



The  
University  
Of  
Sheffield.

University  
Secretary's  
Office.

**The Council, 26 April 2021**

## **Update on the Office for Students' regulatory requirements**

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### **1. Purpose**

- 1.1. To update Council on the changing regulatory requirements of the Office for Students (OfS) and the University's monitoring of ongoing compliance with the OfS conditions of registration.

### **2. Recommendations**

- 2.1. Council is asked to note this update, with the OfS Compliance Register provided at item 23.2.

### **3. Background**

- 3.1. This paper provides Council with an update on the OfS regulatory requirements since the previous report to the October meeting of the Council. There has been a significant amount of national activity, with an increasing number of letters from Ministers to the OfS, a new OfS Chair in post from 1 April, a new general ongoing condition of registration regarding student protection directions, proposals for a new free speech condition, further guidance issued, a number of consultations published and anticipated. Although the OfS is a creature of the 2017 Higher Education and Research Act, with its Regulatory Framework being published in February 2018, it is still finding its feet and the regulatory regime is far from stable.

### **4. The Government approach to regulation and the OfS**

- 4.1. Gavin Williamson MP, the Secretary of State for Education and Michelle Donelan MP, Universities Minister have provided the OfS with six separate [guidance letters](#) so far in the 2020/21 academic year. [Those who remember an annual letter from the Secretary of State to the Higher Education Funding Council for England will note the increased level of direction to a still relatively new regulator.]
- 4.2. The Secretary of State's letter of 8 February sets out strategic priorities following publication of the Further Education White paper and interim conclusions on the review of post-18 education and funding (the Augar Review), which together set out a vision for post-16 education. The 'asks' from Government of the OfS include:

#### Response to pandemic

- To ensure students are aware of the notification process that they can follow to raise any issues regarding the quality of teaching and assessment

- To continue to support initiatives in relation to mental health in the short and long term.
- To continue to work in close collaboration with the DfE and UKRI on monitoring financial sustainability.
- To work with DfE, Ofqual, UCAS and others to ensure that admissions this year run as smoothly as possible and students' interests are fully taken into account. In addition, continue to work closely with the Department for Health and Social Care and Health Education England to determine the intake of students to medical and dental programmes, taking into account deferrals from the previous year.

#### Quality

- Following consultation on regulating quality and standards in higher education to progress rapidly to ensure that a robust enhanced regulatory regime can be operational as soon as possible.
- Take a risk-based approach to quality assessment and regulation, focusing its efforts on lower quality providers.

#### Admissions and equality of opportunity

- To support DfE's work to develop the evidence base and implementation options during and after the consultation on post-qualification admissions.
- To continue to consider broader factors, including socio-economic status and geographical inequality, which are likely to impact on access and participation in higher education, including a focus on white boys on free school meals.
- To encourage universities to do much more to work with schools in a way which meaningfully raises the attainment of disadvantaged children.
- The OfS is reminded that it has a statutory duty to have regard to the need to promote equality of opportunity, not equality of outcome.

#### Risk based regulation and reducing bureaucracy

- Identify further opportunities to reduce unnecessary bureaucracy and reporting requirements for providers.
- To implement a markedly more risk-based model of regulation, with significant, meaningful and observable reductions in the regulatory burden upon high quality providers within the next 12 months.
- To take the time it needs to ensure the NSS review is genuinely radical, as the NSS should play at most a minimal role in baseline quality regulation.

#### Free speech and academic freedom

- To continue to work closely with DfE to deliver this shared agenda and ensure work is closely aligned.
- To take more active and visible action to challenge concerning incidents that are reported to it or which it becomes aware of.
- The OfS should robustly challenge providers that have implemented policies, which "pressure or force teaching staff to drop authors or texts that add rigour and stretch to a course", and clearly support individual academics whose academic freedom is being diminished.

#### Antisemitism

- To undertake a scoping exercise to identify providers which are reluctant to adopt the IHRA working definition of antisemitism and consider

introducing mandatory reporting of antisemitic incident numbers by provider.

#### International opportunities and risk

- To monitor the adoption of the UUK recommendations to help providers manage risks in internationalisation.
- Continue to support the sector to manage these risks

The role of the OfS does appear to be evolving with Ministers increasingly writing directly to Vice-Chancellors and also to students.

- 4.3. It was announced on 8 February 2021 that James Wharton, whose full title is Lord Wharton of Yarm, would replace Sir Michael Barber as Chair of the OfS whose term expired on 31 March 2021. He was Member of Parliament for Stockton South from the 2010 general election until 2017. A Minister from May 2015 until losing his seat in the June 2017 general election. He was reported in the media to be Boris Johnson's 2019 party leadership campaign manager and was made a Conservative life peer in the 2020. He will retain the Conservative whip in the House of Lords; telling the Education Select Committee that if issues arise where there is conflict with his role at the OfS the whips will give him more latitude and understand that he may need to vote against or speak against some of the things that the party in government could bring forward.

## **5. Regulatory approach during the pandemic**

- 5.1. A [letter](#) from the Universities Minister to the Office for Students, dated 13 January 2021, set out the Government's expectations. In particular, the minister has asked universities and colleges to maintain the quality, quantity and accessibility of their provision and to inform students about their options for refunds or other forms of redress where it has not been possible to provide what was promised.

- 5.2. The OfS [wrote](#) to providers on 14 January:

- Asking providers to undertake a review of compliance with consumer law (see below and item 9 on the Council agenda),
- Setting out expectations regarding providers' communications with students:
  - Inform students of any further changes to teaching and assessment arrangements
  - Inform students about their entitlement to seek refunds or other forms of redress if they have not received the teaching and assessment promised.
  - Provide students with clear information, advice and guidance about the implications of the changes and the options available to them.
- Informing providers that reporting requirements remain those set out in its [letter dated 30 July 2020](#) (as reported to September Risk Review Group and October Council).
- Informing providers that the OfS does not "expect substantially to change our position that we are unlikely to take regulatory action where a provider has acted in response to public health advice and where reasonable efforts have been made to protect the interests of students."

## **6. New or confirmed regulatory changes**

- 6.1. Compliance with consumer law

The OfS asked providers on 14 January "to undertake a review during the first half of the spring term of your compliance with consumer law and provide assurance to your

governing body of ongoing compliance with ongoing condition C1 (guidance on consumer protection law)." Detail on the University's review is provided to Council under agenda item 9.

#### 6.2. C4: Student protection directions

The OfS announced on 31 March 2021 it will introduce a new general ongoing condition of registration, C4: Student protection directions. The condition applied from 1 April 2021 to all providers registered with the OfS, except Further Education Bodies. When a provider faces a material risk that it will fully or substantially cease the provision of higher education in England, C4 enables the OfS to direct a provider to take action to protect the interests of students. Examples of action cited by the OfS include arranging student transfers, providing information advice and guidance to students, or providing refunds. Further details are set out in [Regulatory Notice 6](#).

#### 6.3. Student and consumer protection guidance

The OfS updated, on 5 March 2021 its [guidance](#) on student and consumer protection during the pandemic to ensure it continues to be appropriate in the lockdown. The updated version includes a reference to the OfS' published guide on notifications, and notes that where changes to student protection plans are requested, the OfS will consider these, but providers will need to conduct risk assessments in relation to continuation of study. The University submitted a revised Student Protection Plan to the OfS and is awaiting its review and approval for publication.

#### 6.4. Quality and standards guidance during the coronavirus pandemic

The OfS published revised guidance for providers about quality and standards during the coronavirus pandemic. It has been updated to provide additional information to degree awarding bodies on the OfS' expectations in light of the further changes to teaching and assessment arrangements.

#### 6.5. Reportable events guidance

Guidance for providers about reportable events during the coronavirus (COVID-19) pandemic was updated on 28 January 2021 to reflect the ongoing impact of the pandemic. The OfS has also consulted on reportable events, see section 7.5 below.

#### 6.6. Regulatory advice

[Regulatory advice 18](#): Notifications about providers from third parties, published 15 December 2020, provides guidance for registered providers about the way in which the OfS will treat 'notifications' from third parties in its regulatory activities. The OfS may contact the provider if it decides that the issues set out in a notification require further exploration, and it needs more information. The OfS may simply ask the provider to send information to it, or it may compel the production of information under condition F3 (provision of information to the OfS). The University of Sheffield was requested to provide information to the OfS in relation to changes to its integrated Master's in Landscape Architecture (MLA) following notifications to the OfS from students and a response is awaited.

[Regulatory advice 15](#): Monitoring and intervention, published 15 December 2020. This update aims to set out more fully the way in which the OfS will deliver in practice on the commitment made in the regulatory framework that providers that do not pose specific increased risk should experience less regulatory burden.

## 6.7. Condition F1: Transparency information

The OfS [wrote](#) on 24 February 2021 setting out what registered providers need to do to comply with condition F1 (transparency information) in the 2020-21 academic year.

## 6.8. Condition Z3 on offer-making practices remains in place

The OfS 14 January letter to providers confirms that the time-limited condition of registration Z3, that includes requirements in relation to some offer-making practices, remains in place.

## 7. **Regulatory changes on the way**

### 7.1. Freedom of speech

The Education Secretary, Gavin Williamson MP, announced “tougher legal measures” in relation to free speech and academic freedom, warning of a ‘chilling effect’ where students and staff feel they cannot express themselves freely. The proposals include:

- A new free speech condition placed on higher education providers, with the OfS having the power to impose sanctions, including financial penalties, for a breach of the condition;
- A new Free Speech and Academic Freedom Champion with a remit to champion free speech, investigate infringements of free speech in higher education and recommend redress. The new Champion would be appointed to the board of the Office for Students;
- Strengthen the free speech duty under Section 43 of the Education (No 2) Act 1986, to include a duty on higher education providers to “actively promote” freedom of speech. The legal duties would also extend to Students Unions;
- A new legal measure to enable individuals to seek compensation through the courts if they suffer loss as a result of breach of the free speech duties – such as being expelled, dismissed or demoted.

The next steps regarding legislation are to be set out in due course. These proposals are set out in more detail on the Council agenda under item 14.

### 7.2. The Teaching Excellence and Student Outcomes Framework (TEF)

The Independent Review of the Teaching Excellence and Student Outcomes Framework (TEF) has been published alongside Government’s response. The Government mostly agreed with the Independent Review’s recommendations, including that the purpose of the TEF should be the enhancement of quality, and that it should be more clearly part of the OfS’s Regulatory Framework. There will not be a subject-level TEF. The approach of TEF running each year will end and it is expected that the TEF take place every 4 or 5 years. There will be four TEF ratings overall, rather than the existing gold, silver and bronze categories. The Government does not consider ‘Student Satisfaction’ to be an appropriate measure of excellence. The TEF “should use more than just graduates earnings and take account of regional variations. Government would like to see the new TEF in place and assessments published by September 2022.

The OfS expects to consult on proposals for the future TEF in the spring, aligned to more detailed proposals on baseline quality regulation. The OfS does not expect a new TEF framework to be in place before the current TEF awards expire in summer 2021. It is considering the options for the interim period until a new TEF framework is in place and expects to consult about this.

### 7.3. Consultation on financial allocations

Consultations have been published on the approach to [recurrent](#) and [capital](#) allocations. £1.3 billion is made through recurrent grants. This includes money for high-cost subjects, premiums to support disadvantaged students and funding for specialist institutions. The OfS also distributes £150 million in capital funding of which £130 million is subject to consultation. The OfS proposes to distribute capital funding for financial year 2021-22 through a new bidding process. These consultations follow the Department for Education's guidance letter and the condition of grant, applied by the DfE on the Office for Students. The University plans to respond to the consultations.

### 7.4. Consultation on regulating quality and standards in higher education

The OfS consultation set out four proposals and the University provided detailed comments on each of the proposals. Overall, the University responded that as a regulator the OfS has a clear role to ensure that minimum standards are met, to provide clarity to students about the requirements placed on providers and the minimum protections in place. This is often at odds with how an institution would define quality internally, across the wider academic community or through international comparison where the emphasis is on achievement of excellence rather than baseline performance.

### 7.5. Consultation on Reportable Events

The University submitted a response to the OfS proposals on Reportable Events including:

- The proposals still present providers with the Catch-22 that they will have to decide when and whether to report an Event to the OfS, while the OfS instead of relying on that judgement will themselves decide whether a matter was reportable based on their own reasonable judgement and then criticise or sanction under or over-reporting by their own lights.
- The proposed new definition of a Reportable Event removes the concept of 'materiality' from the overarching definition, which is unsatisfactory.
- The proposals remain a one-size fits all rather than a risk-based approach.
- The requirement that a provider is required to report an event within five days of the date of an event being identified is unreasonable.

The outcome of the consultation is awaited.

### 7.6. Consultation on Monetary Penalties

The University submitted a response to the OfS proposals on monetary penalties, outlining issues including:

- Concern that the proposed maximum monetary penalty and the assumed need for sanctions does not constitute a proportionate response.
- At 2% of qualifying income the average fine at Russell Group universities would be around £5.7m and equate to a loss of tuition fee contributions from over 600 students.
- Applying the maximum penalties proposed could also impact on the net liquidity of affected institutions and on their credit rating with knock-on consequences.
- By removing such significant sums from institutions, difficult decisions would need to be made about resource allocation.
- There is also a lack of clarity about when a monetary penalty can be applied.
- The approach also potentially exposes institutions to double jeopardy given legal claims are not negated by regulator sanction.

The outcome of the consultation is awaited.

#### 7.7. Consultation on Publication of Information

The University's response articulated concerns about these proposals, specifically as they relate to the potential reputational damage to institutions, particularly for those universities who most rely on their reputation for their recruitment of domestic and international students, and the need for sufficient transparency from the OfS about the reasons for publication if they proceed with the policy of a broad approach to the publication around their actions and application of sanctions.

The outcome of the consultation is awaited.

#### 7.8. National Student Survey Review

In September 2020, the OfS Chair and the Secretary of State agreed that there should be a review of the National Student Survey (NSS) to investigate the extent to which the survey was adversely impacting on the quality of higher education and to develop practical ways to mitigate and eliminate them.

The first phase of the review ran from September to December 2020 and has reported. Although the NSS will not be scrapped entirely and will remain an annual census, there will be a consultation on an overhaul of the questions. Any references to student satisfaction will also be dropped whilst looking for other ways to measure students' overall assessment of their academic experience. Other measures include improving guidance on the responsible statistical use of the NSS and helping to reduce burden and needless duplication by providing better analysis of the results.

#### 7.9. Outreach

The OfS intends to consult later in 2021 on whether an area-based approach to targeted outreach is maintained, or whether it is replaced with a focus on high-priority schools and colleges from 2022-23 onwards. Following a consultation on the future of Uni Connect, a programme consisting of 29 partnerships which work locally to tackle the barriers to progressing into university or college, the OfS will support the programme until the end of the academic year 2024-25, subject to annual funding allocations.

#### 7.10. Harassment and sexual misconduct

The OfS has [re-launched](#) its work to tackle harassment and sexual misconduct in higher education. It will, in spring 2021, fast-track the publication of the statement of expectations. The statement covers issues relating to providers' systems, policies and processes to prevent and respond to harassment and sexual misconduct. The OfS will consider later this year whether, and if so how, to update the regulatory requirements that relate to consumer protection law, including how we set requirements relating to complaints-handling arrangements and options for connecting the statement of expectations to the requirements expressed in conditions of registration. The OfS highlights potential use of enforcement powers where universities and colleges do not have robust, fair and effective complaints procedures in relation to harassment and sexual misconduct.

#### 7.11. Notifications about providers

The OfS has published a [guide to OfS notifications](#), to enable students, staff, or members of the public who feel that a university or college is not meeting the OfS' regulatory

requirements to submit a notification to the OfS. The OfS has been holding online discussion sessions with students, students' unions and representatives. The sessions are described as an open space to work through questions or comments on the guide as well as advice on using it in practice. The guide sets out the distinction between a notification and a complaint.

## **8. Other areas of interest to the OfS**

### **8.1. OfS Annual Review**

The OfS published its second [annual review](#) on 3 December, in which Nicola Dandridge sets out three priorities for 2021:

- Raising the bar on quality of standards
- Maximising the potential of digital teaching and learning, including tackling digital poverty
- A clearer focus on mature students.

### **8.2. Digital teaching and learning review**

The final report of the digital teaching and learning review, commissioned by the Secretary of State for Education and led by then OfS Chair Sir Michael Barber, was published 25 February 2021. The report provides case studies and practical recommendations – which are not regulatory guidance – for making the most of digital teaching and learning in the next academic year and for the longer term.

### **8.3. Admissions**

Nicola Dandridge, Chief Executive of the OfS wrote a [blog](#) on what students can expect from the OfS in the year ahead, with key points being:

- The rise in applicant numbers and plans for teacher-assessed grades, universities and colleges are likely to have many well-qualified students to choose from and talented students from disadvantaged backgrounds cannot lose out as a result.
- It is vital that students starting this autumn do not face further disappointment because the quality of their course is reduced by over-recruitment and poor organisation.

### **8.4. Grade inflation**

An analysis [published](#) in November by the OfS found that a total of 29.5% of students included in the analysis received a first class honours degree in 2018-19. Of these, the OfS' statistical modelling found 14.3 percentage points were unexplained when compared to attainment in 2010-11. This was an increase of 0.4 percentage points since 2017-18. Nicola Dandridge, Chief Executive of the Office for Students said "While this may indicate that the brakes have been applied, it is clear that grade inflation remains a significant and pressing issue in English higher education."

## **9. Reportable events**

9.1. The OfS has updated its guidance for reportable events during the pandemic, which replaced requirements for reportable events set out in the regulatory framework and Regulatory Advice 16.

9.2. Since the report to October Council the University has not needed to report any events to the OfS.



- 9.3. All regulatory reporting and requests from the OfS are co-ordinated through the University Secretary as a single point of contact with the OfS. Particular requirements are delivered by the relevant individuals, for example, financial returns are made through the Chief Financial Officer, Access and Participation Plan and Prevent returns are submitted through the Executive Director of Academic Services and HESA data returns are submitted through the Director of Planning, Projects and Business Intelligence. The full requirements, and the internal leads for each, are set out in the University's OfS Compliance Register (provided regularly to UEB Risk Review Group, Audit Committee and Council) provided to Council under agenda item 23.2.
- 9.4. Internal leads will keep collating information or data relevant to what would normally be reported as a reportable event under Regulatory Advice 16 using existing internal procedures and notify the University Secretary for advice as required.

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