

## Initial condition of registration E8: Fraud and inappropriate use of public funds

### Requirements relating to arrangements

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

E8.2 The provider must have in place comprehensive **arrangements** in relation to the higher education it plans to provide if registered (including, but not limited to, processes, policies, training and the deployment of staff and financial resources) that could reasonably be considered as being adequate and effective for the purposes of detecting, preventing and stopping any form of conduct (including a failure to act) that could potentially amount to a **relevant fraud offence** or the **inappropriate use of relevant public funds**.

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

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

### Other requirements

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

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

## Definitions

E8.5 For the purposes of this condition E8:

- a. "**conflicts of interest policy**" has the meaning given in condition E7.9;
- b. "**exceptional circumstances**" means compelling circumstances which demonstrate, in the OfS's judgement, that the provider nevertheless has a satisfactory track record in relation to receiving and/or accessing public funds;
- c. **inappropriate use**" means, in respect of **relevant public funds**, any of the following:
  - i. not complying with legally binding terms and conditions that specify or restrict how funding can be used;
  - ii. obtaining, or continuing to receive, funding in circumstances where any conditions or criteria that determine a recipient's eligibility to receive the funding are not satisfied (but excluding circumstances to the extent that the legal framework relating to the relevant funding permits the recipient to make any form of estimation or projection in respect of information that is used to calculate the funding to which it may be entitled);
- d. **public authority**" has the meaning given in section 6(3) of the Human Rights Act 1998;
- e. "**relevant fraud offence**" means any of the following:
  - i. an offence under any of the following provisions of the Theft Act 1968:
    - A. section 17 (false accounting);
    - B. section 19 (false statements by company directors etc.);
  - ii. an offence under any of the following provisions of the Fraud Act 2006:

- A. section 1 (fraud);
- B. section 2 (fraud by false representation);
- C. section 3 (fraud by failing to disclose information);
- D. section 4 (fraud by abuse of position)
- E. section 9 (participating in fraudulent business carried on by sole trader etc.);
- F. section 11 (obtaining services dishonestly);

iii. the common law offence of conspiracy to defraud as preserved by section 5(2) of the Criminal Law Act 1977;

f. **“relevant person”** means:

- i. the Chancellor of the Exchequer;
- ii. any Secretary of State or Minister;
- iii. the OfS;
- iv. UKRI;
- v. the Student Loans Company Limited;
- vi. Research England;
- vii. a local authority;
- viii. any other **public authority** in the United Kingdom with statutory functions to give grants or loans;

g. **“relevant public funds”** means any sums of money obtained or otherwise derived from a **relevant person**, and includes, but is not limited to, the following:

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

## Summary

**Applies to:** all providers seeking registration

**Initial or general ongoing condition:** initial condition

**Legal basis:** section 5 of HERA

## Requirements relating to arrangements

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

## Condition E8.2 and E8.3

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

scope and coverage, appropriate to the provider's context, clearly documented and appropriately resourced. Effective arrangements are preventative and responsive, subject to regular review and supported by appropriate oversight.

11. A provider that can evidence a set of written policies but which does not have the operational arrangements such as effective processes or necessary staff in place to implement and deliver those policies in practice, is unlikely to be considered to have 'comprehensive' arrangements in place. A provider that has arrangements to prevent and stop, but not proactively detect conduct of this nature, is also unlikely to be considered to have comprehensive arrangements in place.
12. Where a provider fails to identify any significant risks in its business model in relation to the protection of public funds, or where the OfS considers that a provider's arrangements do not reduce the risk of fraud or inappropriate use of public funds appropriately, the OfS will consider that the arrangements are not adequate or effective. Where a provider has arrangements in place, they must operate coherently and without contradiction; arrangements that conflict with one another or fail to align will not be considered adequate or effective.
13. Examples are set out below to illustrate the types of arrangements that could reasonably be considered adequate and effective. These examples are not exhaustive, and a provider must assess its own context and risks to determine what additional or enhanced arrangements it should have in place:
  - a. The provider has robust registration and enrolment processes to ensure that students hold the required academic and language qualifications and have a genuine intention to study on the course, especially where a provider uses recruitment agents to recruit students,
  - b. The provider has policies, processes, governance structures and staff in place to monitor the quality, standards and protection of public funds. This is especially important where a provider intends to subcontract courses for delivery by another provider.
  - c. The provider can demonstrate how its controls operate, and how they are regularly reviewed and improved.
  - d. The provider's risk register identifies significant areas of risk in relation to the conduct described in E8.2 and the provider has identified and implemented appropriate mitigations to reduce risk.
  - e. The provider's conflicts of interest policy sets out what constitutes a conflict of interest, explains how and when conflicts should be declared and sets out mitigations to address conflicts it has identified.
  - f. The provider has controls in place to confirm the validity of data submitted to relevant bodies such as the OfS, the Student Loans Company and UCAS (where a provider chooses to upload data on behalf of students)
  - g. The provider has clear and impartial arrangements for staff, students, and third parties to report concerns regarding the provider. Arrangements should enable individuals to safely report concerns in confidence.

- h. The provider has a clear understanding of where financial transactions are taking place, including fair and transparent tender procedures and audit trails for any transactions which directly or indirectly benefit staff at the provider.
- i. The provider has fraud prevention and awareness training tailored to staff roles and responsibilities. Training is regularly reviewed and updated.
- j. Where appropriate, a provider may have a designated compliance officer.

## **Condition E8.4**

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

20. When determining whether a provider is operating substantially the same higher education business as another legal entity, the OfS will place particular weight on similarities between the provider and the other legal entity, including but not limited to:
- a. Relevant individuals, where a significant proportion of the relevant individuals (as defined in initial condition E9) are the same, even where those individuals are in different roles.
  - b. Premises, for example, campuses, offices, location of company registration.
  - c. Key identifiers, for example, UKPRN,<sup>1</sup> company number, regulatory licences.
  - d. Marketing, for example, name, branding, or public statements of affiliation (e.g. using the name of the other legal entity to market the provider).
  - e. Academic community, for example, staff and student populations.
  - f. Ownership and company structure.
  - g. Transfer of assets, business and/or liabilities – where assets, business and/or liabilities have been transferred from one legal entity to another.

### **Exceptional circumstances**

21. A provider must submit a full and complete account of any exceptional circumstances it wishes the OfS to consider if any circumstances set out in paragraph E8.4 apply to the provider.
22. When considering whether exceptional circumstances apply, the OfS will assess whether the provider has provided evidence of compelling circumstances that demonstrate that it nevertheless has a satisfactory track record in relation to accessing and receiving public funds.
23. The OfS will not consider a provider's intention to detect, prevent or stop fraud or inappropriate use of public funding as an exceptional circumstance. For example, where a final decision has been made in relation to one or more of the circumstances listed in E8.4.a.i-iii it is not sufficient that the provider intended to prevent fraud.
24. Where a provider has accidentally submitted incorrect data that amounts to an inappropriate use of public funds, the OfS will consider the materiality of the error and whether the error was an isolated instance, to determine if the circumstances are exceptional and the provider nevertheless has a satisfactory track record.

### **Inappropriate use**

25. Inappropriate use is defined to include but is not limited to:
- a. Non-compliance with legally binding terms and conditions that specify or restrict how funding can be used; an example is where a provider uses funding that is restricted for a specific purpose (such as building a new campus) for other purposes (such as paying creditors).
  - b. Obtaining or continuing to receive funding in circumstances where any conditions or criteria that determine a recipient's eligibility to receive the funding are not satisfied; an example of this is where a provider submits incorrect student data to the Student Loans Company,



directly or through its lead provider and claims more funding than its actual student numbers would permit.

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

## **Public funds**

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

## **Assessing compliance**

29. In assessing whether a provider has comprehensive, adequate, and effective arrangements for preventing fraud or the inappropriate use of public funds, the OfS will consider documents submitted as part of the provider's registration application, including:
- a. Governing body documents that set out where high level responsibilities for managing risks to public money sit within the provider's governance framework, including any relevant delegations from the governing body, and its mechanisms for retaining ongoing oversight.
  - b. The provider's business plan.
  - c. The arrangements it has submitted for assessment of condition E8.
  - d. Any additional relevant information submitted by the provider.
30. When assessing a provider's arrangements for the purposes of E8.2, the OfS will consider whether the provider has policies and processes in place to adequately and effectively manage risks relating to fraud and the inappropriate use of public funding identified within its business plan. For example, the OfS would focus particularly on the management of risks related to third-party agents or courses delivered through partnership arrangements, where a provider's business plan had indicated these would be part of its approach.

31. In assessing whether a provider has comprehensive, adequate and effective arrangements for detecting, preventing or stopping fraud or the inappropriate use of public funds, the OfS's judgement will apply to the arrangements the provider will have in place if it is registered. However, the OfS's judgement may be informed by other relevant evidence of the provider's conduct where this relates to the inappropriate use of public funds or relevant fraud offences. This means that for a provider seeking registration that has previously delivered, or is currently delivering, higher education, the OfS will consider relevant evidence relating to the provider's record in preventing fraud or the inappropriate use of public funds. This includes where public funds are paid to another provider through a subcontractual arrangement or similar partnership. This is also the case where a provider seeking registration has previously delivered or is currently delivering education or training other than higher education, for example further education.
32. The OfS will draw on any relevant evidence or intelligence available to it, including information obtained through its own regulatory activity, third party notifications, or publicly available information, including action taken by other regulators, or media reporting. In cases where the OfS has concerns about a provider based on information it already holds, it may decide to undertake further investigation to establish the facts before reaching a final judgement about whether this initial condition is satisfied.
33. A provider will be required to submit a declaration as part of its application for registration confirming whether any of the circumstances in E8.4.a apply. A provider must ensure that the information submitted in relation to this requirement is accurate and complete. If a provider submits false, inaccurate or incomplete information, the OfS may determine that the requirement set out in the Notice under section 3(5) of HERA is not met.