

INDEPENDENT HIGHER EDUCATION

IHE response to OfS proposals for reforms to OfS
registration requirements

April 2025

Part 1

Question 1

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

IHE agrees in principle with the proposal to replace initial condition C1. We support the strengthening of this condition and the OfS's intention to ensure more robust protection for students. We believe that ensuring that all providers' policies, contracts and terms and conditions are fair is in the student interest, and in the interests of the sector.

We also welcome the increased transparency of what OfS require in the registration process. IHE members have found in the process to date that the documents proposed here for submission are critical in the OfS's decision making, and so making this explicit in the condition represents a welcome shift to evidence-based decision making with clearer requirements for providers.

However, we have three significant reservations which we expand upon further in our response.

Firstly, the new condition and how it will be assessed has the potential to significantly increase the burden of regulation for the OfS. Given that the registration process has not been timely to date, exacerbated by the recent pause, we are concerned that the volume of documents OfS proposes to assess will cause further delay. The OfS needs to consider how it will resource this assessment and look for efficiency which can reduce the burden of the new condition for OfS and providers. Delays to the registration process pose substantial barriers to credible and high-

quality providers legitimately seeking the benefits of registration, which will ultimately have a negative impact on students.

Secondly, we emphasise the importance of context in how fairness to students is assessed. Given the diversity of the sector, documents will and should be different. We are concerned that the OfS will not have sufficient information on the specific context of diverse provision they are assessing to make a judgement as to whether documents are appropriate. This is particularly relevant in partnership provision, qualifications delivered with employers, or online provision where contracts and policies can necessarily look different.

Thirdly, we are concerned that documentation alone is not proof of a provider's understanding or of the requirements being applied in practice. The new model may therefore not prove sufficient to assure the OfS that there is adequate resource, capability, and processes within an institution to implement policy in a way that precludes unfairness to students.

Question 2

With reference to the concept of fairness:

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

We support in principle that the focus for new initial condition C5 should be an assessment of whether providers treat students fairly. We are concerned, however, that the OfS is not best placed to make this assessment in all areas they have identified in this proposal, and we see a risk of regulatory overreach that conflicts with existing legal protections for consumers.

We would like to see a clear link between the concept of fairness and student success, so that the condition is aligned the rest of the regulatory framework and the OfS's regulatory remit. If this remit is to be expanded at all, the OfS will need to work closely with the OIA, CMA and National Trading Standards to prevent any conflict or duplication.

The OfS also need to ensure that the concept is considered in line with other education inspectorates and regulatory bodies, to ensure there is not conflict and or inconsistency for higher education providers regulated or inspected across tertiary education.

We note again here that provider context will be critical in understanding the concept of fairness. What is 'fair' can be different for different students and different types of provision, for example it may need to be considered differently for employer-funded qualifications.

Question 3

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

evidence, the provider would satisfy the condition). If you disagree, please give reasons for your answer.

We agree that in most cases, negative indicators or the absence of these are clearer, and that adding 'fair' behaviours would make the assessment more complex for providers. However, we note that in some cases the negative framing of an indicator can reduce clarity, so we encourage the OfS to review the list of prohibited behaviours with providers currently seeking registration, perhaps through a pilot model, to ensure that these are as clear as they can be.

We are concerned that the wording of Proposal 3 suggests there is no contextual element to the assessment of negative indicators (or their absence). We are concerned that it may not always be the case that the outcome is either satisfied or not satisfied as in some cases further evidence and the provision of provider context may be necessary to determine whether actions or behaviours can be assessed as unfair, and whether or not the teaching provider seeking registration was actually responsible for the unfair practice.

Question 4

What are your views on:

a. The proposed OfS prohibited behaviours list (including the way we are proposing to use consumer protection legislation and CMA guidance to inform it)?

We feel that the list of prohibited behaviours needs to consider different provider contexts and types of provision, and to ensure that there are no actions classified as unfair which could, in certain contexts, be considered fair.

For example, point (a, ii) (allowing the provider to exercise wide discretion to withdraw offers) could be considered fair in an instance where this was required by a Professional Body, leaving the provider with no control over the withdrawal of the offer. Similarly, point (a, vi) (allowing the provider to terminate the contract on a discretionary basis) may be considered fair on an employer-funded programme if there were provisions in the employer contract to do this. Again, this would not be something within the control of the provider.

We also feel there are a number of clauses where subjective language should be reviewed to ensure it is clear to providers registering, and to OfS assessors, when a provider would be considered to have treated students unfairly. For example:

a, iv, v: What would be considered a 'disproportionately' high sum of money

c, v: What does 'expressly clear' mean?

g, iii: What would 'reasonable and proportionate' steps be?

We also note that a model student contract is considered as an alternative option for this proposal. We reiterate, as we have made clear in our response to the OfS Strategy, that we do not see this as appropriate for such a diverse HE sector. It would also need constant revision to incorporate modular delivery, the role of awarding bodies from the RQF more prevalent now with the expansion of HTQs, the anticipated expansion of employer contributions to funding study, and new models of delivery already being explored with advances in technology such as AI.

b. The way we propose to consider detriment to students (including the non-exhaustive factors we propose to consider to determine whether detriment is 'reasonable in all the relevant circumstances')?

We agree with the principle that detriment plays an important role in evaluating fairness and it should be considered in assessing providers' compliance with the condition. We welcome the pragmatism of the definition and process outlined (paras 13-20 of the condition and guidance) but note that there are again frequent examples of subjective terms which may make compliant behaviours less transparent. For example, in the draft guidance as part of Annex C OfS says they will expect providers to do or have done "everything possible to limit the extent of the detriment." 'Everything' is a very broad term, and elsewhere the OfS has used the term 'reasonable', which is defined within the CMA guidance already, and is used across other OfS conditions. We urge the OfS to review the language within this guidance to ensure more consistency with other OfS documents and improve mutual understanding of the actions which the OfS will consider compliant with the new regulations.

c. The adverse findings we propose to consider and the way in which we propose to consider them

We agree that the OfS should consider adverse findings from legal proceedings. We also note that the OfS has identified risk in the misuse of protected terms such as 'university' and 'degree.' We believe the OfS has a clear remit to take action where a provider seeking registration has used these terms inappropriately, to protect students and the reputation of the higher education sector. While we understand OfS's position not to register providers who use the term university in their company name without relevant permissions, we encourage the OfS to consider where a provider may have been granted university title in another country and ensure they are aware of the requirement to seek exceptional permission for this term to use it in the UK. It may be that the provider had no intention to mislead students as they hold this title legitimately in another jurisdiction.

We welcome the clarity in this proposal that the OfS will consider adverse findings across all forms of education delivered by the provider. This has not been entirely transparent in previous conditions or guidance and will support new providers to review their policies across their entire provision. The OfS may want to consider if there are potential conflicts between their prohibited behaviours and the regulatory requirements for other types of education, in particular apprenticeships or professionally accredited courses which can have more complicated and contextual terms and conditions.

We do not agree the suggestion that where there has "not been a relevant finding, but the provider's behaviour falls within one or more provisions in the OfS prohibited behaviours list,"... providers will not be given an opportunity to overturn the assumption that they have treated students unfairly. As we have stated before, contextual information is highly important and relevant to the diversity of providers that the OfS is and will be registering in the near future. The representations process is overly prescriptive and seems an inefficient way to offer context. Providers should be given the same opportunity to respond as they are when the findings are reached through a legal process. They should be invited to identify behaviours they believe may be considered unfair at the point of registration and provide contextual evidence to the contrary or that there has been no detriment to students.

d. The way we propose to consider undertakings by enforcement bodies and applications for enforcement orders?

IHE supports this proposal in principle. We urge the OfS to be more nuanced in its approach to the different levels of actions outlined in the proposal and publish how these approaches might differ between an undertaking, an enforcement order, and where a provider fails to comply with an enforcement order.

e. The way we propose to consider a provider's removal of concerning terms or information from its documents?

IHE supports the proposed approach. As we have outlined above, we are in favour of a constructive and contextual approach but strongly agree that the OfS should be assessing providers' understanding, capability and actions in relation to fairness and not simply the documents themselves. We agree that if concerning terms are removed the OfS should assess the motivation behind this and ensure that providers can demonstrate both understanding and that they have addressed any underlying issues.

We are concerned that the assessments in this proposal are again quite subjective and do not consider the balance of risk in the same way that the OfS currently does across the regulatory framework. For example, the guidance mentions that the OfS will consider the "the nature and range of the provider's actions relevant to the nature and extent of the original concerns" but not the level of risk posed by the term or the limited number of students impacted. For example, if a new provider had a term deemed unfair in their OfS assessment, but there was evidence that the provider had removed this term before any student agreed to it, this should be judged low risk and the removal of the term, along with evidence the provider understands why it was unfair, would be sufficient. Where a term was not identified, and it formed part of a contract with hundreds of students, OfS should expect more action to be taken given the severity of the risk, even if no student experienced detriment from the inclusion in their terms and conditions.

Question 5

What are your views on:

a. The definition of students in the proposed condition (to include current, prospective and former students)?

We support the definition and proposal to include current, prospective and former students. We agree that covering all aspects of the student journey is important and we support the clarity and pragmatism of the definition of when a provider's relationship with a student can be considered to be in scope. We would, however, welcome further guidance on which policies and documents would be considered in relation to prospective and former students, and how fairness to them would be assessed.

We also agree that the previous experiences of former students while they studied with the provider are important in assessing fairness. Evidence of unfairness towards former students should be taken into account as this can be an indicator of what current and future students might experience. We do however strongly encourage the OfS to consider context when assessing these matters. Given the nature of providers now applying to register, understanding any changes

in ownership, management or governance will be important to make an accurate assessment of the future risk of unfairness.

We also support the inclusion of students studying as part of their employment. We agree that there is still an opportunity cost for students, that there should be parity of experience in their relationship with their provider and that their interests should still be protected. However, we emphasise again that the unique context of work-based learning models will need to be considered. As these programmes are funded by employers, there will often be contracts in place which may in some cases supersede those between the provider and student. This could mean that the provider is obliged to take courses of action which, by the OfS definition, would be considered unfair. We have given some examples of this in our response to Question 4a. We urge the OfS to create a model in which context can be provided alongside the submission of documents identifying terms that could be perceived as unfair, and this context is considered as part of the assessment.

b. The inclusion and definition of ancillary services?

We support the inclusion of ancillary services and agree that non-academic services and support contribute significantly to students' experiences of HE.

We note that these are defined in the proposal and guidance as being those services where a contract exists between the provider and student. The OfS may want to consider whether services should be in scope where there is not a contract but should be, for example because it is a requirement to complete the course. This is a particular concern in franchised provision where the registering provider has subcontracted the provision of services but there is no clear contact between the teaching provider and the student to offer those services. We encourage OfS to review this area ahead of May 2026 when we expect franchised providers to apply to register, to ensure that, in any franchised provision, ancillary services that are required to complete the course are part of the student contract and covered in the franchise agreement. The OfS should further ensure that it can be clearly identified which of the partners provides that service. The OfS may also want to include courses with a professional element, where the provider offers a service relevant to an external accreditation rather than to the course, such as counselling required for professional accreditation to be a therapist or counsellor.

We also note that in C.5.8 of the draft condition the definition uses the term "may enter into a contract", which is inconsistent with the wording of the proposal and the guidance, where it is clear that only services in scope are those for which there is a contract.

We agree that third party services should be excluded from scope. We recognise that these can play a significant role in the delivery of important aspects of the student experience but agree with the proportionate and pragmatic approach outlined to not require these policies and contracts to be included.

c. The definition of 'information for students'?

We support the clarity and pragmatism of the definition by considering published or retrievable written information to be in scope.

We also reiterate that any assessment of information must consider provider context and be time limited, as we have set out in relation to former students in Question 5a. If information provided

historically is used in assessment, this needs to take into account any changes in management, governance or ownership so that this evidence can be considered proportionately.

d. Our proposed approach to providers delivering higher education through partnerships?

We agree with the approach that the OfS suggests of responsibility for partnerships applying to both parties within academic partnership arrangements, and that there needs to be a flexible approach taken to how this is applied.

However, we disagree that this is consistent with the approach to regulating quality and standards.

All providers are currently subject to the same conditions of registration, and the providers on the register have all elected to register because they wish to access the full suite of regulatory benefits that accompany OfS registration.

The OfS is now making proposals which govern a new set of providers, with a new set of regulatory conditions, which will change the above statements. The following will now be the case:

- Two tracks of regulatory conditions will be in train at the same time. Those from the new initial conditions, and those from the existing conditions. It can therefore be the case that providers in partnerships will be governed by different requirements.
- Not all providers are electing to register with the OfS. Some providers will register due to the outcome of the Department for Education (DfE)'s consultation on 'strengthening oversight of partnership delivery in higher education'. If the proposals for franchised providers go ahead as outlined, some will be forced to register despite not having elected to do so.

In the case of partnerships operating in different regulatory conditions, this is a new scenario that is particularly unclear within the OfS proposals.

Paragraph 107 in Part 1 Proposal 5 states that the proposed condition applies to both parties in the partnerships where the relationship is a franchise (subcontract) model, and that the model replicates the existing model with Quality conditions, where in effect two providers are held responsible.

What we have collectively learned across the sector is that one of the keys to achieving accountability within partnerships is through collaboration, with resultant transparency on responsibility for the areas of provision built through trust. This proposal is far from clear, and will lead to tension, not collaboration. This will heighten risk.

The current wording of the proposal implies that in franchise arrangements the OfS "propose that the condition would apply to the 'lead' provider in any such relationships."

IHE would discourage any phrasing which could imply that the OfS wishes to apply new initial conditions on existing providers, who are still subject to old conditions. Indeed, there does not appear to be a common understanding of the issues contained within the current consultation amongst the awarding (lead) providers. These changes to initial conditions are seen as the responsibility of the providers pursuing new applications to register. It is important that

awarding partners are aware of their responsibilities when their teaching partners seek to register and collaborate to ensure that all the required documentation is submitted. This needs to be made clear to providers by methods of communication other than a few lines within this consultation, because we know for sure that the message has not yet been received loudly enough by the sector that this is a joint, shared, regulatory expectation. It cannot be left to the teaching providers alone to address.

The OfS needs to make its intentions clear. If teaching providers in franchise arrangements are being held accountable for the published materials of their awarding partner, it must be obvious to the OfS that this creates unworkable expectations. The awarding partners will have different regulatory requirements and cannot be held accountable for regulatory conditions different to their own. The power structures are simply not weighted towards the teaching partners being able to demand change – for instance if that involves costly changes to marketing materials from their awarding partner's budget.

Perhaps it is just the wording that is unclear, and it is not the intention of the regulator to apply new conditions to providers already on the register in this manner. In this case, IHE would urge very careful phrasing, and extremely clear guidance on who is responsible in the eyes of the regulator.

It is relevant that not all providers who will be registering under these proposed conditions will have chosen to do so; that some will be brought into regulation due to the changes proposed by DfE.

IHE is supportive of the aim to bring more providers under the reach of the regulator, so that as many students as possible benefit from the protection of regulation. However, as we made clear in our response to the DfE consultation, the optimal approach would be to have a new and more suitable category of registration for those providers who are not seeking registration for any purpose other than adhering to the requirement to do so. The burden and cost of initial and ongoing conditions of registration are not outweighed by the associated benefits for some of the very smallest providers. These costs are paid directly from student tuition fee payments. To address the need to protect students through regulation, without in turn overburdening those same students with the cost of regulation not designed for the type of provider they have chosen to study at, IHE urges the OfS to introduce a third category of registration. This would also serve to avoid those scenarios which would lead to an overlapping dual accountability that is unworkable in practice.

It is important to reiterate the points we made to DfE on overregulation. It is an initial condition of registration in the two existing categories for providers to be able to demonstrate compliance with conditions B7 and B8. Within a franchise agreement, the qualification is designed and owned by the awarding partner, and responsibility for curriculum design belongs to the awarding partner. OfS conditions B7 and B8 are not designed for providers operating solely under franchise agreements who do not have control over quality and standards, which remain under the clear control of the awarding body. Using the Quality conditions as an example of how providers already operate with this dual responsibility for conditions ignores:

- The over-burden of franchise students paying their teaching provider for regulation, and then paying the percentage fee to the awarding provider, which in part covers the regulation

- The fact that these providers are being asked to register in a system not designed for them, for the convenience of those operating the system, not in the students' interest.

Students are not aware of where these partnership fees go. They simply do not know about them. This is not being addressed by the regulator. Students at the smallest providers already pay the highest cost for regulation due the structure of costs, as noted in the Public Bodies Review of the Office for Students.

Creating a new category of registration would help to mitigate some of these issues by ensuring that the cost of regulation is proportionate to the benefit for students.

IHE would be keen to work with the OfS on the type of checks and areas of assessment that would be most valuable to include within this new category. We propose that it focus on enabling awarding partners to understand their part in accountability, and on strengthening the OfS's capability to conduct due diligence checks on teaching providers, making full use of the regulator's access to relevant information and intelligence from other public bodies. The new category should focus 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.

Question 6

What are your views on:

a. Our proposed document submission requirements?

IHE does not support the proposal to assess fairness based on the submission of policies and student-facing documents alone and instead encourages the OfS to consider a hybrid approach, with a requirement remaining for some narrative or supporting commentary alongside the submission of documents where contextual evidence would be beneficial to an efficient registration process.

We do support the requirement for providers to submit policies and documents, and the list that is proposed for inclusion. We support an approach which is more transparent and evidence based.

However, we have a number of concerns with the proposal as it currently stands. Firstly, we feel that provider context is critical in enabling the OfS to make an accurate assessment. We are concerned that without the provision of supporting commentary or narrative, the OfS will not have the information about and understanding it needs of the diverse provision in the sector. This is increasingly important given the diverse nature of the providers who will be applying to join the register. As we have detailed elsewhere in our response, certain types of provision including but not limited to employer-funded models and partnership provision can have policies and documents that appear more risky if incorrect assumptions are made about the student or provision. As the consultation sets out, it may be the case in partnership arrangements that different students within the same institution have different policies applied to them, determined

by the nature of the arrangements for their programme. Without understanding the context, this could be inaccurately assessed as unfair. Providers must have the opportunity, in this and other such examples, to provide explanation of why documents and policies appear as they do.

Secondly, we feel that the submission of documents alone will not offer sufficient evidence of a provider's understanding or of the requirements being applied in practice. The application of policies through processes, capability and adequate resource is a critical component of whether a provider is behaving fairly towards students. The significance of process is particularly pertinent in relation to complaints – policies alone will not demonstrate how these are handled by the provider, nor will they enable an assessment of whether it has done so fairly. Policies could become replicated and standardised across the sector, and their submission would not give the OfS the necessary assurance that the provider understands and is implementing the requirements. We remain concerned that there will not be enough time in the interview proposed in the new condition E7 to address all the documents and evidence required to assess if someone has the knowledge and expertise to apply policies effectively.

We also are concerned that the proposed approach will increase the burden of regulation for the OfS, and we encourage consideration of how it will resource this without creating further delays to the registration process for providers.

b. Our proposed approach to providers that do not intend to charge fees or register students?

We agree that the condition should apply to courses from providers that do not intend to charge fees or register students, and that the same approach should be used for subcontracted providers and those delivering employer-funded programmes only. As we have set out in our response to Question 5a, we agree that there should be parity of protection in place for students studying in these different models. We note again that consideration will need to be given to how the condition applies in those instances, and how the OfS will make an accurate assessment of fairness given the differences that there can be in contracts, policies and other documents. We would welcome further conversations on this topic and would be pleased to work with the OfS, and our members who deliver courses at no cost, to test assumptions ahead of the registration process reopening.

Question 7

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

We support this and strongly agree that Student Protection Plans (SPPs) should be removed and replaced with the practical policies that govern a provider's approach to the closure of courses, campuses or providers. The current requirements force providers to create unrealistic expectations of risk that are out of date almost as soon as they are published, and solutions that have no basis in law. These documents are dismissed by students as irrelevant yet providers must spend considerable resource reviewing and updating them as they become quickly out of date. The proposed approach is more comprehensive and transparent, and it will better support students to make informed choices.

Question 8

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

As we have responded to Question 6, we support the transparency of this and feel it will be more useful for students. We hold a similar requirement to publish student policies within our own membership regulations.

We encourage the OfS to create better guidance for providers on what is expected to be published, in a similar way to the guidance that has been provided on the requirement to publish a 'single source of information' under Condition E6 (harassment and sexual misconduct). This is particularly important for provision delivered in partnership, where providers might have multiple academic partners and so there will be different sets of documents for different groups of students. There needs to be clear guidance on how student-facing documents should be published so that this information is clear, accessible and transparent for all students regardless of where they are studying.

Question 9

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

We agree with this proposal and feel that also requiring providers to produce and publish a C3 Student Protection Plan would be additional and unnecessary burden. As we have noted in response to Question 7, these risk-based plans quickly become out of date and so are not as accurate or useful as the proposed alternative of publishing the student-facing documents currently in use by the provider. This approach will result for more clear and comprehensive information for students on what they can expect from their institution.

We also support the intention that this change will eventually be extended to all registered providers, as the new proposals are far more clear and practical to implement. Removing SPPs would have the added benefit of reducing burden for both the provider and OfS.

Question 10

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

Please see below some areas where further clarity would be welcomed in the draft condition:

- 'Ancillary services' are defined in C.5.8.a as those "for which a student may enter into a contract with the provider" whereas in the proposal and draft guidance these are stated as services where there *is* a contract (see our response to Q5b)
- 'Former student' could be defined alongside 'prospective student' in line with the guidance, so that the scope of their inclusion is clear.
- The inclusion in scope of any HE provision provided "by, or on behalf of, a provider" could be given further clarity, in line with the proposal and guidance, to make explicit that this will mean in practice that more than one provider could be responsible for compliance in relation to the same student (C.5.1.d). It should also clarify that HE provision delivered on behalf of the provider may not be in scope or may have only some aspects in scope where it is subject to different legal requirements, such as students in Scotland studying on a course validated by an OfS-registered provider.

Question 11

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

Please see below some areas where further clarity would be welcome in the draft guidance:

- As noted above, 'Ancillary services' are defined at C.5.1 of the guidance as being 'wherever there is a contract', whereas in the draft condition the wording used is 'may'.
- As noted elsewhere in our response, including Question 8, further guidance would be helpful for providers on the expectations for publishing information for students, particularly in relation to provision delivered in partnership provision and where institutions have more than one academic partner. Paragraph 34 of the guidance could be supplemented with more information about how student-facing documents should be published in these circumstances.
- Also in Paragraph 34, guidance would be welcome on whether or how the OfS plans to determine whether academic partners are "ensuring through their own due diligence processes that the other partner also treats [students] fairly".

Question 12

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

As we have made clear in our earlier answers, we are concerned that there is a risk that the submission of the documents specified alone could lead to continued unfair practice. The OfS will not have evidence of how these are being applied in practice, including what the processes in place are, or the level of staff resource and capability underpinning their effective application.

There is also the risk that this approach will inadvertently lead to the creation of standardised documents across the sector. The OfS needs to be able to assess the size, scale and fit of the

policies to the provider they are registering – to ensure that these in practice will lead to fairness towards students.

There is also the potential, without the provision of any supporting context, that OfS decision-making will become more subjective, which carries its own risk, for example presuming that a policy is not a good fit due to not understanding the particular provider context in which it is applied.

This could lead to providers being inaccurately assessed and the creation of a barrier to more innovative providers and their students entering regulation. Given developments in the wider policy context, there will be a large number of providers applying for registration in the next two years who already have students learning with them. The OfS needs to consider the interests of these students and ensure that its approach does not inadvertently create a barrier to their accessing funding and the protections of OfS regulation.

We also highlight again here the potential for overlap and inconsistency with other bodies, including the OIA, CMA, professional accreditation bodies and other regulators. There is a risk that tension with their existing requirements could result in increased burden for providers as well as the risk of legal action.

Question 13

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

We have highlighted in response to Question 4a some clauses in the list of prohibited behaviours where there is a need for further clarity of language to make it clear and transparent when a provider would be considered to have treated students unfairly. These are:

a, iv, v: What would be considered a 'disproportionately' high sum of money

c, v: What does 'expressly clear' mean?

g, iii: What would 'reasonable and proportionate' steps be?

Question 14

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

As we have set out throughout our response, we feel that the policy objectives discussed here, which we strongly support, could be achieved more effectively through a hybrid approach that requires the submission of documents alongside the provision of some supporting narrative or commentary. This would lead to a more effective assessment through evidence of how policies are being applied in practice alongside the provision of necessary provider context.

Question 15

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

No.

Part 2

Question 1a

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

Yes.

We welcome the shift to a more practical and transparent approach to assessing governance arrangements at the point of registration. The process for assessing E1 and E2 at application previously often led to lengthy discussions between the applicant and OfS, and to OfS eventually requesting many of the documents cited in the proposed condition anyway. The new E7 condition is more transparent in the documents that OfS will require to assess governance and offers greater clarity on the criteria OfS will use in determining whether a provider's governance is sufficient to meet initial and ongoing regulatory conditions.

We do have concerns that the shift to assessing documentation, away from a provider's assessment of their own governance, will increase the burden of registration for OfS and potentially slow down the registration process. We welcome the OfS's assurances that they can offer more support to providers ahead of application, and we encourage them to consider using the opportunity of reopening the registration process to identify areas where guidance for applicant providers could be improved further, in order to reduce the burden of reviewing the large volume of documentation proposed in this consultation.

We also have concerns that some of the areas for assessment remain subjective, and the OfS must continue to develop its understanding of different governance models across the diverse range of higher education providers who will be seeking registration. There is no current modelling for the 'appropriate size', 'expertise' or 'skills' of the governing body of a franchised provider, for example – a group soon to be required to register with the OfS. We have noted challenges since the OfS started registering providers in 2018, with OfS staff new to the registration process misunderstanding the governance models of unique providers such as those which are part of larger charities, or very small providers with few staff. We urge the OfS to review the training provided to its staff to better support them in making these new assessments. We also call on the OfS to conduct a review of governance assessments within 12 months of the process re-opening, and again when the new requirements for providers to register are implemented, including for franchised providers and those moving from the regulatory orbit of ESFA to that of OfS.

Question 1b

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

Yes.

We agree that the new condition E7 should replace E1 and E2 as initial conditions but are concerned that the proposed assessment will not assure the OfS that providers can meet E1 and E2 as ongoing conditions.

The consultation states that conditions E1 and E2 will remain in place for registered providers and for those providers who register under the initial condition E7, if it is introduced. The new condition E7 will not assess elements of E1 or E2, in particular E2(ii) which requires the provider to “have in place adequate and effective management and governance arrangements to: ... Deliver, in practice, the public interest governance principles that are applicable to it.” E7 requests only documentation related to governance processes, not practice.

The self-assessment document used to assess E1 and E2 required a provider to identify practice, specifically “how [governing] documents uphold the public interest governance principles,” against each principle. This allowed OfS to better understand the relevant context of different governance processes as well as the competency of the provider to deliver the required activity for the relevant public interest principle. While we agree that the self-assessment document is no longer fit for purpose, we are concerned that the assessment of E7 does not contain the necessary information for OfS to judge whether or how the governing documents provided work in practice. This could result in providers with highly contextual governance structures to be refused registration without the opportunity to offer the context needed to demonstrate how they work. It could equally result in providers without the necessary competencies or processes to be successfully registered on the basis of governance documents that are drafted with no intent of delivering on the public interest requirements. We strongly urge OfS to strengthen the contextual information they collect, both in written form and through greater scrutiny of the way processes in governing documents will be implemented. The risk to the HE sector is that governing documents become homogenous, which makes them ineffective across the diversity of higher education providers. Ensuring that there is a clear test for the delivery of the processes described in governing documents will deter providers from submitting processes that they feel might meet OfS’s documentary requirements, but that do not reflect their own reality.

Question 2a

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

No.

The OfS has made clear in its consultation that Condition E1: “The provider’s governing documents must uphold the public interest governance principles that are applicable to the provider,” will continue to apply to registered providers as an ongoing condition including those

registered under the new condition E7. In doing so the OfS will need to use E7 to evaluate how effective a provider's governing documents will be in upholding those public interest governance principles relevant to the provider, to be confident they will do so upon registration. The OfS must therefore include a direct reference to the public interest governance principles as they will form a vital part of the E7 assessment.

Question 2b

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

Yes.

IHE members, including those who had recently completed the OfS registration process and those yet to submit, agreed that a model which prioritises documents which demonstrate effective governance would be less burdensome and more transparent than the previous process of self-assessment.

There was concern however that governing documents are unique to each provider and therefore context becomes critical in ensuring governance is appropriate. The documents-only model proposed in the consultation restricts the provision of this important context at application, likely requiring it to be submitted further in the process. IHE members fear that the lack of opportunity to submit important context at application could delay registration at best and generate unnecessary refusals at worst.

IHE strongly recommends a number of amendments to the E7 proposal.

- Where OfS sets minimum standards for the clarity and consistency of documents, they ensure they provide further guidance on the types of information that should be evident within each the documents submitted aligned to the criteria for assessment and the business plan where governance changes may be proposed.
- OfS should not limit the scope of governing documents to the highest tiers of a provider's decision making as this is unnecessarily prescriptive and will not capture the decision-making bodies of many providers who are part of larger entities. In some cases, the legal entity may not be the highest level of governance for the organisation. Providers should be encouraged to identify where decision-making authority is exercised and submit multiple tiers of governance where appropriate, with supporting commentary.
- OfS should provide the opportunity for 'commentary' on governing documents, similar to how it encourages commentary in financial accounts, to allow providers to offer context for their governing documents where they feel this is needed. This will address potential ambiguity for OfS assessors and reduce the need for follow-up questions after application, improving efficiency in this early stage of the process.

We are also concerned that the proposed model and previous assessment of E1 and E2 do not address changes in a provider's governance. Most future registrants will either partner with a UK university, moving from franchise to validation, or seek Taught or New Degree Awarding

Powers. The current and proposed E7 guidance lacks provisions for identifying governance changes and clarity on which governing documents to submit. The OfS must recognise that providers' governance arrangements are likely to evolve during the course of registration and adjust their document requests accordingly.

Question 2c

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

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

Yes.

We welcome the proposed approach to limit the volume of documents as this will reduce burden for both the provider and OfS. It is important to ensure the registration process can become more efficient through these proposals. We also strongly support the other documents proposed in paragraph 27 of the E7 document, including a provider's Royal Charter or articles of association and in particular shareholder agreements which can represent the greatest departure from the governance modelling of traditional universities, and the most complex to understand.

IHE members have raised concerns that OfS's sole focus on the governing body may be placing undue pressure on Boards, especially where these Boards are largely unremunerated individuals who meet for limited periods of time over their tenure. Boards are supported by executive management, which for smaller providers are critical to ensuring the provider is able to meet the regulatory conditions. They strongly recommended including documents outlining executive management in this initial period of registration, and the interaction between the executive and the Board. Those registered recently all reported that this information was requested by OfS in the early stages of the process to demonstrate the effectiveness of the organisation and it should be included upfront to reduce delays.

IHE members agreed that a conflict of interests policy would be an important part of governing documents, but they noted that this is a challenging area. IHE members agree that more work needs to be done to understand the effectiveness of these policies, and the successful practice that can ensure good governance. IHE will be doing some work in the area of conflict of interest policies in the coming months and are happy to share outcomes with OfS to support better guidance for providers on the expectations of these policies and more clarity how OfS will judge a policy to be effective.

Question 2d

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

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

We agree that governing documents should be appropriate, clear and deliverable in practice and support OfS's efforts to improve the quality of documents submitted. We agree that good quality submissions will support a more efficient registration process.

IHE members have expressed some concern that the OfS is not clear on how its expectations for governing documents and processes might conflict with the expectations of the Charity Commission. Providers registering with OfS are not exempt charities, like those who transitioned from HEFCE to OfS under the previous regulatory regime. We would welcome the opportunity to review areas where IHE members feel there could be more clarity on how the expectations of both bodies can be met without conflict.

IHE members have noted elsewhere in this consultation that documents that do not meet these requirements will be considered 'incomplete' and incomplete applications will receive a ban of 18 months before re-registering. While they support high-quality applications to OfS in the interest of efficiency, the lack of clarity in some of these expectations is concerning given the potential consequences. In particular, IHE members have noted that OfS appears to have internal criteria for the expected resourcing that would make the documents 'deliverable in practice,' but that these criteria are not shared prior to registration. We strongly encourage the OfS to develop clear guidance on these requirements and publish the internal criteria they use to evaluate if the documents meet the threshold.

Finally, as mentioned previously we remain concerned that these judgements can be highly subjective and impacted by the training and experience of individuals responsible for evaluating applications. The OfS continues to lack an independent complaints process for those in the registration process. Moving to this level of evaluation of documentation it is even more important that providers have the ability to raise concerns that the process is not meeting their expectations, and to have these concerns considered independently.

Question 2e

Do you have any additional comments on this proposal?

No.

Question 3a

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

Yes.

IHE welcomes the inclusion of the business plan as an initial document in the registration requirements, as well as the flexibility proposed by OfS in paragraph 52. Many IHE members report being asked for a business plan or similar documents during their registration process and note how helpful it has been in supporting more efficient conversations with OfS. The business plan has been a vital tool for providers in demonstrating context alongside their self-assessment submissions under the previous regulatory requirements. It has also supported providers in the process of change to demonstrate their management of risk across their organisation, not just through the governing body. Business plans are especially vital for new providers, or those moving from professional training or skills into higher education models as they will not have the evidence to meet some regulatory requirements but can demonstrate risk management of that transition through the plan.

We remain concerned however that delays to the registration process have rendered business plans out of date well before the provider is registered. Plans often include increasing resource to meet OfS regulatory requirements or hiring staff to coincide with the start of recruitment for their first HE courses. They must then be re-written and re-submitted as OfS delays to registration mean even plans based on published timelines do not progress as projected. Business plans take considerable resource to develop, and high-quality plans can involve external consultancy especially for smaller providers. They need to be approved by governance committees, which again demonstrates good governance and adherence to a provider's governing documents. Delays to the registration process which necessitate the re-writing of business plans must be addressed and minimised. The OfS must also consider how to reduce burden in the submission and re-submission of business plans, through process or guidance, where it is unable to meet established timelines due to a lack of internal resourcing.

We welcome the specific reference to innovation in paragraph 49, and encourage the OfS to develop further guidance, for providers and for OfS registration staff, to support a better understanding of risk in innovative higher education models. We also welcome the proposals in another section of the consultation that suggest OfS will work more with providers before registration. IHE has long welcomed innovative higher education providers into our membership and have considerable experience in both the risk and reward of these offers for students and industry. We encourage OfS to work with us to explore how to better support providers with more common innovations before registration, especially as many of these providers will be required to register under the DfE's franchise proposals, or incentivised to register through the implementation of the lifelong learning entitlement as they deliver higher education through individual modules.

Question 3b

What is your view of the proposed requirements of the plan?

We welcome that OfS have included more comprehensive guidance on the business plan document(s) expected at registration. We know from the previous registration processes that this will be well received and will support higher quality submissions. In reviewing the proposed requirements of the plan, however, our experience suggests that it is unlikely that all these requirements will be met by a single document. We would welcome the opportunity to work with you and a pilot group of providers to develop a more comprehensive list of documents that will support OfS in making decisions without the need to request more information.

In consulting with providers in our Launchpad programme, we found that the reference to “professionally written” plans in paragraph 56 gave the misconception that providers need external professional consultancy in developing their plan, adding to the cost of registration. We recommend choosing wording that does not have such associations like “competently” or “proficiently”.

Question 3c

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

Yes.

IHE members did express some concerns with the five-year time period for both the business plan and financial forecasts. They felt that the period between three and five years was difficult to predict, especially with uncertainty on the timeline for OfS registration. To address this, we suggest OfS consider the level of detail they expect in the plan during year four and five to ensure that what is written is valuable to the provider and to OfS.

Members also suggested that plans require change based on many variables, including the timeframe for OfS registration. We recommend that OfS be clear in its guidance when providers can expect to be registered, and flexible in their approach to business plans when registration does not meet expectations. Given the lack of transparent information on the length of time registration takes for different providers, there may be incorrect evaluations of risk to their plan posed by timelines for registration and for commencing student recruitment post registrations. We encourage the OfS to work closely with sector partners such as SLC and government colleagues in UKVI and DfE to improve information on timelines for the benefits of registration such as access to student loans and the ability to apply for a student sponsor licence to ensure these are clear and easily understood. Example provider journeys would be welcome.

Question 3d

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

One of the suggestions from our members reflecting the various challenges to the registration process over the last five years, including the pause for the pandemic and the current pause, is that OfS accept two business plans, one that is five years from application, and a more speculative one on the anticipated plans five years from the point of registration, each with less detail required after the third year of planning. This should not be mandatory as not every provider will experience significant change after registration, but it should be openly welcomed in the OfS guidance should providers feel this better demonstrates how their plans might change based on the timeline for registration, and would be more efficient than submitting multiple documents for mitigating the risks posed by the timing for registration. For example, if registration is anticipated well before a re-validation is required, and the provider intends to apply for TDAPs, they may wish to drastically change their plan should they need to re-validate due to cost and creating a more predictable transition for students to their own awarding powers.

Members were clear however that if there is a further five-year business plan it should not necessitate a different set of financial projections but a financial narrative matching the timeline of the plan would be encouraged.

Question 3e

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

No.

We remain concerned that Proposal 4 represents a considerable increase in the burden of OfS registration, for both OfS and the provider. The management and scheduling of OfS's approach to B7 has been identified as a key source of delay for applications. We would need more clarity on who would conduct the assessments of 'knowledge and expertise', when in the process these would happen, and how they would be resourced by OfS given that this new process is not budgeted in the resource available before the pause in registration.

It is also unclear from the proposal what 'other factors' OfS would take into account to determine the provider's ability to deliver the business plan. It would be important to be more transparent about the criteria for this assessment.

Members who have had resource and capacity raised as part of their own registration process report a lack of consistency in OfS's approach. Where assessors have changed during the registration process, the new assessor consistently re-evaluates resource and capacity and often with a different approach than their predecessor. The length of time that registration takes means that demands from OfS to have resource available 'before registration' become increasingly unpredictable and providers end up recruiting staff well before they are needed to undertake their role. Members have turned to interim staff to meet the requirements for 'expertise', but this offers little assurance that staffing and resource will be available upon registration. A more efficient model is required to achieve appropriate burden.

IHE agrees that central to the assessment of a provider's ability to deliver its business plan in practice is a conversation with key individuals in the provider. However, given the realities of the

registration process we strongly suggest finding an approach that blends this with a more desk-based approach that produces evidence OfS can retain, removing the necessity of going over the same ground when assessors are changed. We also feel this proposal needs further thought to make clear when and how these conversations might occur, relevant to the registration timelines and a providers unique business plan. There is too much risk in simply accepting documentation as evidence of a provider's ability to deliver its business plan in practice, however there is equal risk in assessing this at the wrong time in the application process, rendering it either irrelevant or leading to an incorrect assessment and thus refusal.

Question 3f

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

Yes – but with caveats.

Student interest has been something discussed in the registration process previously, though not so explicitly in the registration guidance. In some cases, there have been tensions between providers and OfS where the student interest is significantly different than more traditional students, such as the cases with part-time only providers catering to commuting students, or providers funded primarily by employers, either through the apprenticeship levy or B2B arrangements. Other tensions occurred when new providers were asked to predict the 'student interest' of students they had not yet recruited. Some were easily predictable, but others were not such as demand for additional services like student welfare support or the nature of careers guidance required.

The broad definition cuts across the public interest principles as well as the B conditions. As such we feel that the question of student interest is best addressed in other processes, including through assessment of the B conditions which can better assess the ability of a provider to consider, respond and act in the best interests of the students they have, not those they anticipate having. The risks outlined in Annex D include risks relating to quality and standards, some risks relating to recruiting students from underrepresented groups and risks relating to reliance on validation partners for awarding qualifications, which should be addressed in a providers quality plan and processes, not necessarily in the business plan. OfS can also take a stronger role in reducing risk of validation partners choosing to discontinue awarding qualifications for reasons outside of quality processes.

We do support the assessment of commercial objectives proposed in paragraph 63, where they have the potential to conflict with the interests of students. This could include where resources allocated do not provide sufficiently for the needs of students from underrepresented groups as identified in Annex D 10(f). This should also include where there is an overreliance on funding from a low-cost programme to supplement financial losses on higher cost programmes.

We also repeat our concerns above that Annex D, a core part of this question, lists "other relevant matters" without any further clarification of what these might be.

Question 3g

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

Yes

We remain concerned however that the length of the registration process and timeline for assessing elements of the application will hinder efficient plans to ensure compliance with ongoing conditions. OfS must work to identify where in the registration timeline providers must be able to evidence their ability to meet ongoing conditions such as data submissions, electoral registration, or deliver on access and participation plans. It should not be common for this information to need to be submitted several times before registration is granted.

Question 3h

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

Yes.

Question 3i

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

IHE strongly recommends that business plans also include:

- A description of a provider's employer base, where employer funded courses are identified in the business plan.
- Under "Description of the provider's higher education competitors" OfS should also request an analysis of increased demand from students or employers" as this will be relevant to most new providers entering the higher education sector but facing some competition.
- A description of a providers current and planned academic partnerships including any anticipated changes. This is important for providing context to changing governance structures or quality provisions. OfS should expect a transition plan for any change in partnerships including a franchise moving to validation, and a provider applying for degree awarding powers following registration.
- Under "The provider's strategy for achieving its business objectives and targets" OfS should be clearer, either in the information required or the purpose, that providers should identify any additional regulatory processes they need to complete and the strategy for meeting the obligations of other regulatory requirements. For example, if a provider proposes to introduce new apprenticeships but the register for apprenticeships

is not open for new entries except in specific circumstances, their strategy to do this should be assessed.

Question 3j

Do you have any further comments about this proposal?

No.

Question 4a

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

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

Please give reasons for your answer.

Yes.

We agree that there is significant risk in moving to an evaluation of documents only (without a self-assessment submitted alongside) that can be mitigated by the assessment outlined in proposal four. The move to assessing documents only could drive providers to copy examples of documents accepted previously, or use AI or consultants to meet requirements with less understanding of how to implement the promises of these documents in practice. It is imperative that a test be conducted of not only the knowledge and expertise of key individuals to deliver the higher education provision they propose, but that there is a plan to implement the promises of documentation they submitted. A document-only model would pose an unacceptable risk to the reputation of UK higher education.

Critical to the successful evaluation of knowledge, expertise and process is timing. We strongly encourage OfS to engage with IHE and the wider sector in the development of the 'tests' identified in paragraph 75, to ensure that they capture the right individuals at the right time.

We also encourage OfS to be flexible in this testing, and to use ongoing conditions to make further assessments if needed. Using the examples in paragraph 74, of the use of external consultants and of "a single person trying to fill multiple key roles" OfS should agree a registration timetable with a provider, identifying where consultants will be replaced with key personnel, or training with a new governing body will be complete. Providers should be asked to identify this in business plans, perhaps as an annex that supports the journey through registration. OfS can then schedule appropriate interviews with key personnel hired to take duties from that 'single person' for example, as the application achieves milestones. It should be made clear in the guidance for the business plan and supporting documents that such a

timeline is required where the provider will not have all the expertise at the point of application in permanent staff.

Where there is a reliance on individuals on governing bodies to provide the necessary expertise, OfS should require a clear recruitment plan to replace individuals who may vacate such roles, especially where they are unremunerated. OfS should also not hesitate to use conditions of registration where providers are relying heavily on external expertise within their Board, without appropriate alternatives within their senior leadership. These models are very effective when risk is managed appropriately, especially for smaller providers on a growth trajectory. They should not be discouraged, but they do need to be assessed for risk.

We welcome OfS's assessment of burden within this proposal but remain concerned that OfS lacks the resource to manage this effectively. The proposals mirror the assessment of quality, which OfS has taken on from its DQB. This requires considerable resource from OfS, which has delayed assessments of the B conditions for providers in the registration process. It is also not as straightforward as the B condition assessment, and may require multiple interviews. OfS should consider carefully the efficiency of this proposal.

OfS should also consider more explicit flexibility in the key individuals identified in paragraph 79. There are models where the "chair of the governing body, accountable officer, and ... the person with overarching responsibility for financial management" are all the same person at the start of the registration process but might develop differently as they move towards registration. If OfS requires these to be different people, this should be clear in its requirements for governance. At the very least, OfS should ensure that there are multiple people required to be interviewed under proposal 4, and that this list evolves with the provider and where changes occur during registration there is resource to re-interview individuals to determine their knowledge, expertise, and capacity to deliver on the promises of the governing documents and business plan. IHE members expecting to apply in August 2025 have suggested that OfS consider adding the person with overarching responsibility for the delivery of the business plan, as they would hold significant expertise in this area.

Question 4b

Do you agree with the proposed knowledge and expertise requirement for each of the individuals that would be covered by this test?

Yes.

We welcome the extensive guidance the consultation proposes on the role of the Chair of the governing body and key individuals. This will be very helpful to providers in ensuring they have selected a Chair who can demonstrate the knowledge and expertise required.

We encourage OfS to be flexible in this requirement where it is clear in the governing documents that a Vice Chair fulfils the role described in paragraphs 94-99. It is common in some providers with governing documents rooted in professional bodies, larger charities with more responsibility than HE alone, or Royal Charters, to have Chairs who share these responsibilities with other individuals, who often also Chair sub-groups of the governing body.

Question 4c

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

Yes.

We strongly support the dual role of the interview process, to assess knowledge and expertise as well as reassure OfS that the documents submitted were credible. We do have concern that a duration of 30-60 minutes may not be sufficient for this purpose. We have noted above our concerns about the timing of these interviews, and the need to interview relevant people even if they had not been recruited at the initial stages of application. IHE is very familiar with the development of new providers and supporting providers developing towards HE regulation. We would be happy to feed into the development of more detailed operational information in future.

Question 4d

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

No.

Question 5a

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

Yes.

Question 5b

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

Yes.

Locating this responsibility with the provider is critical to maintaining the independence and autonomy that is fundamental to a higher education institution. At a practical level, it would be impossible for the regulator to pre-approve the appointment of every relevant individual without an unacceptable level of bureaucratic burden and damaging delays to the normal functioning of the provider.

Question 5c

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

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

Yes – with caveats.

While it is right that the OfS look at organisations that an individual was involved in when considering whether such an individual is a fit and proper person, the OfS should take care in applying the test of "significant managerial responsibility or influence" in its definition of "involvement". This is an area in which the OfS must tread carefully in order to avoid creating a 'blacklist' of individuals who could be effectively banned from working in the higher education sector simply due to past employment at a provider which experienced problems, even where the individual was not involved in any concerning practices or they did not have the competence or power to influence such practices. We are reassured, however, by paragraph 14 of Annex C that the OfS is alive to the sensitivity of this area and the need to consider each individual carefully on their own record. A generous consideration of mitigating information will be necessary to protect the rights and future career options of a large number of competent and well-intentioned professionals. Any effective banning of individuals from taking senior positions in the management or governance of an English higher education provider should broadly speaking be reserved for those individuals who had the competence, skills and experience necessary for the positions that they occupied but chose still to commit misconduct.

The OfS and provider should take particular care in considering the relevance to an individual's track record of their having been dismissed or asked to resign from a role at an organisation. A termination of employment can have many causes and is frequently a matter of controversy or dispute. Such complexities will be all the more difficult to untangle in the case of organisations operating in other jurisdictions, given the vastly different contexts of corporate law and employment rights around the world. Many countries do not have nearly as many protections in place against unfair dismissal, nor can the official reasons recorded for a dismissal always be relied upon as accurate.

Moreover, the visibility of such events to both the provider and the OfS will only ever be partial, given the variation in the level of disclosures required or realistically secured in relation to personal employment histories. This is most obviously the case where a Non-Disclosure Agreement has been signed, but will be true more widely. As such, there is a risk that any consideration of past dismissals is inconsistently applied and may have the perverse effect of discouraging disclosures and a relationship of transparency and trust between the provider and their staff which might otherwise be beneficial to both.

The OfS should be clear that its interest is focused on those reasons which are directly relevant for ensuring the protection for public funding and the protection of the interests of students, and be generous in its interpretation of mitigating circumstances. Even if such a role were desirable

for the OfS to undertake, it simply does not have the capacity, resources or jurisdictional reach to divine the ultimate truth in relation to historical employment disputes around the world.

Question 5d

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

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

Yes.

The OfS should consider adopting a more extended definition of 'recent', due to the long timelines that often apply in the management and governance of higher education, and in relation to the student lifecycle. We consider the reference in paragraph 131 to a matter which occurred 72 months ago as not being 'recent' to be misguided. While the availability of the evidence necessary to reach a clear conclusion may be limited, we are aware of significant examples of academic misconduct, fraud, and other unethical practices in the 10-year period between 2005 and 2015 in particular that due to the inadequate and inconsistent regulatory frameworks in force at the time did not always result in effective sanctions for the organisations and individuals concerned, let alone the criminal convictions which in a number of cases would have been warranted.

Irrespective of the specific regulations and sanctions that existed then, those individuals who were principally responsible for such practices demonstrated a poverty of character and judgement that should prohibit them from being considered a fit and proper person to take any role in the governance or senior management of English higher education today. Unfortunately many of the same individuals have been implicated in misconduct at multiple institutions through the years, and these examples should all be taken into consideration when applying the fit and proper person test. By all means give any individual who appears to be so implicated the opportunity to explain, to mitigate, even to provide clear evidence of personal change via an unambiguously positive and more recent track record. But leopards rarely change their spots, and the first duty of the regulator should be as far as possible to keep such predators away from their potential victims – not least amongst them the reputation of the English higher education sector.

Question 5e

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

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

Yes.

Question 5f

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

Yes.

Question 5g

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

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

Yes.

The OfS should, however, further develop its definition of "any individual who would have significant overarching responsibility for ensuring that the provider complies with the ongoing conditions of registration (if registered)" to be clear about the roles to which this is likely to apply. As it could theoretically include a significant number of individuals, it will be essential that such individuals are informed and aware that they fall within its scope. As with other roles, they must be given the opportunity to mitigate their own future association with the regulatory track record of the provider, should they become aware of any misconduct or potentially serious breaches of conditions of registration.

Question 6a

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

Yes.

As implied in our answer to question 5d, however, we consider the timeline indicated to be insufficient for the effective protection of public money and the reputation of the English higher education sector. While it is right that a provider that was found to have committed misconduct in relation to fraud or the inappropriate use of public funds within the last 60 months should be prevented from registering with the OfS, it does not follow that similar misconduct 62 or 70 months ago should be ignored. On the contrary, we recommend that serious incidents of misconduct which took place within the past 20 years should be considered as relevant to the assessment of a provider's track record. If the ownership, or the management and governance, of the provider is substantially the same at the point of application as it was when the misconduct took place, a provider should not normally be allowed to register. There could, however, be a sliding scale applied, and the OfS could consider representations from the

provider to mitigate any older misconduct findings and to provide evidence of a more positive recent track record.

The OfS should also consider adopting a broader track record test in relation to fraud that encompasses any findings of fraud in the discharging of sponsorship duties for student visas. The Home Office was in effect the first regulator of English higher education providers that were not publicly funded by HEFCE and as such it retains very extensive records and intelligence in relation to individuals who were found to have committed fraud within the immigration system, or through serious failings allowed such fraud to proliferate uninterrupted. Some such findings were even upheld in the high court and hence are a matter of public record. Such individuals should have no place in the English higher education sector today.

Question 6b

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

No.

Question 6c

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

Yes.

Conflicts of interest policies should be expected to extend beyond employees to include other individuals with significant influence on the provider, including significant shareholders, member of governing bodies and consultants.

Question 6d

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

Yes.

Question 6e

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

Yes.

As above, however, we recommend that a longer period than 60 months be taken into consideration when assessing a provider's track record, albeit with a sliding scale of relevance

in relation to the length of time and any changes to ownership, governance and management during that time.

Question 6f

Do you have any additional comments on this proposal?

No.

Question 7

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

We welcome the opportunity to comment on Annexes C to G in this consultation however we feel more engagement with the sector would be beneficial to support stronger guidance for providers prior to application. We have a number of suggestions we will include here but feel there is more to contribute as proposals are developed.

Resources: The definition of "capacity and resources" is unclear as it refers only to staff which might be considered only "capacity". In members experiences of registration OfS have queried several common resources to test business plans, ability to meet F conditions for data, and activity to meet the public interest principles. These include the development or delivery of student data systems, physical space for expansion of students or delivery of services such as libraries, online learning platforms and resources specific to subject specialisms such as studios, labs and clinic space. If resources beyond staff will be considered in OfS's judgement it would be helpful to make this clear in the definition.

Evaluation of change: The guidance is not clear on the information providers should submit when they are changing significantly as a result of the registration process for example from a franchise to a validated partnership or from a study abroad provider to an institution with NDAPs. It is unclear if providers should submit documents relating to what they are currently, to which they can evidence, or documents in prospect of what they will become. It is also unclear how OfS will judge the risk of change, or if they will look only at the risk related to the model of provider after registration, rather than the evidence presented by the provider in their current form.

Other factors: It is unclear from the proposed guidance what 'other factors' OfS would take into account to determine the provider's ability to deliver the business plan. It would be important to be more transparent about the criteria for this assessment.

Question 8

How clear and helpful is the guidance as drafted at Annexes C to G? If any elements of

the draft guidance are unclear or could be more helpful, please specify which elements and provide reasons.

See above.

Question 9

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

There is a strong risk that providers will develop more homogenous documents and policies in an effort to meet perceived OfS requirements, which are not effective within the providers individual context. While we know this risk is well-known to OfS we do have concerns that the resource allotted to addressing this is too limited to manage the risk. We encourage OfS to review the documentation received in the first year of re-opening registration to evaluate if the interview model (proposal 4) was sufficient to ensure that documents submitted are appropriate to the provider and not copies of the most common documents found across the higher education sector.

We remain very concerned that these OfS proposals will increase the burden on OfS of registration further delaying the process for providers. Even some delay when OfS re-opens the process in August will have a knock-on impact for franchise providers required to register in May 2026, and to do so within 18 months. Reviewing multiple documents for each provider, and conducting additional interviews is a significant increase in activity and it is important that the registration process has the resource it requires to be efficient and effective.

Question 10

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

We would welcome more clarity on the timeline and approach for proposal four, and in particular:

- Does OfS expect any additional cost associated with the interview process as is the case with the assessment of conditions B7/8?
- When would interviews be conducted in a timeline of the registration process?

Question 11

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

We addressed this question within our response to individual proposals.

Part 3

Question 1a

Do you agree or disagree with the proposal that the OfS should issue a decision under section 3(5) of HERA, which would establish the requirements for an application for OfS registration? Please give reasons for your answer.

Agree.

Publishing a list of documents and information required at and during the course of registration, as proposed in the changes to the C and E conditions of registration brings greater transparency for providers seeking to register. Many of the proposals represent a confirmation of the evolution of the registration process since it was first established in 2018. These documents were often requested by OfS to support the registration process. It is important that OfS requirements and guidance becomes more clear on the purpose and necessity of this information.

We have submitted comments on individual proposals where we feel OfS could improve the proposals and our agreement is linked to OfS considering these proposals and making amendments to Schedule 1 Part A as outlined. We would welcome further discussion on any amendment within our response should OfS be not minded to make the proposed changes.

Question 1b

Do you have any comments on the proposed section 3(5) Notice set out in Annex A of Part 3 of this consultation?

We have submitted comments on individual proposals where we feel OfS could improve the proposals and our agreement is linked to OfS considering these proposals and making amendments to Schedule 1 Part A as outlined. We would welcome further discussion on any amendment within our response should OfS be not minded to make the proposed changes.

Question 1c

Do you agree or disagree that the proposed pre-application support would be beneficial to a provider applying for OfS registration? Please explain why.

Agree.

There is no element of the proposed support that we disagree with, however we suggest some amendments to the support made available:

- Published case studies to clarify most common questions for registration and relevant to emerging issues such as franchise providers seeking registration, providers applying in current forms but seeking substantial changes when registration is granted such as NDAPs or an academic partnership through validation.

- Specific guidance for providers part of an identified new group to register. Examples could be franchise providers registering under the DfE proposals, or providers offering courses on the RQF moving to OfS when Advanced Learner Loans are discontinued.
- An FAQ on new elements to the registration process including the proposals here.
- Transparent information on previous providers timescales (aggregated) for registration and Degree Awarding Power applications (NDAP and TDAP first application) to support realistic business plans aligned to the registration process.

IHE have extensive experience supporting providers to register with OfS. We are more than happy to share our knowledge and work with OfS to develop engagement and support that would make significant impact.

We also encourage OfS to bring together roundtables of providers who have completed the OfS processes to support the review of further guidance and information.

Question 1d

Do you support any of the alternative options we have set out in Part 3, Annex C, Proposal 1, or do you have any other proposals? If so, please explain and provide reasons for your view.

We do not agree with either alternative option for support however do feel there are further alternatives OfS could have explored.

Question 2a

(i) Do you agree or disagree with the proposal to require a provider to submit additional scenario planning, commentary and mitigation plans as part of the OfS registration application? Please give reasons for your answer.

We agree that there are significant current and medium-term financial challenges in the sector, and it is important to make sure that provider's financial planning is robust, not least to protect students. Assessment of financial risk and development of mitigation plans should be part of internal processes and reporting.

We agree also that scenario planning, commentary and mitigation plans have the potential to support effective OfS decision making, and help them to identify risk or market dependencies. We have consistently supported the opportunity to provide further context within the registration submissions, but this must be relevant to individual providers' risk to be effective.

We do not however agree that the OfS assessment of sector risk should be applied to all providers uniformly, or with the model for scenario planning proposed in 2a. While some providers may be impacted by "the scale of the real financial risks that are occurring in the higher education sector" (Annex C, paragraph 4) there are many providers for whom the challenges of the existing sector are not at all reflective of their experience. The OfS's analysis and modelling of the financial sustainability of the regulated higher education sector in England, published in November 2024, is not reflective of the diversity of risk across providers currently paused, or planning to apply to

register after 1 August 2025. The risks identified do not uniformly apply across provision and this will result in scenario planning that does not reflect real risks and resource spent to no benefit to the registration process. We outline below several cases of providers in registration now, for which the modelling from November 2024 simply wouldn't be applicable:

- A provider registering to deliver only Apprenticeships and predominantly Degree Apprenticeships: Starts in degree-level apprenticeships (Level 6 and 7) have grown to 50,110 in 2023/24, from 46,800 in 2022/23. There is no statistical analysis of Degree Apprenticeships in OfS's 2024 publication.
- Specialist providers teaching only one subject showing growth in available statistics: Enrolments in Computing rose by 23% from 2021/22 to 2022/23.
- Providers teaching entirely online or through blended learning: Online student numbers continue to grow, UK students remain in modest growth with 2-7% growth per year since 2014/15. International students studying online UK Degrees is growing substantially, now making up 26% of UK TNE (2021/22).

These three case studies are reflective of the types of providers IHE are currently supporting to register with OfS. These are not atypical of those seeking registration and show ineffectiveness of standardised scenario planning which cannot predict the risks for the unique provision we expect to see in the registration process when it re-opens. Providers deserve to be judged on a fair and accurate assessment of their level of risk.

We understand the desire of OfS to standardise the scenarios but we do not agree with their assessment that "it is therefore appropriate for all higher education providers to be thinking about the impact [that reducing UK undergraduate entrants] could have and how they will remain financially sustainable if they have fewer new students than they had forecast or planned." Every provider should have financial planning that anticipates no growth and a realistic loss scenario.

(ii) Do you agree or disagree that the proposed financial scenario parameters for a provider already delivering higher education provide a realistic challenge to a provider's financial forecasts? Please give reasons for your answer.

No.

We agree with the scenario that providers should submit financial projections assuming zero growth in higher education students each year for the four years following a provider's OfS registration application submission. While we do view this as not entirely realistic, we understand the value of modelling such a scenario to allow providers to demonstrate their approach to mitigating risk related to low or no growth.

We do not agree with a standard scenario assuming 40 per cent fewer than forecast higher education students for the year following a provider's OfS registration application submission, followed by zero growth in student numbers and fee income over the subsequent three years. While this may be a realistic reflection of loss for the providers OfS has registered it does not reflect the providers we know plan to register from August 2025. The value of this scenario as a tool to test financial resilience in the providers we anticipate registering would be low at best.

As we outline below in 2a (iv) we would support a more flexible scenario model reflective of specific provider circumstances.

(iii) Do you agree or disagree that the proposed financial scenario parameters for a provider not yet delivering higher education provide a realistic challenge to a provider's financial forecasts? Please give reasons for your answer.

No.

OfS's assessment of student growth post-registration for this group of providers neglects a very important aspect of their circumstances that we have seen supporting providers through the registration process: in most cases, OfS did not register the provider within the timescales they advertised and providers were often registered mid-academic year, preventing them from recruiting full student cohorts.

OfS's suggestion that a scenario for providers with no higher education students would recruit at zero growth and then 80 per cent fewer students across all levels is not realistic. IHE members feel that an 80 per cent reduction in forecast student numbers, even across programmes they were already running (assuming 'all levels' could also mean FE and professional training programmes running alongside HE) would be entirely predictable, and therefore assessed as part of the business plan as unrealistic forecasts. With requirements to include competitors and an understanding of the market within the business plan, OfS should have enough evidence to judge an 80 per cent reduction in forecast as highly improbable at the point of registration. This scenario is also designed to "test if a provider is financially sustainable without rapid expansion" but it assumes that forecasts are always predicting rapid expansion, which is not only not the case, but something OfS would consider a risk in any business plan proposal.

In the case of providers not yet delivering higher education we strongly urge OfS to model more realistic scenarios, reflective of the type of providers registering. It would be useful to model several possible scenarios and ask providers to apply the scenario most applicable to them depending on the delivery posed in their business plan.

(iv) Do you support any of the alternative options we have set out in Part 3, Annex C, Proposal 2a of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

We strongly support the proposed alternative option of "flexible" scenario planning with the suggestion that where two scenarios are proposed, only one is flexible. We also support requirements for new providers that scenarios must show either no growth or a reasonable reduction in forecast student enrolments, realistic to the projections for their specific offer. Just as OfS will judge the business plan as credible based on the evidence presented within it, so too can OfS judge scenarios as a reasonable consideration of recruitment challenges within the provider's context.

Question 2b

(i) Do you agree or disagree with the proposal to require a provider, during the

registration process, to submit updated financial and student number tables and commentary? Please give reasons for your answer.

Agree.

IHE members have often been asked for updated financial and student number information during the lengthy registration process. This proposal makes this request more transparent from the outset and promotes an ongoing assessment by the provider of financial and student projections throughout the registration period. In cases of growth, revised information can support the assessment of business plans and financial sustainability in a positive way.

We would strongly urge OfS to consider the impact that lengthy registration processes have on the financial sustainability of providers. This time period can have a significant impact on an institution, its financial position, and its students – delaying access to student funding, and in some cases to external investment. The OfS should be looking to make the registration process more efficient and timely, and then the information submitted would not be out of date so quickly, reducing burden for OfS and the provider. OfS could also reduce burden by providing more accurate updates on the status of their application as it moves through the application phases. This will allow providers to anticipate if and when this financial information will be required and allocate the resource required.

(ii) Do you support any of the alternative options we have outlined in Part 3, Annex C, Proposal 2b, or do you have any other proposals? If so, please explain and provide reasons for your view.

No.

Question 2c

(i) Do you agree or disagree with the proposal to require a provider, during the registration process, to submit audited financial statements for any financial years that are completed after the provider's initial submission of its registration application, and before the OfS makes a final decision about the provider's registration? Please give reasons for your answer.

IHE members have often been asked for audited accounts during the lengthy registration process when they become available. These have also been requested as soon as a provider is registered, for the years they are available. This proposal makes this request more transparent from the outset, and we agree with OfS that the certainty this proposal creates is preferable to the ad hoc model.

We strongly encourage OfS to better align this request with the financial reporting requirements of other bodies such as the Charity Commission or other jurisdictions where the provider may be required to report the same information. The reporting of this information should not put a provider's other regulatory compliance at risk, when OfS are not yet responsible for regulating their activity, and the provider receives no benefit to registration. Providers should submit this information as it is a low burden alternative to more comprehensive financial information and will be required upon registration regardless. The requirements for submission should ensure the burden of submitting it is minimal.

(ii) Do you support any of the alternative options we have outlined in Part 3, Annex C, Proposal 2c, or do you have any other proposals? If so, please explain and provide reasons for your view.

Yes.

We urge OfS to consider a longer deadline for submitting audited financial statements where a provider can evidence that a delay would ensure it can continue to apply with regulatory conditions from other regulators or that submitting audited statements to the OfS deadline would pose a risk to their compliance with the regulatory requirements of other bodies.

Question 2d

(i) Do you agree or disagree with the proposal to require a provider, as part of its registration application, to submit a diagram showing its corporate structure and ownership as described in this proposal? Please provide reasons for your view.

We strongly support this proposal. Diagrams of a provider's ownership and governance have also been requested frequently in past registrations and we welcome the greater transparency this proposal will offer on the value of these documents. These diagrams provide OfS a clearer view of who controls and owns the provider, who the parent company is and any associated companies, allowing for a more reliable and efficient assessment of risk. As we have said elsewhere, we support proposals that allow for greater institutional context as they enable OfS assessors to develop their understanding of the different corporate models and funding that exist in an increasingly diverse sector.

(ii) Do you support the alternative option outlined in Part 3, Annex C, Proposal 2d of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

No.

Question 3a

Do you agree or disagree with the proposal to introduce a requirement for a provider to submit information about historical or current investigations? Please give reasons for your answer.

Agree.

All complex regulatory systems ultimately succeed or fail on their ability to generate a relationship of trust between the regulator and the regulated. The regulator should do all it can to set providers up to succeed by setting clear and appropriate expectations and offering timely and constructive advice on how to meet them. Just as regulated providers need this advice in order to fulfil their role, the regulator needs an open and honest disclosure of relevant information from provider in order to fulfil its own. It is therefore invaluable to build transparency and accountability into the system and the regulatory relationship from the outset.

Some clarity and definitions around the different types of investigation and investigatory body that are relevant would be helpful, however, in order for applicant providers to be able to make the appropriate disclosures. For example, it will not immediately be clear to all applicants what is meant by professional body, regulatory body, funding body, statutory body, enforcement body, and public body – nor whether these are exclusive categories, or overlapping ones, and where an investigatory body could meet more than one definition, how exactly the disclosure form should be completed.

It is not clear which if any of the categories of body would include QAA or the British Accreditation Council (BAC), but both bodies have conducted countless and highly relevant investigations into the quality of provision and the effectiveness of management and governance within English higher education institutions, and both will have extensive records going back decades which are not in the public domain but should be considered as relevant for disclosure in some cases.

As indicated in our answers to Part 2 of the consultation, we consider that in many cases an investigation which took place longer ago than 60 months before the date of application may still be highly relevant to a provider's track record and the likelihood that they can meet the conditions of registration and will continue to do so. A sliding scale could be applied so that only certain of the most relevant investigations, and perhaps only those that generated certain outcomes and sanctions, must be disclosed – and only if the individuals in charge of the provider at the time of the investigation still remain in position today.

Question 3b

Do you think there may be any unintended consequences of adopting this proposal? If so, please explain your answer.

Unsure.

Question 3c

Do you support any of the alternative options we have set out in Part 3, Annex C, Proposal 3 of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

We would potentially support narrower disclosure requirements in the case of older historical investigations, should the OfS accept our recommendation that certain disclosures should be extended beyond the 60-month period proposed. The higher education sector has long followed a cyclical model of review, with investigations initiated only after reviews which occur on a four or five year cycle. The last comprehensive review of those providers not funded by HEFCE was conducted in 2014, over ten years ago. Limiting disclosure to a 60-month period will be unlikely to catch any of the most significant investigations of non-publicly funded providers to date.

Question 4a

Do you agree or disagree with the proposal to require a provider to report to the OfS specified matters that may affect a provider's application to register? Please give reasons for your answer.

Yes.

The requirement to report specified matters that may affect a provider's application to register will help to improve the efficiency of the registration process. OfS can update their perception of risk based on more accurate information, and this will reduce the delays we have seen at the end of the registration process, when relevant information can surface through other means including through the representation process. We welcome the departure from the established reportable events process, which has the potential to increase burden with limited impact on the efficiency of the registration process.

This is another requirement which we have seen evident in the registration process to date and we agree that the proposal improves the clarity and transparency of the request for information.

Question 4b

We would welcome views on the list of specified matters set out in Table 6. Are there other specified matters you think should be included, or matters listed that should be excluded? Please give reasons for your answer.

We support all the matters proposed in Table 6.

We would also suggest that the following are also included:

- Any change of campus or premises where teaching is delivered, or establishment of a new campus or teaching site. This information is needed to support the provider's business plan and projections for growth and can demonstrate how a provider prioritises the student interest.
- A notification to the provider that its accrediting body is to withdraw from its arrangement. This reflects the changing nature of HE providers, with more working with accrediting bodies in professional training. This information would also be relevant to assessment of the business plan and to assessment of the C conditions.

Question 4c

Do you agree or disagree with the proposed reporting deadline of 28 days for all the specific matters proposed to be reported to the OfS? Please give reasons for your answer.

Yes.

We agree that a provider must report these matters to OfS within 28 days but would welcome greater guidance for providers on when OfS considers an 'event' to have occurred. This model

reflects OfS's position on reportable events, which still causes confusion amongst registered providers.

We also encourage OfS to define 'event' as the notification of the matter to the provider seeking registration when applying this rule to matters which involve a counterparty, partner or external body. Providers should not be held responsible for any delays between the decision by a counterparty or partner, and them notifying the provider of that decision.

Question 4d

Do you think there may be any unintended consequences of adopting this proposal? If so, please explain your answer.

Yes.

There may be circumstances where a provider, knowingly or unknowingly, misses a decision-making point for OfS in the registration process by waiting 28 days to report a relevant matter. This could result in the application progressing and then being paused while OfS considers the matter increasing the burden of the registration for both OfS and the provider and creating inefficiencies in the system. More consequential is if OfS schedules and charges for a quality assessment and then subsequently a relevant matter is disclosed that prevents that from going ahead or results in the provider exiting the registration process. We recommend OfS also include a notification to the provider of decision-making points and encourage providers to report relevant matters before these points to create a more efficient registration process for all.

Question 4e

Do you support any of the alternative approaches we have outlined in Part 3, Annex C, Proposal 4 of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

No.

Question 5a

Do you agree or disagree with the proposal to apply a resubmission restriction period to a provider with an application that was previously refused? Please give reasons for your answer.

We agree in principle that there should be a resubmission restriction period for refused applications. We recognise and support the OfS's intention to ensure that applications to register are complete, of high quality, and where there are weaknesses that providers sufficiently address these. We also recognise the need for the OfS to consider its own resource and develop an approach that will be efficient and make best use of this. As we have noted in our responses to Parts 1 and 2 of this consultation, we expect the proposed changes will increase the burden of regulation for the OfS and this remains something that we are deeply concerned about.

We do not agree with a uniform resubmission restriction period. We feel that the best way to strengthen student protection and promote student choice, in line with the OfS's strategic goals, would be to implement a differentiated approach to resubmission restrictions that takes into account the reason for the refused application and the work that the provider needs to do before they resubmit. As we outline in more detail below, we feel that a restriction of 18 months could have significant negative impacts on providers and their students. We feel that in some cases this is disproportionate, and the negative impacts of this could outweigh any benefits for the OfS and the sector. We feel a flexible approach whereby providers with few incomplete aspects to their application, only small changes to make or significant mitigating circumstances could have a shorter resubmission restriction than those with more numerous documents deemed missing or poor quality. These providers would need an extended period of time to make the necessary structural and operational changes that would improve their future applications.

Question 5b

Is there any other impact of this proposal or potential unintended consequences that we have not considered? If yes, please explain and provide reasons for your view.

There is a risk that an 18-month restriction period will create unnecessary risk of closure, including courses, campuses, or the business, for providers who are otherwise evidencing broad compliance with initial conditions of registration. This will have a negative impact on both prospective but also in some cases current students, who will not receive the protections or funding that come with their institution achieving registration.

A large number of the providers who will be seeking registration with the OfS in the next 12-18 months will be in franchise partnerships, should the recent proposals from DfE be implemented. These institutions attract high proportions of students from underrepresented groups. These proposals could therefore have a negative impact on equality of opportunity, and student choice for these students in particular.

These franchise providers would be disproportionality impacted by an 18-month resubmission restriction as they are the only providers already subject to a window for successful application, with the significant consequence of losing access to student loans should they fail to be registered within the timeframe. We believe providers subject to the DfE requirement to register when they reach 300 students should only be subject to resubmission restrictions in the most serious of cases or where OfS believes that the provider is unlikely to meet the registration requirements within the window already set by DfE for registration.

We have also highlighted above the potential financial impact for providers, who would face delay in being able to access student funding, risk external investment, and the loss of resource invested in preparing the application. In a context of increased financial challenge, this could risk the sustainability of some institutions in the sector, which would again have a negative impact on student choice.

Question 5c

Do you agree or disagree with the proposal that the time frame for the resubmission restriction period is 18 months? Please explain and provide a reason for your view.

We disagree with a fixed resubmission restriction of 18 months for all providers. We recognise that, in some cases, this period of time is necessary to enable a provider to address the issues in their application for example those that require significant organisational or operational changes. We agree that there will be cases where a provider who has not demonstrated evidence of compliance with the initial conditions will need to undertake governance or quality improvements, or secure additional funding, and that in these cases 18 months might be required before an application can be considered again.

However, we do not feel that this is necessary in all cases. As the proposal recognises, there will be instances for example where an application is refused because it is incomplete, and the missing information could be provided in a much shorter time period. In these cases, an 18-month restriction is disproportionate and would have a series of negative impacts for the provider, and current and prospective students, that are not justified by the reason for the refusal.

An 18-month restriction would create a barrier to providers entering registration, and through this accessing student funding. This could extend over more than one recruitment cycle, impacting more than one cohort of prospective students who may have been intending to apply to an institution, and thereby restricting student choice. This could also be to the detriment of current students, who in some modular provision may have begun a programme on a self-funded basis but with the hope of accessing student finance.

An extended restriction period would also have a greater negative impact on provider financial sustainability. A delay in accessing registration could mean that providers are not able to access planned investment or grow provision in a way that access to student funding would enable. This will overall have a negative impact on student choice across the sector, contrary to the aim stated in the proposals whereby "prospective students can choose from a diverse range of courses and providers".

We also feel OfS should consider lengthier resubmission restrictions where providers are found to have deliberately omitted information that would increase their risk, or mis-led OfS in the information they submitted.

Question 5d

Do you support any of the alternative options we have outlined in Part 3, Annex C, Proposal 5 of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

As we have outlined in our responses above, we would support differentiation in the resubmission restriction periods, whereby the time period would be determined by the weight of incomplete application requirements, or grounds for the refused registration.

We think the clearest and most efficient way to do this would be for the OfS to determine, at the point of application refusal, the appropriate time period for their resubmission restriction. We agree that some guidance on criteria for different restriction periods could be useful (for example, an incomplete application where it is clear information could have been submitted versus one not meeting one or more conditions of registration) but that the OfS could use discretion to determine what time period would be most appropriate based on their assessment of the application and the provider context.

We agree that the option to introduce flexibility whereby a provider can apply for early submission would be more resource-intensive for the OfS and could lead to inconsistency and applications being reassessed with different levels of change made.

We have proposed above an alternative option for providers delivering under franchise partnerships required to register by DfE, already subject to a restrictive window of application that should serve as an incentive to submit a high-quality application and adhere to OfS requests for missing or additional documentation.

Question 5e

We are interested in respondents' views on a 12-month resubmission restriction. Do you think this is a better option than the proposed 18-month resubmission restriction? Please explain and provide reasons for your view.

We feel that in many cases a 12-month restriction period would be more proportionate than 18-months and would avoid unnecessarily penalising providers who do not need such an extended period to make the changes required. This would reduce the negative impacts on providers and students that we have outlined in response to the question above. It also more helpfully aligns with annual planning and operational cycles.

However, we reiterate again that our preferred option is differentiation in the approach. We agree that there will be cases where significant organisational and operational change will be required, and in these cases 18 months is more appropriate. We feel that this time frame could be reserved for such cases, with 6 or 12 months being applied in cases where the changes required are not so significant.

Question 6

Do you have any comments about the impact the proposals in this consultation may have on the timeline for a registration assessment outlined in Part 3 of this consultation?

We broadly support OfS efforts to reduce the burden of the initial application period through the proposals to create greater transparency and clarity on what they require to make an initial assessment. However, we are concerned that the consequences that these proposals do not reflect that this is a largely untested method for registration. We encourage OfS to reject applications that do not meet basic requirements for submission, however the proposals in Part 1 and Part 2 go beyond 'missing' documents. Applications can be considered incomplete where documents are not 'high quality', 'comprehensive', 'professionally written'. We urge OfS to

consider a pilot group of providers from those intending to apply in August 2025, willing to work closely with OfS to establish clear and effective guidance that raises the standards of applications, through their own participation in this process.

We support OfS in looking for efficiencies in the system and strongly support clear deadlines for the provision of information. We are not convinced that the existing representations process is the appropriate vehicle to provide an opportunity for providers to submit missing information. Further discussion with those most impacted by the changes, including IHE as their representative body, would be needed to adapt this process to be more efficient at collecting exactly the information needed with minimal burden.

Question 7

Do you foresee any unintended consequences resulting from the proposals in Part 3 of this consultation? If so, please indicate what you think these are and the reasons for your view.

Blacklisting: There is a possibility that requirements to disclose information on investigations involving 'relevant individuals' could result in a sector 'blacklisting' of individuals involved in investigations but not found to be responsible for wrongdoing. Providers may fear hiring individuals who had previously worked at institutions investigated by the bodies listed in proposal 3, that they may find OfS considers that individual may not be fit and proper, or pose a higher risk that the provider will not comply with the OfS's regulatory conditions.

Unfair detriment to franchise providers: We note the concern above that franchise providers are the only providers applying with a window set by DfE to have successfully registered with OfS. Proposal 5 has the potential to have a disproportionately negative impact on franchise providers subject to the OfS requirement.

Question 8

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

Disclosures: More clarity and definitions around the different types of investigation and investigatory bodies that are relevant would be helpful in order for applicant providers to be able to make the appropriate disclosures.

Question 9

In your view, are there ways in which the objectives discussed in Part 3 of this consultation could be delivered more efficiently or effectively than proposed here?

We have included suggestions for more efficient or effective proposals under the headings above.

Question 10

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

No.

Contact IHE

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