to students.

Proposal 7: Remove initial condition C3 (and replace with initial condition C5)

Continue to impose initial condition C3 alongside proposed initial condition C5

42. We have considered continuing to apply initial condition C3 alongside proposed new initial condition C5. This would have the benefit of simplicity for providers, as there would be no change to our current requirements in relation to initial condition C3. However, our initial view is that this would create additional burden alongside the requirements of initial condition C5 which, we suggest, may not provide additional practical benefit in relation to student protection.

Continue to impose initial condition C3 alongside proposed initial condition C5 but with amended submission requirements

43. Given that we have identified a substantial overlap between the documents we are proposing to require for initial condition C5 and the content of a student protection plan required under current initial condition C3, we have also considered whether we could:

- continue to apply initial condition C3 alongside proposed new initial condition C5
- meanwhile, assess a narrower set of documents under initial condition C5 to reduce duplication.

44. Our initial view is that all the documents we are proposing a provider would be required to submit would be directly relevant and important to our assessment of the fair treatment of students, regardless of whether we continued to apply initial condition C3.

45. We recognise that the requirement for a provider to submit policies related to the conditions under which it may make changes is the requirement most closely aligned with current requirements for student protection plans under initial condition C3. We suggest that these policies are integral to an assessment of fair treatment for students within the scope of proposed initial condition C5. Furthermore, the student protection plan requirements under initial condition C3 only require a provider to set out mitigations for those risks it considers reasonably likely to crystallise. As explained under Proposal 7, we are proposing that a provider would be required to submit relevant policies, regardless of their self-assessment of risks. We suggest that the current proposal (including submission requirements) more robustly meets our aim of strengthening protections for students, while also representing a more streamlined approach for providers.

Annex C: Proposed initial condition C5 and related guidance

Initial condition of registration

Condition C5: Treating students fairly

Scope

C5.1 The scope of this condition includes:

- a. a provider's relationships with **students**;
- b. the provision of higher education;
- c. the provision of **ancillary services**;
- d. higher education provided (or to be provided) in any manner or form by, or on behalf of, a provider (regardless of which provider holds or will hold the contractual relationship with the student);
- e. any arrangements the provider has made or plans to make to attract students, encourage applications to become students, or to otherwise communicate with students (including, but not limited to, advertising and marketing material, and actual or proposed information that may be published on its website) ("**information for students**");

C5.2 For the purposes of this condition:

- a. the provider's relationship with a **student** is treated as being within the scope of this condition:
 - i. regardless of the arrangements for the payment of tuition or other related fees;
 - ii. whether or not the student is obtaining higher education services for the purposes of business, trade or profession;
- b. the provision of higher education and **ancillary services** are treated as services;
- c. references to the provision of higher education includes offering the provision of higher education;
- d. references to the provision of **ancillary services** includes offering the provision of **ancillary services**;
- e. references to **key documents** and **information for students** includes any draft or proposed versions of the relevant information.

Requirement

C5.3 The provider must, if registered, treat each **student** fairly in relation to any activities that are connected with the provision of higher education and/or **ancillary services**.

C5.4 The provider will be deemed not to satisfy paragraph C5.3 if, in the reasonable opinion of the OfS, its actions or omissions (including proposed or likely actions or omissions) fall within one or more of the following categories:

- a. they fall within one or more of the descriptions provided for in the OfS **prohibited behaviours list**; or
- b. they give rise to a likelihood of detriment or actual detriment to the **student** (unless the OfS considers that the detriment would be reasonable in all the relevant circumstances).

C5.5 The provider will be deemed not to satisfy paragraph C5.3 if it has been subject to adverse findings under one or more of the following forms of wrongdoing in a context that directly or indirectly relates to the provision of education and **ancillary services**, unless it can demonstrate that it has addressed any issues related to any such adverse findings to the satisfaction of the OfS:

- a. non-compliance with **consumer protection law**, as found by a court of England and Wales or **competent authority**;
- b. the offence provided for in section 214(1) of the Education Reform Act 1988 (unrecognised degrees);
- c. the offence provided for in section 76(6) of the Companies Act 2006 (failure to comply with a Secretary of State direction to change a company name); or
- d. the offence provided for in section 1198 of the Companies Act 2006 (name giving misleading indication of activities).

C5.6 The OfS will take the following non-exhaustive matters into account when determining whether a provider satisfies paragraph C5.3 (where any of these matters apply):

- a. an undertaking by the provider has been accepted by an **enforcement body**, and the undertaking is in connection with behaviour that relates to the provision of education or **ancillary services**;
- b. there is an outstanding application for an enforcement order against the provider made by an **enforcement body**, and the application relates to the provision of education or **ancillary services**.

C5.7 In the course of the provider's application for registration with the OfS (and the OfS's consideration of that application), the mere removal of a term, provision or any form of information from **key documents** or from any **information for students** will be insufficient to demonstrate that the provider, if registered, will treat its students fairly in accordance with paragraph C5.3, unless it can demonstrate that it has addressed any underlying issues related to that term, provision or form of information to the satisfaction of the OfS.

Definitions

C5.8 For the purposes of this condition C5:

- a. “**ancillary services**” means services for which a **student** may enter into a contract with the provider as part of the higher education experience, including but not limited to contracts governing the provision of library services, disability support packages, scholarships, accommodation and sports facilities.
- b. “**consumer protection law**” is to be interpreted broadly and includes, but is not limited to, the following legislation (as may be amended from time to time):
 - i. The Consumer Rights Act 2015;
 - ii. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013;
 - iii. The Provision of Services Regulations 2009;
 - iv. The Consumer Protection from Unfair Trading Regulations 2008;
 - v. Digital Markets, Competition and Consumers Act 2024;
 - vi. The Protection from Harassment Act 1997.
- c. “**competent authority**” means the Competition and Markets Authority, or any other body with jurisdiction to make decisions under section 182 of the Digital Markets, Competition and Consumers Act 2024.
- d. “**enforcement body**” means an Enforcement Body as defined in schedule 6 of the Consumer Rights Act 2015, or defined in Part 8 of the Enterprise Act 2002, or an Enforcer as defined in section 164 of the Digital Markets, Competition and Consumers Act 2024.
- e. “**former student**” means a person who was a student of the provider in the past, irrespective of the reason for that person no longer being a student of that provider, where there still exists a current relationship based on the former student having been a student of the provider (for example, where a former student has an ongoing complaint against the provider in relation to issues that occurred while they were a student).
- f. “**information for students**” has the meaning given in C5.1(e).
- g. “**key documents**” means the provider’s terms and conditions, other documents with contractual effect, notices, policies relating to the circumstances in which it may make changes to its courses, refund and compensation policies and complaints processes.
- h. “**OfS prohibited behaviours list**” means a separate document published by the OfS from time to time that sets out the descriptions pursuant to the test in C5.4a. For the avoidance of doubt, the OfS prohibited behaviours list forms part of this initial condition of registration C5.

- i. **“prospective student”** means, in respect of a student, that a person has already received any form of offer for or on behalf of the provider to commence a course of study, including research courses, at the provider, irrespective of whether that offer is legally binding or is subject to conditions or formalities.
- j. **“student”** includes current students of the provider, **prospective students**, and **former students**.

DRAFT Guidance

Condition C5.1

1. ‘Ancillary services’ includes (but is not limited to) library services, disability support packages, scholarships, accommodation and sports facilities, wherever there is a contract between a higher education provider and a student. Ancillary services offered by third parties do not fall within the scope of the condition.
2. Higher education provided ‘in any manner or form’ includes any higher education course. This includes courses at any level and with any volume of learning, and it applies whether or not a course is recognised for OfS funding purposes, or any other purpose. This means, for example, that postgraduate research courses, the study of modules or courses leading to microcredentials, and apprenticeships, all fall within the scope of this condition. It also includes courses provided face-to-face, by distance learning, or a combination of delivery approaches.
3. Higher education provided ‘by, or on behalf of, a provider’ includes courses where students are, or will be, in any of the following categories:
 - taught by the provider seeking registration
 - registered with the provider seeking registration
 - studying for an award of the provider seeking registration (including where these services are provided on that provider’s behalf).
4. The condition applies to all higher education provided through all forms of partnership arrangements. This includes instances where there is shared contractual responsibility for a student; this may be the case in a subcontractual partnership. In practice, this may result in more than one provider being responsible for compliance with this condition in relation to the same student. The OfS will base its assessment on the provider’s stated intentions for if it is registered. This includes whether it intends only to teach students registered by another provider (for example, through a subcontractual arrangement) or to teach students who it will also register (for example, through a validation arrangement).
5. ‘Information for students’ includes anything students may rely on in their decision-making: for example, emails or other forms of communication; presentations delivered at open days; any written material used to inform communications with students (such as scripts for recruitment phone calls).

6. Arrangements the provider 'plans to make' and 'proposed information' include the situation where a provider applying to register is not yet operating or not yet delivering higher education.

Condition C5.2

7. The condition applies to relationships between a provider and its students, whether the latter pay for higher education or ancillary services directly or indirectly (for example, through Student Loans Company funding). This includes circumstances where a third party pays (for example, an employer or other sponsor).
8. This condition applies to a provider's relationships with students studying for the purpose of their business, trade or profession. This includes, for example, apprentices or other students who are studying as part of employer-sponsored programmes.
9. Higher education and ancillary services are considered 'services' regardless of whether fees are charged and whether it is provided on a 'for profit' or a 'not for profit' basis.
10. The condition applies wherever higher education and ancillary services are offered. This therefore relates to the provider's arrangements to attract, encourage and communicate with students, and includes instances where a provider is not yet delivering such services.

Condition C5.3

11. The overarching obligation of the condition is that a provider must treat its students fairly. Unfair treatment is defined in the condition, and is separate from the protections offered by consumer protection law. The OfS expects any higher education provider seeking registration to ensure it understands and complies with its legal obligations.
12. The OfS will consider any of the provider's activities that are connected with providing higher education or ancillary services.

Condition C5.4

13. The OfS will deem that a provider does not treat students fairly where its actions (or its failure to act):
 - fall within the descriptions in a specified list of behaviours (the OfS prohibited behaviours list)
 - give rise to actual or likely detriment to students.
14. The OfS will assess the provider's actual 'actions or omissions' and those that are 'proposed or likely' as follows:
 - a. 'Proposed' actions may include, for example, unfair terms and conditions in a contract that is not currently in use, for instance if the provider is not yet delivering higher education.
 - b. 'Likely' relates to circumstances where the provider has not expressly proposed acting or not acting in a specific way but there is evidence to indicate it may do so nevertheless. For example, a provider's contract with its students may be ambiguous, unclear or silent

on a particular matter, but its website may contain evidence of unfair treatment of students in relation to that matter.

15. The OfS prohibited behaviours list is published separately. It forms part of initial condition C5. Some of its provisions are informed by consumer protection law but, in some cases, they may have a different effect in this context. For example, section a. of the OfS prohibited behaviours list specifies some contract terms similar to those that may be regarded as unfair according to the Consumer Rights Act 2015 (the 'grey list'), but which will be treated as always unfair for the purpose of this condition. A provider may satisfy its legal obligations without satisfying the requirements of this condition, and vice versa.
16. 'Detriment' means any harm, damage or loss experienced (or more likely than not to be experienced) by a student. The OfS will consider whether the likely or actual detriment identified, and the action or lack of action leading to it, would be reasonable in all the relevant circumstances.
17. Depending on whether the OfS is considering likely or actual detriment, it expects to take the following non-exhaustive factors into account:
 - whether it is reasonable to argue that the course of action proposed or taken is, or was, necessary in the circumstances
 - whether these circumstances are, or were, in the control of the provider
 - whether the provider is doing, or has done, everything possible to limit the extent of the detriment.

Necessary in the circumstances

18. In an emergency, a detriment to students may be necessary to avoid a more serious detriment to students, staff or the wider community: for example, a rapid move from face-to-face to online learning may be necessary to avoid risks to public health or health and safety in a pandemic or other localised outbreak of contagious illness or infection. The provider's actions may give rise to detriment but still be in the interests of all, or the vast majority of, students in the short term.

In the provider's control

19. An emergency may be out of the provider's control, or it may be due in part to the provider's actions or inaction. For example, a failure to maintain buildings or equipment, or carry out and act on necessary safety checks, may mean a provider has to take action to safeguard students, but these circumstances may well have been within the provider's control. A provider seeking registration should consider how broadly its terms and conditions and other documents are drafted, and the circumstances over which it could reasonably be expected to have control.

Steps taken to limit detriment

20. Circumstances relating to staffing and resource allocation (including, for example, industrial action) could be within a provider's control, and it may be able to take measures to limit detriment to students. Such steps, however, may not be sufficient to fully address detriment to students and ensure that they are treated fairly.

Condition C5.5

21. The OfS's starting presumption is that a provider does not treat students fairly if it has been subject to findings of non-compliance with consumer protection law, or other wrongdoing as specified in C5.5. The OfS will consider findings made by UK courts or other competent authorities as defined in the condition.
22. The Protection from Harassment Act 1997 may be relevant to cases where a provider aggressively pursues academic sanctions imposed for non-payment of non-tuition fee debts, as this may amount to harassment.
23. Section 214(1) of the Education Reform Act 1988 relates to offering unrecognised degrees. The Companies Act 2006 contains provisions relating to company names that give a misleading indication of the nature of a company's activities. This includes a provider claiming to be a 'university' without the relevant permission to do so.
24. The OfS will consider relevant any finding that directly or indirectly relates to the provision of any form of education, including further education, not just to higher education.
25. Where there are findings of wrongdoing, the OfS will consider evidence submitted by the provider to reach a judgement. The OfS will consider the following non-exhaustive factors:
 - the recency of the findings
 - whether the findings relate to matters that were repeated or sustained
 - whether the findings include a view about the deliberateness of the provider's actions or inaction
 - how the provider has engaged with the issue since the finding was made
 - the steps it has taken to address the issue and ensure it does not happen again in future.
26. Where the provider has not engaged with the issue and has not described satisfactory steps to address it, the OfS is more likely to consider that the provider does not treat students fairly.

Condition C5.6

27. The existence of undertakings or applications for enforcement orders will not automatically lead to a conclusion that the provider does not treat students fairly, as there is no presumption of wrongdoing. The OfS will consider information submitted by the provider, alongside other reasonably available evidence (for example, the provider's documents or information published on its website) to reach a judgement. The OfS will consider whether the information provides reassurance that any issues that led to the undertaking or the application for enforcement order are not – or are no longer – of concern.
28. The context that will be considered relevant to this provision extends beyond higher education and includes, for instance, the provision of further education.
29. For the avoidance of doubt, C5.6 relates specifically to applications for enforcement orders by enforcement bodies and not to enforcement orders issued by a court. Where this has happened, the court will also make a finding of non-compliance with consumer protection law.

This will be considered under C5.5, with a starting presumption that the provider does not treat students fairly. The provider will have the opportunity to overturn this presumption, as set out in C5.5.

Condition C5.7

30. During the application process, if there are terms or information of concern to the OfS in any of the provider's documents, simply removing these will not be sufficient, unless the provider can demonstrate that it has addressed any underlying issues associated with these terms. This would be relevant, for example, where a provider removes a term after the OfS has provisionally determined that it is unfair. The OfS will consider:

- the consequences of the removal
- whether the removal addresses the issues
- whether other related issues remain
- whether the removal itself leads to other concerns.

31. An example would be the case where a provider's student contract includes a clause specifying that it will not consider making refunds under any circumstances, but it subsequently removes this term, and submits a refund and compensation policy that the OfS considers fair. In these circumstances, the removal of the original term is likely to be acceptable, as the provider has taken steps to remedy the issue beyond mere removal of the term.

32. The OfS will also consider the following non-exhaustive factors:

- the extent to which the provider has demonstrated it understands why the term or information that it has removed was of concern
- other actions beyond removal that the provider has taken, and the extent to which these address the concern
- whether the provider has replaced the terms with more suitable terms.

33. The OfS will consider the nature and range of the provider's actions relevant to the nature and extent of the original concerns. The OfS will take more assurance where the provider demonstrates it has understood the concern and taken actions to fully address the issue. For example, where a provider has removed an unfair term from a student contract but continues to make similar statements elsewhere on its website, the OfS is unlikely to conclude that the concerns have been addressed. In all circumstances, the test the OfS will apply is whether the provider will, if registered, treat students fairly.

Assessing compliance with the condition

34. The OfS will assess the documents the provider submits with its application. The OfS will also consider any information published by the provider on its website, such as information about:

- courses, including fees

- ancillary services such as library services, accommodation and sports facilities
 - affiliation with other bodies, which may include other awarding bodies, professional, statutory or regulatory bodies and other regulatory agencies
 - materials to attract students, encourage applications or otherwise communicate with students (including, but not limited to, advertising and marketing material).
35. The OfS considers that providers in partnerships share a responsibility to treat students fairly, including ensuring through their own due diligence processes that the other partner also treats them fairly. The OfS expects any provider applying for registration to ensure that any information it publishes or otherwise shares with students is clear, accurate and consistent with that shared or published by its partner. The OfS will pay particular attention to information outlining each partner's duties and responsibilities.
36. Where a provider (or another legal entity that the OfS considers to be operating substantially the same higher education business) has previously been registered, a history of non-compliance with ongoing condition C1 is likely to result in a judgement that initial condition C5 is not satisfied. Similarly, for a provider in these circumstances, any regulatory interventions the OfS has previously made in relation to consumer protection law or treating students fairly, such as a referral to National Trading Standards, will be relevant to the OfS's assessment of compliance with initial condition C5.
37. Where the OfS considers this initial condition satisfied, but identifies an increased risk of not treating students fairly, it may impose one or more specific ongoing conditions of registration, and will also consider whether additional monitoring requirements are appropriate. For example, where a provider does not intend to register any students when it seeks registration (because students will register with a lead provider in a subcontractual partnership), the OfS may require the provider to submit a reportable event if this position changes once it is registered. This may include requiring the provider to submit the contractual and other documents it intends to use in its relationships with students.
38. Any assessment that the OfS makes about whether a provider has satisfied this condition is not a judgement about whether the provider is complying with consumer protection law, and should not be seen as such. Providers will still need to seek their own legal advice to ensure compliance with the law.

Annex D: Proposed OfS prohibited behaviours list

OfS prohibited behaviours list

This document forms part of (and should be read in conjunction with) initial condition of registration C5, which states:

C5.3 The provider must, if registered, treat each **student** fairly in relation to any activities that are connected with the provision of higher education and/or **ancillary services**.

C5.4 The provider will be deemed not to satisfy paragraph C5.3 if, in the reasonable opinion of the OfS, its actions or omissions (including proposed or likely actions or omissions) fall within one or more of the following categories:

- a. they fall within one or more of the descriptions provided for in the **OfS prohibited behaviours list**; or
- b. they give rise to a likelihood of detriment or actual detriment to the **student** (unless the OfS considers that the detriment would be reasonable in all the relevant circumstances).

This document contains the descriptions for the test in condition C.5.4a.

C5.8 sets out the definitions for terms used in the condition. For ease of reference, we have extracted below the definitions for terms used in the OfS prohibited behaviours list.

“ancillary services” means services for which a **student** may enter into a contract with the provider as part of the higher education experience, including but not limited to contracts governing the provision of library services, disability support packages, scholarships, accommodation and sports facilities. (C5.8a)

“information for students” means any arrangements the provider has made or plans to make to attract students, encourage applications to become students, or to otherwise communicate with students (including, but not limited to, advertising and marketing material, and actual or proposed information that may be published on its website). (C5.1(e) and C5.8d)

“key documents” means the provider’s terms and conditions, other documents with contractual effect, notices, policies relating to the circumstances in which it may make changes to its courses, refund and compensation policies and complaints processes. (C5.8e)

PB.1 For the purposes of condition C.5.4a, the following descriptions apply:

a. **Key documents**

Key documents that contain provisions which have the purpose or effect of:

- i. excluding or limiting the legal rights of the student in the event of the provider’s total or partial non-performance (or inadequate performance) of any of its contractual obligations. This includes the student’s right to offset money they owe to the provider against any claim;

- ii. allowing the provider to exercise wide discretion to withdraw offers, including in the case of over-subscription;
- iii. creating a disparity between the rights of the provider and the rights of the student by allowing the provider to retain money already paid by the student where the student decides not to sign the contract or withdraws from the contract after signing it, without also allowing for equivalent compensation to be paid to the student as where the provider cancels the contract;
- iv. requiring a student to pay a disproportionately high sum of money as penalty to the provider or for services which have not yet been supplied, where the student decides not to sign the contract or withdraws from the contract after signing it;
- v. requiring a student to pay a disproportionately high sum of money as a penalty to the provider where the student fails to fulfil any of their obligations under the contract;
- vi. allowing the provider to terminate the contract on a discretionary basis;
- vii. allowing the provider to retain money paid by the student for services not yet supplied, where the provider cancels the contract;
- viii. automatically extending a fixed-term contract where the student does not indicate otherwise, when the deadline for the student to express a desire not to extend is unreasonably early;
- ix. binding a student to terms with which they have not had a real opportunity to familiarise themselves before signing the contract;
- x. allowing the provider to unilaterally:
 - A. alter the terms of the contract;
 - B. define the characteristics of the services to be provided; or
 - C. alter the characteristics of the services to be provided;
 after the student has signed the contract, and without valid reason which is specified in the contract;
- xi. allowing the provider to decide the price payable after the student has signed the contract (where no price or method of determining the price has previously been agreed);
- xii. allowing a provider to increase the price payable without giving the student the right to cancel the contract;
- xiii. allowing the provider to determine whether the services supplied conform with the contract;
- xiv. allowing the provider the exclusive right to interpret any term of the contract;
- xv. limiting the provider's obligation to respect commitments undertaken by any agents working on its behalf;
- xvi. obliging the student to fulfil all their obligations where the provider does not perform its own obligations;
- xvii. allowing the provider to transfer its rights and obligations to another provider or organisation, where this may reduce the guarantees for the student, without the student's agreement; or

- xviii. excluding or hindering the student's right to take legal action or exercise any other legal remedy, in particular by:
- A. requiring the student to take disputes exclusively to arbitration not covered by legal provisions;
 - B. unduly restricting the evidence available to the student; or
 - C. imposing on the student a burden of proof which, according to the applicable law, should lie with another party to the contract.

b. Descriptions relating to conduct and omissions

Actions or omissions (including those that are proposed or likely) that provide evidence of any of the following behaviours:

- i. displaying or otherwise presenting inaccurate or false information, including:
 - A. claiming that the provider is registered with the OfS when it is not;
 - B. claiming that the provider is a 'university' without permission to use this term;
 - C. claiming to offer 'degrees' when the provider has neither its own degree awarding powers nor a contract for degrees to be awarded by a provider with degree awarding powers;
 - D. claiming that the provider (including any of its courses or other services or activities) is validated, accredited, approved, endorsed or authorised by any other body when it is not (or making such a claim without complying with the terms of the validation accreditation, approval, endorsement or authorisation);
 - E. displaying logo, trust mark, quality mark or equivalent without having obtained the necessary authorisation from the relevant body);
 - F. claiming with certainty that the provider will, in the future, be:
 - I. registered with the OfS;
 - II. able to use the term 'university';
 - III. able to offer degrees;
 - IV. validated, accredited, approved, endorsed or authorised by any other body;
 - V. or otherwise displaying or presenting information which pre-empts or appears to pre-empt any decision of the OfS or any other body;
 - G. claiming that the provider is a signatory to a code of conduct when it is not (or that a code of conduct has an endorsement from a public or other body which it does not have).
- ii. Advertising, promoting or otherwise offering courses, course content, material components, features or elements of a course, other services or facilities, without disclosing the existence of any reasonable grounds the provider may have for believing it may be unable to provide these; or with the intention of not delivering what has been advertised, promoted or offered; or with the intention of delivering an alternative;
- iii. Applying pressure to elicit an immediate decision and deprive students of sufficient opportunity or time to make an informed choice. This includes falsely stating that an offer for services will only be available for a very limited time, or that it will only be available for particular terms for a very limited time;

- iv. Communicating (or allowing an agent working on the provider's behalf to communicate) with a prospective student in a language which is not English without clearly disclosing to the student that the provision of services will be conducted in English, where this is the case;
- v. Presenting as a distinctive feature of the provider's offering, rights which a student would automatically have, in any case, in law;
- vi. Using editorial content in the media (including social media) to promote the provider's services where the provider has paid for the promotion without making this clear to the student (through the content itself or by images or sounds which are clearly identifiable) (advertorial);
- vii. Displaying or otherwise presenting information about the provider or its activities which is likely to have the effect of misleading a student into believing something about the provider or its activities which is inaccurate or untrue;
- viii. Publishing or otherwise sharing materially false or inaccurate information about market conditions (or about other specific providers) with the intention of inducing the student to sign a contract with the provider;
- ix. Offering a prize, reward or other promotional benefit without awarding the prizes, rewards or benefits described (or a reasonable equivalent), or where the student is required to pay money or incur a cost to receive the prize, reward or other benefit (unless otherwise clearly explained);
- x. Describing a service as 'gratis', 'free', 'without charge' or similar if the student has to pay any associated costs that have not otherwise been explained (including the repayment of student loans at a later date); or
- xi. Making persistent and unwanted contact with applicants or students by telephone, email, social media, or other means.

c. Clarity and legibility of **key documents** and other **information for students**

Any of the provider's **key documents** and other **information for students**:

- i. are not legible (clear enough to read);
- ii. are not drafted in clear and understandable language;
- iii. contain substantive inconsistencies, including inconsistencies within or between the provider's own documents, and between the provider's documents and those published or otherwise made available to students by another body with which the provider has a contract for the provision of higher education or **ancillary services**;
- iv. are otherwise confusing or unclear; or
- v. are not expressly clear how they apply to different periods of time and different categories of students (for example, students that commenced a course of study on a particular date).

d. The provider's policies relating to the circumstances in which it may make changes to its courses.

The provider's policies:

- i. do not provide information about circumstances in which it may make changes to all of the following:

- A. Courses (including changes to material components or content of a course, changes to subjects offered and course closure);
- B. Qualifications to be awarded (including circumstances where a validating partner has withdrawn validation);
- C. Mode of study (including full-time, part-time, online and hybrid provision, and including measures to address the needs of specific student groups, including accessibility needs);
- D. Teaching location and facilities (including closure of a campus, building or other facilities and including measures to address the needs of specific student groups, including accessibility needs);
- E. Course fees and other related fees or charges (for example, additional fees to resit exams).

- ii. do not contain provisions that would ensure all students are treated fairly in practice if any of the changes to courses set out in i. above take place.

e. The provider's complaints processes

The provider's complaints processes:

- i. contains unreasonable barriers to making a complaint (including unreasonable time limits within which a complaint may be made);
- ii. does not include a clear point of contact for making a complaint (including where this contact point is external to the provider as may be the case in some types of academic partnership);
- iii. does not set out clear and reasonable timescales for processing the complaint (including clear and reasonable timescales for students to respond to requests for further information);
- iv. does not provide a route for escalation and appeal where the student is dissatisfied with the outcome of the complaint, or the way in which the complaint is being (or has been) handled; or
- v. does not make students aware of their ability to use the complaints scheme run by the Office of the Independent Adjudicator of Higher Education.

f. The provider's refund and compensation policies

The provider's refund and compensation policies:

- i. are not clear about the circumstances in which a student would be entitled to a refund;
- ii. are not clear about the circumstances in which a student would be entitled to compensation;
- iii. do not clearly set out the provider's approach to calculating refunds; or
- iv. do not clearly set out the provider's approach to calculating compensation.

g. Fake reviews

The provider (or another entity working on its behalf):

- i. publishes a fake review for the provision of higher education or **ancillary services**. A review will be considered fake if:
 - A. it falsely claims to have been written by a student;
 - B. it is written by a student but the provider conceals that the student received a financial or other incentive, inducement or reward in return for their review;
- ii. Published reviews in a misleading way, including failing to publish negative reviews, removing negative reviews from publication, giving greater prominence to positive reviews;
- iii. Does not take reasonable and proportionate steps to:
 - A. prevent the publication of fake reviews; or
 - B. remove from publication any fake reviews.

Annex E: Proposed template text for publication of student protection plan on provider's website following successful registration

[Provider name]'s student protection plan

The documents and policies set out below, taken together, constitute our student protection plan. These were considered by the Office for Students (OfS) in [month / year] when [provider name] was granted registration. Any subsequent changes to the documents published on this page will not have been reviewed by the OfS but we are expected to ensure that we maintain the level of protection for students set out in these documents on an ongoing basis.

The following documents set out important protections for students:

- **Student contract:** This sets out the terms and conditions for the provision of higher education, including additional costs that apply.
- **[Other contracts]:** These set out the terms and conditions for the following other services we offer to students:
 -
 -
- **Policy relating to changes we may make during your course:** This includes how we may make changes to the content of your course; how, when and where the course is delivered; the qualification you will receive; circumstances in which we may close a course. It explains how we will protect your interests if we make any of these changes.
- **Complaints process:** This explains how you can make a complaint about your higher education experience and how we will handle your complaint.
- **Refund and compensation policy:** This explains the approach we will take to refunds and compensation.

If you think we have not followed our policies or processes, or you are unhappy with how we have done so, you can make a formal complaint using our complaints process in the first instance (as above).

If we do not resolve your complaint to your satisfaction, you can make a complaint to the Office of the Independent Adjudicator. This is an independent body set up to review complaints from individual students about higher education providers in England and Wales. You can find further information at <https://www.oiahe.org.uk/students/>.

The OfS is the independent regulator for higher education in England. It does not handle complaints for individual students but, if you think we may not be meeting its regulatory requirements, you can notify the OfS about your concerns.

- You can find information about the OfS's regulatory requirements at <https://www.officeforstudents.org.uk/for-providers/registering-with-the-ofs/registration-with-the-ofs-a-guide/conditions-of-registration/>.
- You can find information about the OfS's notification process at <https://www.officeforstudents.org.uk/for-students/of-s-and-students/notifications/>.

The OfS monitors [provider name's] financial position and, if it thinks the institution is at material risk of closure, it can require us to take specific actions to protect our students. This might include a requirement to produce (and comply with) a 'market exit plan'. This is a detailed document setting out plans and arrangements for any or all of the following:

- plans which would allow us to keep teaching you until you have completed your course
- arrangements for you to transfer to another university or college to complete your course
- arrangements for you to receive evidence of your studies to date (for example, certificates or academic transcripts setting out the modules you have studied and the grades you have achieved)
- information advice and guidance
- complaints
- refunds and compensation
- archiving of our academic records so students have access to the information they may need in future.

If the OfS thinks [provider name] is at material risk of closure it will work with us to consider very carefully the information students need to know and when.



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