

# INDEPENDENT HIGHER EDUCATION

IHE response to the OfS consultation on new requirements for the oversight of subcontractual arrangements in English higher education

October 2025

## Introduction

IHE welcomes the regulator's efforts through this consultation to protect the interests of stakeholders. This aligns with IHE's aims to promote high quality experiences for students across a diverse range of provision.

Well-managed subcontracting is not only a valued feature of the English higher education landscape – it is essential. Such arrangements enable access to specialist expertise, industry-led learning environments, and geographically diverse opportunities that would otherwise be unavailable. Without these partnerships, many students, especially those from underrepresented backgrounds, would face barriers to accessing meaningful higher education.

IHE supports the principle that regulatory responsibility lies with the awarding provider and welcomes the OfS' steps to reinforce this within the regulatory framework. However, we believe further clarity and action are needed to ensure transparency, accountability, and equity in partnership arrangements. This includes greater transparency of contractual nuances. The tuition fee distribution as highlighted by OfS forms part of this but is not the only, or indeed primary, area where greater transparency would be welcomed. There are significant commercial sensitivities from providers which have prevented transparency, and this may well have been at the expense of accountability.

For students, transparency in the following areas would enhance the student experience and protect the student interest:

- The ability to identify and access resources at the lead provider. Students are not necessarily able to access services and resources in the same way as 'on campus' students. Whilst not all services necessarily may be desirable for students in delivery partners (for instance, where geographically distant) the options which are beneficial should be available.

- Students typically sign their contract with the lead provider, not the teaching (delivery) provider. As a result, students expect the lead provider to be accountable for the services outlined in that contract. It must be clear how students can raise complaints or appeals with the lead provider, even when their teaching is delivered elsewhere. To ensure transparency and uphold the student interest, the OfS should prioritise guidance that clarifies what information must be publicly available by both lead and delivery providers, particularly in relation to the C conditions of registration.

For providers there is a need for transparency:

- In which partnerships exist, and the associated costs and rationale. This will not be accessible if it remains, for example, in an unpublished Comprehensive Sources of Information (CSol)
- Around OfS investigations and any identified risks, so that both existing and prospective partners are aware of potential reputational harm that may arise from being associated – directly or indirectly – with poorly managed or high-risk partnerships. Clearer communication to subcontracted and franchise providers from the regulator would help providers make informed decisions and safeguard their own reputations
- Around data in partnerships, including clearly identifying which providers are in partnership, who holds the student contract, which institution awards the qualification, and which party is responsible for managing complaints and appeals.

IHE recognises the ambition to balance risk with burden, and that this was the aim when selecting the 100 FTE threshold. However, this rationale remains questionable as publicly available data has not yet demonstrated that quality-related risks are concentrated at this threshold.

Currently, the consultation gives the impression that delivery providers must be controlled rather than treated as equal partners. For partnerships to function effectively, they require not only robust due diligence and oversight, but also healthy, collaborative relationships free from power imbalances.

The current framing by the OfS risks undermining trust between partners, potentially leading to a culture of compliance over openness, where concerns may be concealed rather than addressed. This environment is unlikely to foster the positive, transparent working relationships needed to support high-quality provision and student outcomes.

IHE proposes that the OfS take additional steps to those outlined in this consultation as they are able to draw on due diligence information not available to partnership offices in lead providers.

We repeat the call that there should be an additional category of registration, focused on assessing a provider's suitability as a partner. This should be based on due diligence covering governance, ownership, contractual transparency, and accountability for quality and standards.

The process should be proportionate, efficient, and flexible to accommodate the diverse range of providers seeking to apply.

## Question 1

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

IHE welcomes the work by the OfS in protecting the interests of students and stakeholders through the proposals in this consultation. Many of the proposals align closely with IHE's aims to promote high-quality higher education experiences for students across a diverse range of provision.

IHE agrees that when delivered well, subcontracting is a valued aspect of the diversity of English higher education and would go further in saying it is essential in supporting underrepresented students and innovation in the higher education sector. These partnerships often form the link between lead universities and experts in industry, specialist subjects, and those with unique learning environments to deliver meaningful higher education to students. Sometimes the partnerships are formed to expand reach into different locations, but it is often just as much about collaborations that simply couldn't happen any other way.

Examples of this within IHE's membership are:

- **Universal Centre for Sport (UCS)**

UCS takes university sport apprenticeships out of the lecture hall and into community clubs across the UK. Acting as both the link and the engine behind two university partners, UCS ensures students learn directly in the environments where sport is lived and led – making education immediate, applied, and impactful.

- **Pen Green Centre & the University of Hertfordshire**

Long before policymakers recognised the need for higher-level skills in early years education, Pen Green and Hertfordshire were already setting the standard. This partnership blends world-leading research with hands-on delivery for children and families, creating an education model that trains the next generation of early years educators with both rigour and real-world expertise.

- **NMA & De Montfort University**

NMA brings motorsport engineering degrees to life in the beating heart of the industry. Partnering with De Montfort, they place learners inside the world of motorsport itself, where industry experts deliver blended learning to career-changers and engineers of the future. This isn't education about the industry – it's education inside it.

We agree that the regulatory responsibility ultimately sits with the awarding provider in a partnership arrangement and more should be done to underscore this within the regulatory framework. The consultation proposals are therefore a positive step towards the regulator paying due regard to ensuring appropriate controls are in place.

However, OfS should also ensure it uses existing regulatory tools. There is no evidence that the proposals have been mapped against existing requirements or that the OfS has considered where it could exercise its jurisdiction more efficiently. We would welcome greater clarity on how OfS will use existing powers and tools to better regulate subcontract relationships alongside these proposals and where duplication of effort has been evaluated.

It is unclear how the proposals will ensure that partnerships operate on the basis of collaboration rather than control. The consultation gives the impression that delivery providers must be controlled rather than treated as equal partners, which risks creating power imbalances that destabilise collaboration. IHE research on partnerships suggest that the most successful partnerships for students are those rooted in transparency and collaboration between partners. Greater clarity is needed on how the OfS intends to protect the conditions necessary for healthy, balanced partnerships.

The proposals are unclear on how the new condition will address weaknesses in due diligence. IHE remains concerned that the assessment of the governance, management and individuals involved in a subcontract provider is not of higher priority within these proposals. It is not obvious what additional measures providers are expected to take beyond existing checks, or how these will be supported by the OfS. We would welcome clarity on whether the OfS will make use of its own access to information (for example through a new category of registration, as suggested in our answer to Q5) to strengthen the sector's ability to identify individuals who are not fit and proper persons.

The OfS does not make clear what is meant by "publication of specified information" in the context of subcontractual arrangement directions. While the publication of information is a normal part of regulatory processes, and some of what is covered in the Comprehensive Source of Information (CSol) proposals is already required under the C conditions, OfS has not explained what additional information it might expect providers to disclose. This lack of clarity creates concern, particularly where existing contracts require partners to withhold commercially sensitive information. In other regulatory contexts, such as Freedom of Information requests, there are clear protections to prevent the release of commercially sensitive material. Without similar assurances here, IHE Members felt unable to comment fully on the proposals.

## **Question 2**

***In your view, is the proposed definition of subcontractual arrangements clear and does it correctly capture the nature of these arrangements?***

We have several concerns with the proposed definition of subcontractual arrangements and have noted particular areas which need to be clarified. Without clarification it will be difficult for both lead and teaching providers to place their models within the OfS definition.

Subcontract is used interchangeably with franchise. IHE recognises the useful statement from the OfS of how they define subcontracting for the purposes of these proposals. The sector struggles to use terminology effectively due to conflicting uses of the same words. However, it should be clearer. Paragraph 12 of the consultation sees a perpetuating of conflated definitions of franchise and subcontract arrangements, stating subcontractual delivery is '...commonly known as franchised provision.' IHE recognises these two words as distinct entities, with different characteristics.

IHE is clear that these are two different partnership relationships. Our research has defined these as follows (see the IHE report on definitions for more examples<sup>1</sup>):

### **Franchise**

The qualification is designed and owned by the awarding partner (franchisor), requiring the teaching partner (franchisee) to deliver instruction in adherence to the prescribed programme. This framework ensures consistency and fidelity in delivery, as the teaching partner is required to implement the programme as specified by the awarding partner. Responsibility for curriculum design belongs to the awarding partner. The student contract is owned by the awarding partner.

### **Subcontract**

The qualification can be designed by either partner, although the awarding partner will control the methods of assessment as part of the programme approval process. This allows awarding partners to access the subject-specialist knowledge of teaching partners, while retaining closer control over qualification development than in Validation agreements. Responsibility for curriculum design is determined via contractual agreements. There are two models of ownership for the student contract:

1. The awarding partner owns the student contract. This is the dominant model. It allows teaching partners to gain access for their students to student finance which would otherwise not be available for their courses.
2. Some students, who do not require access to student finance, contract directly with the teaching partner. This may be the case for international students, or those who pay their own fees.

Many franchise arrangements also involve subcontracting. The OfS itself recognises this in its register of providers, which records cases where one provider holds the student contract but subcontracts part or all of the delivery to another. While a franchise partnership always involves the teaching provider delivering the curriculum of the lead provider, it can also incorporate a subcontract, where the teaching provider subcontracts the student from the lead provider, who holds that contract with the student. The OfS should avoid using “franchise” and “subcontract” interchangeably and ensure that its regulation clearly distinguishes between them, particularly in cases where intellectual property does not reside with the teaching provider, as these situations require greater communication and oversight from the lead provider.

It is unclear whether the primary risk lies with subcontractual partnerships, as defined by IHE, or with franchise relationships in which the lead provider retains both the student contract and the intellectual property of the course. This is particularly significant when such arrangements end: in franchise relationships, the delivery provider owns neither the IP nor the student contract, making changes to validated provision complex, since the delivery provider has no

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<sup>1</sup> IHE (2024) *Academic partnerships – working paper on definitions and early data*  
<https://ihe.ac.uk/latest/publications/academic-partnerships-working-paper-definitions-and-early-data>

contractual entitlement to continue delivery without IP ownership. A clearer understanding of how these arrangements operate would help identify where risk is most likely to arise.

The definition in the condition does not sufficiently define an 'entity' or the nature of the arrangement the lead provider and teaching provider are contracted to deliver. While the definition is clear on the division of teaching, it assumes but does not state clearly that teaching should be the main activity covered by the contract. In doing so it does not cover, to include or exclude, the breadth of partnership provision within the sector. Examples which are unclear are below:

### **Joint-venture**

In these partnerships the lead provider and another entity will together create a third entity. In most cases the lead provider will hold the majority shares in the joint venture entity and retain greater than the majority of assets, supporting students in the event of an exit by the minority partner. These entities would effectively be 'under the control' of the lead provider and therefore ineligible to register independently to OfS. Joint-ventures are occasionally included in the lead providers 'trading names' within the OfS register. There are circumstances where the teaching provider would hold majority shares in a joint-venture and these may then be independent enough to be eligible for OfS registration. These would be more likely to be of a similar nature to other arrangements that fit the definition provided in the new condition of registration.

### **Managed campus models**

These models may or may not involve a contract to deliver any teaching. In these circumstances a lead provider may contract with an entity to manage a campus, particularly one not in the same city as the main campus (common for London campuses of providers outside London). These contracts may be arrangements that concern the delivery of student support or experience, or could supply teaching staff in some circumstances, but they could also exclude any delivery of the curriculum, which would be managed by the lead provider more directly. It is important to identify these models and match the provisions of the contract with the nature of the providers OfS wishes to capture in this condition to be clear who is included.

The limited nature of the existing definition will be unhelpful for providers in understanding whether their entities and arrangements fit into the scope of the consultation. Regard should also be paid to the OfS Regulatory Framework, which has clear definitions of what constitutes an institution for the purposes of registration. Where control clearly sits with one institution as defined by the Framework, this should be sufficient reassurance to the regulator that the provision falls under the auspices of that institution, and condition E8 will not apply.

The rationale for excluding certain types of providers is also unclear as the nature of most of these arrangements fit the rest of the definition. OfS have used a list of exclusions established by the Department for Education (DfE) in their consultation *Strengthening oversight of partnership delivery in higher education*. The intent of this list was not based on the nature of the provision, nor the relationship with the lead provider. This was a list of bodies where the DfE had the ability to intervene directly or through other regulatory bodies, should poor provision or fraudulent activity be found. They were out of scope for a consultation which sought to provide a regulatory link to DfE for all subcontracts. As DfE already had a link, it was not necessary to include them in their provision. OfS has no such link with the list of excluded provision. OfS

does, however, have a direct link with subcontracted providers registered with it, yet these are not part of the exclusions.

If, in fact, the list has been repurposed simply as a list of conveniently definable low risk groupings of providers, then IHE would request further transparency on how the risk profile is being determined. It is entirely possible for one lead provider to hold multiple partnerships with the excluded list, and another to have only one partnership for a niche partner that does not intend to grow beyond 300 students. There is currently no evidence that the latter is of more risk than the former.

OfS must be clear why subcontracted providers of particular models would be excluded and apply that rule consistently or risk undermining the definition within the regulatory condition.

### **Question 3**

#### ***Do you have any comments on the scope of providers that will have obligations under the proposed condition?***

In defining the scope of providers, the OfS has focused on identifying risk and minimising burden for lead providers. However, it has made no assessment of the burden this condition will impose on subcontracted providers, most of which are SMEs or micro-entities. These providers may have less than the 100 FTE students, but because the definition includes a collective total, they will be impacted by the regulation in the same way as the larger subcontracting partners, but with less ability to absorb the costs.

In response to the DfE thresholds, IHE argued that a headcount threshold of 300 was already too low to be workable, due to the burden and cost of the regulatory system on such a small provider, which would inevitably impact the student experience. While the OfS' proposal to use an FTE methodology is preferable, the new threshold of 100 is equally problematic. It ignores the impact on smaller providers that may be partnered with a lead provider whose overall subcontracted student population exceeds 100 FTE students.

The consultation notes there may be costs linked to more robust governance arrangements. This is indeed the case, but costs will arise even where partnerships already have strong governance and quality controls in place. IHE Members in long-established partnerships, delivering high-quality provision, are already seeing a shift in the nature of their relationships.

Instead of balanced governance and oversight, the OfS proposals appear to encourage a 'command and control' approach, for example requiring lead providers to review all applicant interviews and impose new processes for information requests.

These additional costs will not fall solely on lead providers. The most likely outcome is that they will be passed on through fees within partnership agreements. Members are concerned that this will price smaller providers out of the market, leaving only large-scale partnerships viable as they can negotiate lower fees. This would reduce diversity and access across the sector.

Paradoxically, it is within the largest subcontractual and franchise arrangements that risk appears most significant. OfS should reconsider proposals which would bring the smallest of subcontracted providers into scope to minimise the unnecessary risk to the student experience that added costs would bring.

The process for bringing individual providers into scope, outside of any threshold considerations, is an important mechanism for the OfS. There must be the ability to act swiftly on regulatory intelligence.

IHE would urge the OfS to consider how all connected partners are informed and supported in all such circumstances. There are practical and reputational risks by association for those who are in connected partnerships, e.g. with the same lead provider, and there have been instances where IHE Members have been affected by the actions of other parts of the connected partnership chain, leading to a termination of all partnerships.

#### **Question 4**

##### ***Do you have any comments on the impact of these proposals for particular groups of students?***

The proposed condition risks having a disproportionate impact on disadvantaged and underrepresented students. These students are more likely to study through subcontractual and franchise arrangements, often because they prefer the settings and learning environments offered by teaching partners rather than those of lead providers. The OfS itself has acknowledged that such students are generally more represented in these arrangements.<sup>2</sup>

The additional regulatory requirements will increase costs for lead providers, which are likely to be passed on to teaching partners through contractual agreements. This reduces the resources available for course delivery and student support, and in some cases could make partnerships financially unviable. The result would be fewer opportunities for disadvantaged and underrepresented students to access higher education, and potentially higher fees for those who remain.

IHE supports the aim of safeguarding students through high-quality partnerships and agrees that OfS has a vital role in this. However, the proposed approach risks undermining the very groups it seeks to protect. Alternative mechanisms, such as establishing a third category of registration tailored to subcontractual and franchise providers, would enable more proportionate oversight, while protecting access, diversity, and the quality of provision for these students.

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<sup>2</sup> OfS (2024) *Office for Students examines risks associated with subcontractual partnerships*  
<https://www.officeforstudents.org.uk/news-blog-and-events/press-and-media/office-for-students-examines-risks-associated-with-subcontractual-partnerships/>

## Question 5

### ***Do you have any alternative suggestions to the approach we have proposed?***

The proposed Comprehensive Source of Information (CSol) should be reconsidered and divided into two core requirements:

- **Published Information:** Aligned to the existing requirements in the CMA higher education guidance, OfS should reinforce the information which should be made public by both the lead provider and their subcontract providers. This should include a clear list of partners, the policies and processes that apply to students under the partnership, and which services for students each partner is responsible for under their contract. Like Access and Participation Plans, links to this information should be included in the lead providers register entry.
- **Internal CSol:** This document should contain the elements of the proposal not included in the C conditions, or as part of the CMA higher education guidance.

This would support transparency and ensure consistency in how oversight is communicated and evidenced across the sector.

OfS should consider amendments to the register to include under each lead-provider a list of their subcontract partners and any trading name. This was the case under the HEFCE register prior to the creation of OfS and allowed for greater transparency for prospective students and other regulatory bodies.

In addition, the CSol should explicitly reference the new governance-related E conditions as part of the information included. If the OfS were conducting due diligence on a provider, it would assess compliance against these conditions. It follows that, in subcontractual arrangements, lead providers should be expected to apply equivalent due diligence standards to their delivery partners who are not registered. This should happen not only at the outset of the partnership, but on an ongoing basis to account for material changes within the delivery partner, such as senior appointments or structural changes (e.g. acquisitions), which may affect the partner's ability to meet regulatory expectations.

To support lead providers in undertaking effective due diligence, the OfS should publish insights drawn from its own regulatory investigations and oversight activity. Sharing anonymised case studies or thematic findings would help the sector better understand emerging risks, particularly in relation to fraud, and strengthen due diligence practices across both lead and delivery providers.

It is right to expect lead providers to take ownership of their obligations to students taught through partnership arrangements. However, when in pursuit of due diligence information and in operating oversight, lead providers will never have the access to inter-agency intelligence that the OfS does. A suitable method of registration should therefore be consulted on alongside

the planned OfS consultation to disapply some conditions of registration for providers as part of the implementation of the Lifelong Learning Entitlement.<sup>3</sup>

For those IHE Members who wish to register with the OfS, there are significant barriers and operational costs which prevent them from doing so until such time as they reach a scale where it becomes viable. Even at this point, the distinct uncertainties associated with OfS registration timelines create ongoing obstacles. If there were an alternate and appropriate regulatory oversight method suited to those who wished to continue to operate under subcontractual or franchise models, the OfS would have more reach to prevent unwanted behaviour in the sector.

IHE recommends that a category is available for registration based on due diligence on a provider's suitability as a partner, and the fitness and propriety of their management and governance; transparency on ownership and the terms of any contract for provision; accountability which is clearly assigned for the critical aspects of provision; quality and standards which are managed effectively by the relevant partner; and with the process designed from the ground up to be proportionate and efficient, with the flexibility needed for the diverse range of providers who might wish to apply.

This would allow the OfS to identify which individuals are not fit and proper persons, drawing on data sharing agreements with other public bodies to reduce the risks such as fraud in the system most effectively. Those providers that have undertaken this type of registration will be marked out as embracing transparency and be an understandably preferred partner.

This should be designed to be efficiently administered so providers can reliably plan their businesses around reasonable timescales for registration – and this can be funded through a ringfenced fee for the process. Delivery providers will understand the benefit of this registration process as it will facilitate formation of new partnership arrangements.

IHE also recommends that the new initial condition requirements for new providers regarding fit and proper persons should be consulted on as a matter of priority for implementation for all providers. This would ensure lead providers already on the register, in subcontracting and franchise partnerships, would be operating under the same expectations and understandings of the requirements of their governance arrangements.

## Question 6

***Do you have any comments on the nature of the risks that we have included in our draft guidance that we are proposing providers mitigate?***

IHE supports the need to mitigate risks to students and taxpayers identified in the draft guidance for E8. However, the proposed approach risks fundamentally altering the nature of partnerships. By requiring them to operate in a governance-and-control environment, the OfS is overlooking the crucial role that healthy, collaborative relationships play in managing risk. Power

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<sup>3</sup> DfE (2025) *Lifelong learning entitlement: what it is and how it will work*  
<https://www.gov.uk/government/publications/lifelong-learning-entitlement-lle-overview/lifelong-learning-entitlement-overview#how-the-office-for-students-will-regulate-providers-under-the-lle>

imbalances created through excessive control could undermine trust, making partnerships more fragile and creating system-wide risks.

The most common reason partnerships end is a change in strategic direction by the lead provider. Regulatory pressure is likely to make these endings more frequent, which will damage the quality and continuity of provision. Students who access higher education through these arrangements, many of whom may not have done so otherwise, are placed at risk. The draft guidance highlights the risk of a delivery partner's failure but does not adequately address the risk created when lead providers end partnerships.

It is also important to distinguish between subcontracted and franchised partnerships. In subcontracted models, delivery partners usually own their course content (IP), which allows them to move to another partner or transition to a validated model if registered with the OfS. This means delivery can continue even if the partnership ends. By contrast, in franchise models the lead provider owns both the student contract and the course material, leaving delivery partners unable to continue provision. While the lead provider can theoretically provide continuity, in practice they are unlikely to do so in the same location or format that suits existing students. Lead providers should therefore be required to explain how they will secure continuity of study when they instigate a partnership ending.

The OfS needs to strike a careful balance in its regulatory approach. Heavy-handed conditions and language of control risk creating an environment in which partnerships cannot thrive, when more proportionate tools already exist within the regulatory framework.

From the student perspective, the proposals are framed around prevention, which does little to support students experiencing issues during their studies. Additional risks should be addressed:

- Awareness of rights: Students need clear information on their rights to complain or seek redress, which provider is responsible, and for which services. Without this, they risk being left uncertain and unsupported. Lead providers in subcontractual and franchise agreements should be held accountable for how they amplify and respond to student voice across all sites.
- Accessibility of processes: Navigating complaints and appeals procedures is particularly challenging for students studying in partnerships. At moments of stress, such as during complaints or appeals, these students can struggle with the complex structures of larger lead providers. Lead providers should ensure their processes are accessible and transparent. Annex 1 of the guidance refers to how providers "respond to complaints"; this should be strengthened to include appeals, with an explicit expectation that information is publicly accessible.

## Question 7

***Do you agree or disagree with the minimum content requirements we have proposed for the single document we propose a provider should maintain? Please give reasons for your answer.***

Agree.

IHE agrees with the principle of a single document setting out minimum content requirements, but we believe the proposals as currently drafted require refinement to ensure they genuinely serve students and stakeholders, while remaining proportionate and workable for providers.

### **Transparency and student benefit**

Greater transparency around partnership formation would be valuable, particularly for students and for providers considering partnership opportunities. However, while processes should be open and clear, information that is commercially sensitive or contractually restricted must be respected.

A single Comprehensive Source of Information (CSol) is only useful if it is focused on the student interest. At present, the proposals conflate several different types of information. It would be more effective to differentiate between:

- Information that already exists elsewhere in the regulatory framework and needs monitoring for compliance.
- Information OfS requires specifically within the CSol but which should remain unpublished.
- Information OfS expects to be published under CSol requirements because it is not otherwise covered by existing conditions but is relevant to prospective and current students.
- Information OfS expects providers to publish to meet existing conditions, in particular the C conditions (see response to Question 5).

### **Purpose and rationale**

The strategic rationale for partnerships should be articulated clearly by providers and shared transparently between the lead and delivery provider. Alignment of mission, values, and strategy is a key factor in partnership success.

In IHE's survey of awarding partners, the most common motivators for partnership were:

- Widening participation (25%)
- Increasing revenue from student fees (19%)
- Supporting local provision (17%)

While financial incentives are often important, they do not necessarily equate to poor quality. It would be more constructive to require frank disclosure of financial motivations alongside an explanation of how these arrangements benefit students. Discouraging honesty about financial drivers will not improve outcomes for students.

### **Information students need**

IHE recommends that the CSol for E8 should be adapted into a more useful public resource, similar to its role under E6. Students should have access to information that helps them understand the purpose of the partnership shaping their education, who is responsible for which aspects of their experience, and where accountability lies.

In practice, this could take the form of a published, audited annual statement (similar to Condition A2) from lead providers, setting out:

- The responsibilities of the lead provider.
- How the partnership is governed.
- The support routes available to students if problems arise.

Student protection plans should already include contingencies for partnership endings or course closures; this expectation should be reinforced.

### **Sector-wide transparency**

To enhance public confidence, IHE recommends that OfS establish a centralised, publicly accessible register of subcontractual and franchise partnerships. The former HEFCE register included such information, but most providers currently do not publish details of whether partnerships are subcontractual, where students are registered, or who their partners are.

We propose the OfS Register include a searchable record of all active partnerships for each registered provider, with key information such as:

- The type of partnership (using clear, consistent categories).
- Which provider holds the student contract.
- Which provider is responsible for complaints (and on what services) and appeals.
- Which provider awards the qualification.

This would significantly improve transparency for students, stakeholders, and the wider public.

### **Adaptability and governance**

A clear overview of partnership numbers and structures is essential, as is information on who owns the intellectual property (IP) for courses. This has direct implications for contractual complexity and student continuity if partnerships end.

Governance arrangements should be published and must include the perspective of students studying with teaching providers. Students need clarity on how partnerships are managed, who is responsible for their experience, and who they can contact when problems arise.

IHE supports the principle of a single document with minimum content requirements, but the design must be adapted to prioritise transparency for students, clarity of responsibilities, and sector-wide accountability. With adjustments - particularly around publication, alignment with existing regulatory requirements, and the creation of a central register - the proposals could make a meaningful contribution to protecting students and supporting effective partnerships.

## **Question 8**

***Do you have any views on any challenges that you anticipate with the implementation of this proposal?***

Creating and maintaining a single Comprehensive Source of Information (CSol) will be a significant undertaking, especially if required by January 2026. OfS should consider phased

implementation, focusing first on partnerships where there is already established risk and OfS is already engaged.

There is a concern about the confidentiality of information provided to the OfS and the risk that it could be published. While contracts often allow information to be shared with regulators, they do not anticipate that confidential contractual details will then be made public. The OfS must therefore give providers assurance that confidential information will not be published. Providers would also need sufficient time to review and, if necessary, amend their contracts to ensure disclosure to regulators is permitted, but even with such clauses, publication of sensitive information was never the intended outcome.

## **Question 9**

***In your view, are there any barriers to implementing the measures in this proposal, which require providers to operate in accordance with their comprehensive source of information? If so, please specify which, and tell us why.***

### **Resourcing and capacity**

IHE supports the principle that lead providers should have sufficient capacity and resources for effective partnership oversight. However, experience shows that resourcing varies significantly between providers and often depends on individual staff members. This inconsistency creates a barrier to ensuring consistent compliance.

### **Access to student data**

A practical barrier arises when delivery partners do not have access to raw student data, including student experience data and HESA submissions. Delivery partners are held accountable for student outcomes, yet without access to the data on which they are measured, they cannot effectively identify or address areas of concern. Lead providers should therefore be obliged to share this data in an accessible and usable form.

### **Contractual and confidentiality issues**

The framing of the proposals risks requiring lead providers to breach existing contractual arrangements with their partners. For example, subcontractual arrangement directions could include obligations to publish specified information under the Accounts Direction. Publishing commercially sensitive contractual information would not meaningfully increase transparency for students, as it would not show what they are entitled to or who is responsible for providing it. This creates legal and operational risks for providers without delivering clear student benefit.

### **Cost and complexity of implementation**

Implementing the proposed oversight mechanisms would require renegotiation of contracts, additional staffing, and legal review. These costs are likely to be passed through contractual arrangements, reducing the proportion of funding available for teaching and student support. This risks unintended consequences for students, particularly those studying with delivery partners.

## **Question 10**

### ***Do you have any comments on the proportionality and effectiveness of our proposed approach to using subcontractual arrangement directions?***

We recognise the importance of proportionate and effective regulation in subcontractual and franchise arrangements. However, we have several concerns about the OfS' proposed approach to subcontractual arrangement directions (SCDs).

#### **Student protection and transparency**

Protecting students must remain the central objective. Transparency should focus not on publishing financial distributions, but on clarifying the student contract: what students are entitled to, who is responsible for delivering those entitlements, and how students can seek redress. Without this, students risk being passed between lead and delivery providers with neither taking responsibility. This undermines both proportionality and effectiveness.

#### **Complaints and redress**

The proposals do not adequately address how students can raise complaints and access independent redress. We recommend that the OfS work more closely with the OIA and require lead providers to ensure all partners are subscribed. Publishing a list of subcontractual relationships would further support the OIA in monitoring compliance and ensuring student access to redress.

#### **Contractual and legal challenges**

SCDs could require providers to take actions that conflict with existing contractual terms. To comply, lead providers may need to renegotiate contracts and introduce override clauses that allow regulatory requirements to take precedence. This is a major undertaking, especially for providers with multiple partnerships, and could require renegotiation of commercial terms. Unlike Proposal 3, Proposal 4 does not provide a grace period for implementation. We therefore urge the OfS to allow a transitional period for providers to review and update contracts.

#### **Economic and proportionality concerns**

The proposed powers to publish commercially sensitive information and impose contract-altering directions risk breaching the Regulators' Code, which requires regulators to "understand and minimise negative economic impacts." Without a clear risk-based justification, these measures could have disproportionate economic consequences, particularly for smaller delivery providers. The OfS should articulate more clearly how SCDs will be applied proportionately and in line with risk.

#### **Areas where transparency would be more effective**

IHE strongly supports greater transparency in partnership arrangements but believes this should be directed to student-facing areas that genuinely enhance the student experience. Examples include:

- Clarity on which services and resources students can access at the lead provider.
- Clear guidance on differences between students at the site of the lead provider, and those taught through delivery partners.

- Transparency about responsibilities for teaching, support, and complaints.

While IHE supports the principle of proportionate regulation and greater transparency, the proposed approach to SCDs risks being ineffective in protecting students, disproportionate in its economic impact, and legally problematic for providers. A revised approach should focus on clarity of student entitlements, improved complaints and redress mechanisms, contractual feasibility, and transparency in areas that matter most to students.

## **Question 11**

***Are there aspects of the proposal to include additional disclosures in provider financial returns that you found unclear? If so, please specify which, and tell us why?***

Yes, there are several aspects of the proposal to include additional disclosures in provider financial returns that are unclear.

### **Link to identified risks**

The background to the proposal asserts that risks are heightened when subcontractual relationships are operated on a for-profit basis. It is not clear how the proposed additional disclosures will address this specific risk. The mechanism by which requiring financial information is meant to reduce or mitigate that risk is not explained.

### **Strategic statements risk being superficial**

Requiring providers to state the 'strategic aims' of their partnerships risks becoming an exercise in public relations, with little means of verifying the accuracy of such statements. It is unclear how this will meaningfully improve accountability.

### **Limited value for students and public accountability**

The proposed financial disclosures will not provide a clear picture of value for money for students or the use of public funds. Average franchise fees retained by lead providers are often cited (20–30%), but partnership arrangements are highly complex and varied. A single disclosure figure cannot capture this complexity or meaningfully support comparisons.

### **Missing complexity in financial flows**

The current proposal overlooks two-way financial flows. For example, delivery providers often pay lead providers for programme review, external examiners, award boards, or training. A simple disclosure of fee payments in one direction would ignore these costs, distorting the picture.

### **Variation over time and across contracts**

Some contracts change over time (e.g. higher retention in year one, reducing in later years) or use minimum-number models that secure a fixed payment regardless of student recruitment. These practices are widespread but would not be transparent under the current disclosure proposals, meaning students and regulators would miss important contextual information.

### **Financial motivations vs. quality**

The proposals assume that financial motivations may undermine quality, but this is not necessarily the case. Financial incentives and high-quality provision can co-exist. Requiring

statements of subcontractual rationale will not guarantee that strategies are “accountable” or “not solely based on financial incentives.”

### **Commercial sensitivity**

Members are concerned that publishing commercially sensitive financial information could allow competitors to undercut prices without regard to quality. This could ultimately reduce student choice and harm quality, undermining the stated regulatory objectives.

### **Better route to transparency**

Breaking down financial flows does not show who is responsible for which aspects of student support or quality. A more effective approach would be for lead providers to publish:

- A clear overview of which provider is responsible for which aspects of the student experience.
- A statement of how those responsibilities ensure a high-quality experience.

This would provide more useful transparency than financial figures alone, and more directly serve the student interest.

## **Question 12**

### ***In your view, are there any barriers to implementation of this proposal?***

As noted above, the lack of clarity around the legal issues is a major concern, as there are potentially scenarios where providers are expected to publish information that is commercially sensitive, or contractually protected. Time needs to be given to review contracts and amend if necessary. These are time consuming processes.

## **Question 13**

### ***Do you have any comments on the proposals to publish this information, either in providers audited accounts or by the OfS?***

The stated rationale for publishing this data is to help students assess value for money. However, without detailed breakdowns of what the fees are actually for, it is unclear how students could meaningfully interpret this information. The benefit to students is therefore speculative. Instead, the transparency for students should centre on publishing an A2 style partnership statement which will help students, and prospective students, to understand their rights and entitlements in line with the contracts they will sign.

While we support transparency in principle, the publication of commercially sensitive financial data such as fee retention rates risks breaching confidentiality. This information would typically be exempt from disclosure under the Freedom of Information Act (FOIA), and its publication by a regulator raises legal and ethical questions.

Public disclosure of fee splits may lead to competitive tensions and renegotiation across the sector, particularly among delivery providers. This could destabilise existing partnerships and

reduce the viability of subcontractual models, especially for smaller or specialist institutions. We would recommend OfS considers what benefit Proposal 5 will bring in terms of bringing true transparency to the nature of the partnerships in question.

## **Question 14**

### ***Do you have any comments on the appropriateness and effectiveness of our proposed approach to monitoring compliance with the proposed condition?***

IHE Members have concerns about both the appropriateness and the effectiveness of the proposed monitoring approach.

#### **Lack of tools to address root causes**

Many of the areas to be included in the Comprehensive Source of Information (CSol) are already covered by other regulatory conditions and therefore should already fall within OfS oversight. However, fraud and poor practice often arise from weak or poorly managed due diligence by lead providers. The proposals do not contain mechanisms for monitoring or supporting due diligence processes. This leaves a critical gap, undermining the effectiveness of the proposed condition.

#### **Limited deterrent effect of financial penalties**

Members did not feel that financial penalties would act as an effective deterrent. Without routine or robust monitoring, fines risk being applied too late, and their immediate impact may fall on current students rather than on the provider at fault. This makes them both inappropriate and ineffective as a sole enforcement tool.

#### **OfS should consider alternative enforcement mechanisms**

OfS should consider more targeted regulatory tools, such as student number controls (SNCs), where poor behaviour has been identified. Unlike one-off fines, SNCs can provide proportionate and longer-term oversight of specific partnerships. For effectiveness, SNCs must be applied directly to the partnership at issue, not across a lead provider's wider portfolio. IHE members have seen instances where restrictions applied to the lead provider were passed down to unrelated partnerships, unfairly penalising students and providers who were not involved in the initial concern. Appropriately applied, SNCs would enable the OfS to isolate and manage risk without harming compliant, high-quality partnerships. However, the regulator must also account for contractual commitments around student numbers, allowing sufficient time for providers to review and amend contracts where necessary.

#### **Promoting good practice, not just penalising poor practice**

While tackling poor behaviour is essential, the OfS also has a role in promoting examples of high-quality subcontractual and franchise partnerships. Current public debate often focuses on negative cases, damaging the reputation of the wider sector. The OfS, uniquely positioned with access to sector-wide data, should use its insight function to highlight case studies of effective partnerships and share lessons on how oversight arrangements can support strong student outcomes. This would be a more proportionate and constructive use of the proposed monitoring framework than focusing narrowly on financial disclosures, which do little to drive improvement in practice or student experience.

## Contact IHE

- For more information, or to speak to someone about this consultation response, please email [info@ihe.ac.uk](mailto:info@ihe.ac.uk)
- Visit our website at [www.ihe.ac.uk](http://www.ihe.ac.uk)
- Connect with us on LinkedIn at [@Independent Higher Education](https://www.linkedin.com/company/independent-higher-education)