



Consumer protection during the pandemic

<b>Outcome requested:</b>	Audit and Risk Committee is asked to <b>consider</b> the report from a review of compliance with consumer law in 2020–21, in the context of the pandemic, which was commissioned by the Office for Students (OfS).
<b>Executive Summary:</b>	<p>In January 2021, the OfS commissioned all universities to review their communications, teaching and assessment activities for students in 2020–21 in the context of consumer law, to consider any obligations arising from the review, and to report to the governing body and, if compliance with the ongoing conditions of registration was found to be at higher risk, the OfS.</p> <p>This paper summarises the approach taken and the findings from the review. It gives assurance that the University has complied with its general obligations under consumer law and recommends that no further action needs to be taken, other than some internal improvements for the future.</p>
<b>Alignment with QMUL Strategy</b>	Aligns with the strategic objective to provide an excellent student experience.
<b>Internal/External regulatory/statutory reference points:</b>	<ul style="list-style-type: none"> <li>• Ongoing conditions of registration with the OfS</li> <li>• CMA Guidance for Higher Education Providers</li> </ul>
<b>Strategic Risks:</b>	<ul style="list-style-type: none"> <li>• Student experience</li> <li>• Compliance with the ongoing conditions of registration with the OfS</li> <li>• Legal compliance</li> </ul>
<b>Equality Impact Assessment:</b>	Not required
<b>Subject to Prior and Onward Consideration by:</b>	By SET prior to presentation to the Audit and Risk Committee and Council
<b>Confidential paper under FOIA/DPA:</b>	Unrestricted (suitable for general distribution to relevant groups)
<b>Timing:</b>	The review and this paper have been commissioned by the OfS.
<b>Author(s) :</b>	Robert Cashman, Executive Officer
<b>Date:</b>	05 March 2021
<b>SET Sponsor(s):</b>	Jonathan Morgan, Chief Governance Officer and University Secretary

## **Review of Compliance with Consumer Law During the Pandemic February 2021**

### **Background**

1. On 14 January 2021, the Office for Students (OfS) wrote to each university (Annex A) to commission a review in the first half of the spring semester of compliance with consumer law during the pandemic as a basis for giving assurance to its governing body on compliance with ongoing condition of registration C1. This condition requires the University 'to demonstrate that, in developing and implementing its policies, procedures and terms and conditions, it has given due regard to relevant guidance about how to comply with consumer protection law'.
2. Prior to this, the Minister of State for Universities wrote to the OfS (Annex B) asking that universities maintain the quality, quantity, and accessibility of their provision during the pandemic and inform students about their options for refunds or other forms of redress where it has not been possible to provide what was promised.
3. The OfS published guidance on 10 June 2020 (Annex C) which sets out an expectation on universities to provide clarity for new and returning students on how teaching and assessment will be delivered in 2020–21, the circumstances in which changes might be necessary, and any adjustments to teaching and assessment that might take place as a result. The guidance also states that the OfS does not intend to take regulatory action unless it becomes aware of 'practices that appear to us to constitute a significant disregard for the Competition and Markets Authority (CMA) guidance (and a significant breach of consumer protection law which is not as a result of actions that were necessary to implement public health advice may be evidence of that), or where we consider that reasonable efforts have not been made to protect the interests of students'.
4. The letter sent by the OfS on 14 January 2021 requires the University:
  - a) to re-test whether it was sufficiently clear with new and continuing students about how teaching and assessment would be delivered in 2020–21, the circumstances in which changes might be made, and what those changes might entail;
  - b) to assess whether students received, during the autumn term, the teaching and assessment they were promised and might reasonably have expected to receive based on the information provided;
  - c) to assess whether current plans for the spring and summer terms would ensure that students received the teaching and assessment they were promised and might reasonably expect to receive based on the information provided;
  - d) actively to consider its obligations under consumer law for refunds or other forms of redress arising from the review.
5. There is no expectation on the University to report proactively to the OfS on the outcome of the review unless it identifies compliance risks that amount to a reportable event (Annex D). This is because the duty to ensure compliance with ongoing condition of registration C1 lies with the Council. In addition, were the OfS to receive notifications from students or others that raise relevant issues, it is likely that it would want to discuss these and see documents relating to the review.

### **Method**

6. A task and finish group, chaired by the Chief Governance Officer and University Secretary, was established by the Senior Executive Team to undertake the review and

met on four occasions during February 2021. The terms of reference and membership of the task and finish group, which included three elected officers from the Students' Union, are provided as Annex E.

7. In clarifying the scope of the review, the task and finish group considered whether to focus its attention on undergraduate applicants and students, or to include postgraduates as well. The OfS letter of 14 January makes no reference to this, whereas the CMA is clear that its guidance to universities applies to undergraduates only (Annex F). Given the short time scale set by the OfS for the review, the inclusion of postgraduates as well as undergraduates would have necessitated a much lighter-touch review than was implied by the OfS letter. For these reasons, the task and finish group concluded that the review should consider only undergraduate applicants and students at this time.
8. The task and finish group gathered communications sent to students and applicants by schools, institutes and the University centrally between March 2020 and January 2021, as well as information on teaching and assessment delivery and student engagement during the autumn and spring terms in 2020–21. In addition, announcements from Government and Ministers relating to education settings specifically, and to the wider national situation, were considered as providing an important context which would influence and affect the information the University could reasonably provide and how it would be received by students.
9. In order to identify whether any disciplines should be prioritised for review and to evaluate the effectiveness of feedback and complaints mechanisms (which is a relevant consideration under consumer law) the task and finish group also gathered existing summaries of student feedback and information on formal and informal complaints. This included feedback collected through Student-Staff Liaison Committees in schools and institutes and from additional surveys conducted by the University and Students' Union which specifically sought feedback on blended learning.
10. The information gathered was shared with all the members of the task and finish group. The Deans for Education led on the review for schools and institutes in their respective faculties and the Director of Marketing and Communications and the Deputy Registrar (Admissions) led on the review for central communications to students and applicants. Other staff and student members of the task and finish group collectively reviewed all areas. Meetings of the task and finish group were used to report and compare findings, to identify emerging areas of focus and to calibrate the findings.
11. The task and finish group concluded that it was not necessary, or indeed possible in the time available, to review every single communication. The purpose of the review was to assess the overall level of compliance with consumer law and the effectiveness of systems and arrangements that underpin this, rather than to identify issues potentially affecting individual students that would be more appropriately raised and addressed through the complaints procedure. The task and finish group therefore adopted a targeted approach, guided by information on student feedback and complaints as well as awareness of key milestones in relation to government guidance and student and applicant engagement with the University. Enough documentation was reviewed in each school and institute to provide a reasoned answer to the questions asked by the OfS. To put this in context, at the time of the review only one formal student complaint in 2020–21 had highlighted a potential breach of consumer law requiring the University to consider its obligations for refunds or other forms of redress.

12. The task and finish group noted that, in some areas, provision would be, as in any year, affected by factors which were not fully within the University's control. For example, in the School of Medicine and Dentistry, the University is reliant on the partner NHS Trusts to provide the full range of clinical experiences. This was a particularly relevant consideration in the circumstances of the pandemic.

### **Conclusions on communications**

13. At the outset of the pandemic, the University introduced regular, central communications to all students on its response to local and national developments. These were shared with leaders in schools, institutes, faculties and the central University for input ahead of being sent. A timeline of central messages in the context of key external developments is provided in Annex G. Communication about teaching and assessment in 2020–21 commenced in May 2020. This described a core offering of online seminars, lectures and assessment, with supplementary in-person activities offered on campus (which students were encouraged to join if they were able) so long as this was permitted under government guidance. In the event of government restrictions being tightened, the core offering of teaching and assessment would remain in place to enable students to complete their studies. Central communications to applicants were based on the same messages.
14. A process was also introduced early on whereby schools and institutes built on the central messages to provide discipline-specific detail to students and applicants while maintaining consistency with the core messaging. This was especially important in disciplines such as medicine, dentistry, engineering and law, where there are additional requirements from professional, statutory and regulatory bodies that require consideration and clarification. The process was supported by the Deans for Education in the faculties, who worked closely with Directors for Education in schools and institutes throughout the planning for 2020–21 to verify that the University's agreed approaches were implemented. Across the three faculties, sign-off processes were put in place for school and institute communications, as well as regular meetings at faculty level to calibrate the approach.
15. Based on a detailed review of central communications to applicants and students, the task and finish group concluded that these provided appropriate clarity at a high level about how teaching and assessment would be delivered in 2020–21, the circumstances in which changes might be made, and what those changes might entail. The approach set out by the University in May 2020 has held true during successive periods of lockdown. The task and finish group also concluded that central communications were sufficiently regular and that communications to applicants and students were consistent with each other.
16. Based on a more risk-based review, the task and finish group concluded that the process to trigger and sign-off on school and institute communications was generally effective in ensuring that communications were sufficiently regular and aligned with central messaging. This conclusion is supported by the following specific findings.
  - a) Feedback from some students indicated that they would have liked school and institute communications prior to September 2020 to be more specific about the in-person activities being planned on campus. For example, students sometimes had different expectations of what was meant by terms such as 'blended learning', 'face-to-face' and 'practical subject'. The task and finish group concluded that the communications were as specific as they reasonably could be given the uncertain picture nationally. It also noted that the responsiveness of schools and institutes to student feedback played an important role in refining in-person activities and meeting student expectations once teaching and assessment got under way.

- b) The review found that, in isolated cases, school and institute communications initially stated that all teaching would be delivered online, in contrast with the central messaging. These were highlighted by students and addressed by the relevant faculty, with new school and institute communications sent quickly to update the position (see also paragraph 19(b) below).
- c) As the year progressed, the government made rapid decisions to tighten restrictions. Central communications responding to such developments were generally sent within 24 hours, but it took longer for school and institutes to work out the detailed implications for individual programmes and to communicate these to students. The task and finish group concluded that communications were issued reasonably quickly and found no instances where school and institute communications were issued too late for students to be able to respond. However, the task and finish group also recognised that this was a source of understandable anxiety for some students.
- d) The review of communications in the School of Medicine and Dentistry found some communications sent directly by the NHS Trusts to students that were not aligned to the communications sent by the School. In each case, the School issued further communications to clarify the position for its students.

### **Conclusions on teaching and assessment in the autumn term**

- 17. During the summer of 2020, schools and institutes were required to review their programmes to ensure that these could be adapted to effective blended delivery. In some instances, modules were changed or withdrawn, and this was communicated in advance to existing students and applicants. The development of high-quality online teaching and assessment was prioritised, as the University had communicated that this would be the core mode of teaching and assessment. Schools and institutes were also required to develop suitable in-person teaching activities which were Covid-secure, engaging, and educationally relevant. The need to maintain social distancing was a significant constraint in terms of what could be offered.
- 18. There were three broad levels of in-person teaching activity planned at the start of 2020–21: core activities in a limited number of subjects where professional, statutory and regulatory body requirements apply; optional activities linked to the programme or to individual modules; and enhancement activities designed to support students' broader engagement. As such, and in line with the central messaging, for most students the in-person activities were supplementary to the core online provision. In some areas, the take-up of these activities amongst students was very limited.
- 19. The task and finish group concluded that the core online teaching and assessment, and the in-person teaching, offered during the autumn term was consistent with the communications sent to applicants and students by schools, institutes and the University centrally. This conclusion is supported by the following specific findings.
  - a) Student feedback indicates that the core online teaching and assessment was well-received and in line with what the University said would be offered. Where issues were raised, these generally related to students' access to study space and devices, technical issues with the platforms used, or the approaches taken by staff, which were addressed at the appropriate level. The in-person activities were therefore prioritised for review.
  - b) In isolated cases where in-person activities were not initially communicated to students (see paragraph 16(b) above), it was not always possible to offer new in-person activities immediately. The activities were sometimes developed over a period of weeks, by which time government restrictions were being re-tightened.

- c) Across the Faculty of Science and Engineering, students had the opportunity to participate in four hours of in-person activity each week at the start of the autumn term. There was some appropriate variance between schools in terms of how these opportunities were configured and made available.
- d) The diversity of disciplines within the Faculty of Humanities and Social Sciences resulted in a wider range of approaches to in-person activities. The task and finish group considers this to be appropriate. In certain schools, students raised concerns over the small amount of in-person activity being offered, as well as reports of activities being cancelled. The task and finish group investigated these specific matters and found that, while in some instances communications could have been made clearer (and subsequently were made clearer in response to student feedback), overall, the communications and arrangements for teaching and assessment were consistent with the central messaging.
- e) Significant changes were made to course timetables in the School of Medicine and Dentistry, where there are significant requirements from regulatory bodies, to enable all students to balance blended learning within the government restrictions. The implications for NHS Trusts of a second wave of the pandemic resulted in limits being imposed on the type and number of in-person activities that could be offered.

### **Conclusions on teaching and assessment in the spring term**

- 20. Plans were made over the course of the autumn term to offer further in-person activities in the spring, the design of which was to be informed by student feedback on the activities that were offered previously. In the Faculty of Science and Engineering, students were told that opportunities to work in laboratories would be offered if possible. With the announcement of a third national lockdown in January 2021, however, many of these plans had to be postponed or abandoned. Formal assessment in relation to the autumn term was delivered online in the first weeks of January 2021 as originally planned.
- 21. Compared to the government guidance in 2020, the guidance for January and February 2021 presents a more complex scenario with different implications for students depending on the discipline they are studying. The guidance issued in January permitted in-person activities to continue in medicine and dentistry. This posed a logistical challenge, in that many clinical resources and personnel were necessarily prioritised for the public health crisis caused by the pandemic. The School of Medicine and Dentistry therefore had to work with NHS Trusts and students to put alternative opportunities in place, such as evening clinics for dentistry students. It took time for this to be worked through, during which the School remained in regular communication with students, although this was understandably a source of anxiety for some students. Meanwhile, online provision of core teaching and assessment continued in the other disciplines in line with the initial messaging to students. The task and finish group found that schools and institutes did not in all cases supplement the University's central communication with further information on the implications of the January 2021 lockdown as was expected, but concluded that this was not material.
- 22. In February 2021 the government lifted restrictions on in-person teaching in further practical subjects with effect from 8 March. Planning is underway to deliver more in-person teaching activities in four schools in the Faculty of Science and Engineering and three schools in the Faculty of Humanities and Social Sciences. There is a faculty sign-off process for the activities and communications in each school. This process was still under way when the task and finish group was concluding its review.

## **Conclusions on student feedback and complaints mechanisms**

23. The task and finish group concluded that responsiveness to student feedback and complaints has played, and continues to play, an important and effective role in refining teaching and assessment activities and meeting student expectations. This conclusion is supported by the following specific findings.
- a) The University prioritised regular Student-Staff Liaison Committee meetings in schools and institutes to provide frequent opportunities to gather and respond to student feedback on teaching and assessment. Some schools and institutes also offered ‘town hall’ meetings to give all students an opportunity to ask questions and raise issues with the leadership team.
  - b) Many of the central communications invited students to respond if they had questions or concerns. The response was limited, suggesting that local arrangements in schools and institutes for issues to be raised and resolved are working effectively.
  - c) Themes raised through student feedback related to ‘no detriment’ policies, which have been picked up in collaboration with the Students’ Union, and access to laboratories in practical subjects, which becomes possible under government guidance after 8 March. The summaries of formal and informal student feedback and complaints considered by the panel otherwise revealed no particular patterns.

## **Summary of conclusions and recommendations**

24. In summary, the task and finish group concluded that communications from schools, institutes and the central University to applicants and students about teaching and assessment in 2020–21 were clear and regular. Communications were also consistent for the most part and any inconsistencies were addressed appropriately. The University’s promise to students comprised a core offering of online seminars, lectures and assessment with supplementary in-person activities for those able to join on campus when permitted under government guidance. In the event of government restrictions being tightened, the core offering of teaching and assessment would remain in place to enable students to complete their studies. The task and finish group concluded that the University has remained true to its promise as the year progressed and government restrictions were flexed. The core provision of online teaching and assessment has been well received by students, and responsiveness to student feedback and complaints has played an important and effective role in refining in-person teaching activities in particular to match student expectations.
25. On this basis, the task and finish group is able to provide assurance that overall:
- a) the University was sufficiently clear with new and continuing students about how teaching and assessment would be delivered in 2020-21, the circumstances in which changes might be made, and what those changes might entail;
  - b) students received, during the autumn term, the teaching and assessment they were promised and might reasonably have expected to receive based on the information provided;
  - c) current plans for the spring and summer terms would ensure that students received the teaching and assessment they were promised and might reasonably expect to receive based on the information provided.
26. As a result of its review, the task and finish group has not identified any issues that require the consideration of refunds or other forms of redress under consumer law, or compliance risks that amount to a reportable event under the OfS guidance.

27. The task and finish group has also made the following recommendations, which are being taken forward within the University in the context of continuous improvement.
- The use of terms that in practice have been interpreted in different ways by students, such as 'blended learning', 'face-to-face' and 'practical subject', should be avoided or more clearly defined in a consistent way across the University.
  - Communications should distinguish more clearly between core teaching and supplementary education activities.
  - The University should consider how information might be cascaded to students more quickly and placed more in the context of they have been told previously.
  - Given the central importance of student feedback, ways of promoting further engagement amongst students with feedback mechanisms should be considered.





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14 January 2021

Dear Professor Bailey

## **Regulation during the current phase of the Coronavirus (COVID-19) pandemic**

I am writing to give you a short update on the actions the Office for Students (OfS) is taking in response to the disruption caused by the coronavirus (COVID-19) pandemic and, in particular, the lockdown imposed by government last week.

I am also setting out actions we are asking you to take in connection with your continued compliance with our existing regulatory requirements.

In addition, please see a letter from the universities minister to the Office for Students in Annex A, dated 13 January 2021, which sets out the government's expectations. In particular, the minister has asked universities and colleges to maintain the quality, quantity and accessibility of their provision and to inform students about their options for refunds or other forms of redress where it has not been possible to provide what was promised. The minister has also thanked those providers reporting their COVID-19 testing to the OfS and reiterated the importance of this reporting.

We recognise and are grateful for the efforts you and your staff continue to make to ensure students are able to continue to study and complete their courses successfully in these exceptionally challenging times.

We are also aware that an increasing number of universities and colleges are putting in place arrangements to support students not able to access their accommodation this term due to the national lockdown. If you have not already done so, we would also encourage you to consider how you might support your students by engaging with their private accommodation providers.

## **Action we are now asking you to take**

### **1. Consumer protection**

We are asking you to undertake a review during the first half of the spring term of your compliance with consumer law and provide assurance to your governing body of ongoing compliance with ongoing condition C1 (guidance on consumer protection law). This condition requires a provider to demonstrate that, in developing and implementing its policies, procedures and terms and conditions, it has given due regard to relevant guidance about how to comply with consumer protection law.

We set out our expectation in our guidance for providers about student and consumer protection (published on 10 June 2020)<sup>1</sup> that all providers must be clear for new and returning students about how teaching and assessment would be delivered in 2020-21, and the circumstances in which changes might be necessary. We have heard from some students that they were not clear about what had been promised, or that what was promised has not been delivered in practice. We are now therefore asking you to:

- a. Re-test whether you were sufficiently clear with new and continuing students about how teaching and assessment would be delivered in 2020-21, the circumstances in which changes might be made, and what those changes might entail.
- b. Assess whether students received, during the autumn term, the teaching and assessment they were promised and might reasonably have expected to receive based on the information provided.
- c. Assess whether your current plans for the spring and summer terms would ensure that students received the teaching and assessment they were promised and might reasonably expect to receive based on the information provided.

If you conclude that new or returning students were not provided with sufficiently clear information about how teaching and assessment would be delivered in 2020-21, or that teaching and assessment were not delivered as promised, we expect you actively to consider your obligations under consumer law for refunds or other forms of redress.

If the outcome of your review identifies potential compliance risks with condition C1, we would expect you to inform us of the risks identified and whether or not you are taking remedial action. We are not otherwise expecting you to proactively report to us on the outcome of your review. However, if we receive notifications from your students or others that raise relevant issues, we are likely to want to discuss these with you and this would include asking to see documents relating to your review.

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<sup>1</sup> See [www.officeforstudents.org.uk/publications/guidance-for-providers-about-student-and-consumer-protection-during-the-pandemic/](http://www.officeforstudents.org.uk/publications/guidance-for-providers-about-student-and-consumer-protection-during-the-pandemic/).

## **2. Communication with students**

You will already have communicated with your students about any changes to teaching and assessment that will be necessary as a result of the current lockdown. As you continue to respond and adapt to guidance about the return of students to campus during and following the national lockdown, we would expect you to:

- a. Inform students of any further changes to teaching and assessment arrangements, such that these are broadly equivalent to those previously offered to students within the context of requirements of public health advice.
- b. Inform students about their entitlement to seek refunds or other forms of redress – such as the opportunity to repeat parts of their course that you are unable to deliver this year – if they have not received the teaching and assessment promised.
- c. Provide students with clear information, advice and guidance about the implications of the changes and the options available to them. This must include clear signposting of the route to complain or seek redress.

As we indicated in our previous correspondence, it will be important to consider how your approaches to the current situation affect all students and, in particular, those who might be most vulnerable to disruption. This includes students who are suffering from coronavirus and who need to self-isolate, international students, and students unable or less able to access remote learning for whatever reason, together with care leavers, those estranged from their families, and students with disabilities.

### **Our general regulatory approach during the pandemic**

We have previously written to you to set out our expectations on the quality and standards of courses (3 April 2020)<sup>2</sup> and consumer protection (10 June 2020).<sup>3</sup> Our guidance is relevant to both undergraduate and postgraduate students. We intend to update and reissue these guidance documents to ensure they continue to be appropriate during the current lockdown. We do not expect substantially to change our position that we are unlikely to take regulatory action where a provider has acted in response to public health advice and where reasonable efforts have been made to protect the interests of students.

To assist you in the meantime, you may find it helpful to know that we expect to make the following limited changes to our guidance on quality and standards:

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<sup>2</sup> See [www.officeforstudents.org.uk/publications/guidance-for-providers-about-quality-and-standards-during-coronavirus-pandemic/](http://www.officeforstudents.org.uk/publications/guidance-for-providers-about-quality-and-standards-during-coronavirus-pandemic/).

<sup>3</sup> See [www.officeforstudents.org.uk/publications/guidance-for-providers-about-student-and-consumer-protection-during-the-pandemic/](http://www.officeforstudents.org.uk/publications/guidance-for-providers-about-student-and-consumer-protection-during-the-pandemic/).

- a. Updated expectations for the current phase of the pandemic in relation to appropriate measures for degree awarding bodies to take when considering mitigating or exceptional circumstances:
  - i. You should ensure that standards remain secure.
  - ii. You should continue to consider appropriate 'safety nets' for individual students affected by the pandemic and recognise its impact, for example, through the implementation of your mitigating circumstances policies. With such safety nets in place, you may determine that it is no longer necessary to implement the type of 'no detriment' policies put in place by some providers in 2019-20 to mitigate the early disruption caused by the pandemic on students.
  - iii. You should consult appropriately at an early stage with students about your assessment and awarding plans and should consider in particular the needs of different students, including those with characteristics protected under the Equality Act 2010.
  - iv. You should ensure that students are informed of the approach you intend to take as early as possible, including where they can seek further advice if they have questions about how the approach will apply to them.
- b. Minor changes to our existing reportable events requirements to update references to academic years and continue the requirement to report to us where you are not able to ensure that a group of students can graduate as planned this academic year.

More generally, our reporting requirements remain those set out in our letter dated 30 July 2020<sup>4</sup> and we are maintaining this reduced set of reporting requirements through the current lockdown.<sup>5</sup> This means that we continue to require you to submit reportable events relating to liquidity and banking covenants.

We will continue to respond to notifications from students and others where concerns are raised about the approach taken by providers. We are actively engaging with students' unions to enable them to understand how our notifications process works so they can raise appropriate concerns with us. As with individual student complaints, we are clear that such engagement should not replace discussion between individual students' unions and their providers.

In response to the pressures providers are currently under, we have extended the deadline for our current quality and standards consultation until 19 January 2021 and are keeping the position under review for other consultations with deadlines that fall further into the year.

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<sup>4</sup> See [www.officeforstudents.org.uk/publications/update-on-the-office-for-students-approach-to-regulation-and-information-about-deadlines-for-data-returns/](http://www.officeforstudents.org.uk/publications/update-on-the-office-for-students-approach-to-regulation-and-information-about-deadlines-for-data-returns/).

<sup>5</sup> Full details of our approach to regulation during this period are set out at: [www.officeforstudents.org.uk/advice-and-guidance/coronavirus/provider-guide-to-coronavirus/regulatory-requirements/](http://www.officeforstudents.org.uk/advice-and-guidance/coronavirus/provider-guide-to-coronavirus/regulatory-requirements/).

We are aware that the government's announcement that A-level and other examinations will not take place as planned in 2021 is likely to have implications for admission to higher education for those students planning to start courses in 2021-22. We will continue to monitor the position, but meantime our time-limited condition of registration Z3, that includes requirements in relation to some offer-making practices, remains in place.

### **Our approach to engagement with providers**

We set out last year (4 November 2020)<sup>6</sup> the approach we are now taking to engagement with individual providers. This has allowed us to engage positively with providers to understand and address issues that have arisen over the past 10 months, particularly in relation to concerns about financial sustainability and quality. We are grateful for the constructive way in which providers have approached these discussions with us.

We will continue to engage in this way with providers, particularly where we received notifications or other information that raises concerns about quality and standards or consumer protection matters.

Our team remains available to discuss any regulatory matters with you and can be reached at [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk) or on 0117 931 7305.

Yours sincerely



Susan Lapworth  
Director of Regulation

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<sup>6</sup> See [www.officeforstudents.org.uk/publications/letter-to-accountable-officers-coronavirus-covid-19-new-national-restrictions-for-england/](http://www.officeforstudents.org.uk/publications/letter-to-accountable-officers-coronavirus-covid-19-new-national-restrictions-for-england/).

## Annex A: Letter from Minister for Universities, 13 January 2021



**Michelle Donelan MP**  
Minister of State for Universities

Sanctuary Buildings 20 Great Smith Street Westminster London SW1P 3BT  
tel: 0370 000 2288 [www.education.gov.uk/help/contactus](http://www.education.gov.uk/help/contactus)

13<sup>th</sup> January 2021

Dear Sir Michael,

I would like to thank the Office for Students for its continued hard work in response to the evolving Covid-19 pandemic. Your work is crucial for supporting students and will continue to be critical in the months ahead. I am writing to you now following my letters to providers and students on 30 December 2020, and the subsequent announcement by the Prime Minister on Monday 4 January. I am aware that you intend to communicate with providers following these developments, and I wanted to write to you in advance of that. This is not intended as guidance under the Higher Education and Research Act 2017 but is intended to set out the government's position in support of your planned activity in this area.

This government's priority is to support the wellbeing of students and staff throughout HE and to enable students to complete their courses and secure excellent outcomes. We are especially grateful to those institutions reporting their Covid-19 testing and case numbers and I would like to emphasise the importance of this. The Government has been very clear that Higher Education providers are expected to maintain quality and academic standards, and the quantity of tuition should not drop. Providers should seek to ensure all students, regardless of their background, can access their studies remotely. You have indicated that you will reiterate to providers their obligation to have regard to relevant guidance about consumer protection law and will ask them to review whether students have received the teaching and assessment they were promised. I would strongly encourage and support that.

Universities and colleges have risen to the challenges of the pandemic, producing interactive, high quality and innovative remote learning. This is more important than ever with the vast majority of students studying solely online. I look forward to receiving in February your review of digital teaching and learning in higher education. I know you are monitoring and assessing quality in providers and I would like you to continue to do so - and to a greater extent during this period when the majority of courses are 100% online.

Nonetheless, this has been a very difficult year for students, and understandably, many are publicly questioning whether they should be entitled to both tuition fee and accommodation cost refunds. I therefore also ask you to continue to encourage groups of

students to contact you through your notifications process if they have concerns about on the quality of tuition, and to ensure providers are aware of that process. I urge you to reiterate to the sector that students should make a complaint to their institutions if they have concerns about the quality of course delivery and that they can take their case to the Office for the Independent Adjudicator if they remain unsatisfied with their providers' response. University complaints processes should remain open and accessible at this time.

We are currently looking at what more we can do to support students and we strongly encourage providers and accommodation providers to review their accommodation policies to ensure they are fair, transparent and have the best interests of students at heart. As you know, we recently announced up to £20 million to help students most in need of support in these exceptional circumstances, for example those struggling to cover accommodation costs as a result of the pandemic, in addition to an existing £256 million universities can use to help those in financial hardship. We value your support in ensuring this money is focused on the students who most need it. It is important to be clear to providers that they should make students aware of the processes in place to support them if they have concerns about their accommodation costs or face particular financial hardship.

Finally, I would like to reiterate my thanks to the OfS for its continued hard work regulating the higher education sector and supporting students during these challenging times, and in particular the flexible approach you have taken to regulation. I appreciate your efforts to ensure a high-quality experience for all students, delivering excellent student outcomes and value for money.

Yours sincerely,

A handwritten signature in black ink, reading "Michelle Donelan". The signature is written in a cursive style with a long, sweeping underline.

**Michelle Donelan MP**  
**Minister of State for Universities**



# **Guidance for providers about student and consumer protection during the coronavirus (COVID-19) pandemic**

**Reference** OfS 2020.29

**Enquiries to** [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk)

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# Guidance for providers about student and consumer protection during the coronavirus (COVID-19) pandemic

## Summary

1. This document provides guidance for registered providers about how the Office for Students (OfS) will approach the regulation of student protection during the period of disruption resulting from the coronavirus (COVID-19) pandemic. It is temporary guidance which supplements the information provided in the OfS's guidance relating to quality and standards<sup>1</sup> and will be in place until the OfS's normal regulatory requirements are re-introduced.
2. The pandemic is causing immense disruption to students' experience of higher education and has created significant challenges for providers. Providers have had to make adjustments to their normal arrangements for teaching, learning and assessment to respond to the disruption and to implement government public health advice in order to protect the health and safety of staff, students and the public. They have made enormous efforts to do this. However, even if students have been supported to continue their studies, and quality has been maintained, their experience of higher education and the delivery of their course will have been, in the majority of cases, significantly different from their experience before the pandemic.
3. It is likely that adjustments will need to continue into the next academic year and therefore the information that applicants for courses starting in 2020-21 received before the pandemic and which has informed their decisions about what and where to study is now likely to be subject to significant change.
4. Notwithstanding the significant uncertainty regarding the impact of coronavirus, providers will need to ensure that prospective students have information that is clear and timely (including any information about changes to the courses for which they have applied). Prospective students will need to understand what a provider is committing to deliver in the current circumstances and in different scenarios, how this will be achieved, and the changes that might need to be made in response to changing public health advice, so that they are able to make informed choices. Existing students also need clear information about any adjustments to their courses and assessment that may take place in the next academic year.
5. Providers need to continue to ensure that their terms and conditions are fair and transparent, and students must continue to have access to complaints processes which are accessible, clear and fair. It is our expectation that complaints processes should be operated flexibly and in a way that recognises the significant disruption that students have faced.
6. It is important that all providers consider how their approaches to the current situation will affect all students, and in particular those who might be most vulnerable to disruption. This includes students suffering from coronavirus or who need to self-isolate, international students, and students unable or less able to access and effectively participate in remote learning for whatever reason, together with care leavers, those estranged from their families, and students with disabilities.

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<sup>1</sup> Available at [www.officeforstudents.org.uk/publications/guidance-for-providers-about-quality-and-standards-during-coronavirus-pandemic/](http://www.officeforstudents.org.uk/publications/guidance-for-providers-about-quality-and-standards-during-coronavirus-pandemic/).

7. We will continue to encourage students and other third parties to notify us of any concerns about the information they have received, and about the changes made by a provider to its teaching and assessment arrangements. We will also be interested in the number and patterns of complaints that are made to the Office of the Independent Adjudicator for Higher Education (the OIA).
8. During the exceptional circumstances caused by the pandemic, we do not intend to take regulatory action unless we become aware of practices that appear to us to constitute a significant disregard for the Competition and Markets Authority (CMA) guidance (and a significant breach of consumer protection law which is not as a result of actions that were necessary to implement public health advice may be evidence of that), or where we consider that reasonable efforts have not been made to protect the interests of students. We will, as a matter of course, take into account the impact of the pandemic on a provider's ability to satisfy conditions of registration during this period
9. Whether or not the OfS takes regulatory action in a particular case, students may complain to the OIA<sup>2</sup> or seek redress by taking legal action for breach of contract, or under consumer protection law. Bodies such as the CMA, Advertising Standards Authority and local authority trading standards departments may also intervene where a provider does not comply with consumer protection law.<sup>3</sup> Providers will need to continue to consider their own broader legal obligations as is normally the case.
10. The approach we are taking during the pandemic does not reflect the approach we would normally take to compliance with our regulatory framework. For example, in more normal times we would be likely to have regulatory concerns about providers not delivering courses as advertised. This reflects the unprecedented nature of the pandemic and the impact it has had on all sectors of society and the economy.
11. Providers are able to contact the OfS at [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk) if they have any questions about this guidance.

## Introduction

12. All registered providers are subject to ongoing conditions of registration relating to student protection – these are collectively referred to as ‘the C conditions’ and are as follows:

**Condition C1: Guidance on consumer protection law.** The provider must demonstrate that in developing and implementing its policies, procedures and terms and conditions it has given due regard to relevant guidance about how to comply with consumer protection law.

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<sup>2</sup> In this guidance, where we have made reference to complaints being made to the OIA, we are assuming for simplicity that the student has followed the necessary procedure (such as first making their complaint to their provider), and that they are eligible to complain to the OIA. More information on eligibility and process for complaining to the OIA is set out on its website at <https://www.oiahe.org.uk/>.

<sup>3</sup> This guidance does not prevent action being brought for any alleged breach of consumer protection law and should not be read as a complete guide on consumer protection law or as legal advice.

**Condition C2: Student complaints scheme.** The provider must:

- i. Cooperate with the requirements of the student complaints scheme run by the Office of the Independent Adjudicator for Higher Education, including the subscription requirements.
- ii. Make students aware of their ability to use the scheme.

**Condition C3: Student protection plan.** The provider must:

- i. Have in force and publish a student protection plan which has been approved by the OfS as appropriate for its assessment of the regulatory risk presented by the provider and for the risk to continuation of study of all of its students.
- ii. Take all reasonable steps to implement the provisions of the plan if the events set out in the plan take place.
- iii. Inform the OfS of events, except for the closure of an individual course, that require the implementation of the provisions of the plan.

13. Further information about these conditions can be found in the OfS's regulatory framework.<sup>4</sup>

14. This document contains guidance about how the OfS will approach regulation of the C conditions during the coronavirus pandemic, and specifically focuses on:

- Provision of information to current students and applicants
- Contractual terms and conditions
- Complaints
- Student protection plans

15. It is designed to provide guidance to providers in relation to students who began their course in or before the 2019-20 academic year (current students), as well as applicants who intend to begin a course in 2020-21 (prospective students).

## **Consumer protection law**

16. This guidance focuses on the OfS's approach to the regulation of providers in relation to their conditions of registration. We recognise that the issues that providers are having to consider in relation to consumer protection law are complex and varied, likely to span several years, affect individual students in different ways and have wider implications for both the student experience and a provider's financial viability and sustainability.

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<sup>4</sup> See [www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/](http://www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/).

17. It is important to note, however, that consumer protection law continues to apply during this period of disruption.<sup>5</sup> Consumer protection law applies to the relationship between providers and applicants for their courses (prospective students) and current students. Students pay a significant amount for their course and, although the ‘purchase’ of higher education is not a straightforward transaction and students have their own obligations that will affect their experience, their rights as consumers are important not only in protecting students but also in maintaining confidence in the integrity of the higher education sector.
18. Providers will need to ensure that their contractual terms, their behaviour in seeking to rely on any contractual terms, and their behaviour in negotiating, and advertising potential courses, is compatible with legislation applying to consumer protection, unfair contract terms and unfair trading practices.<sup>6</sup>
19. This guidance is intended to describe the OfS’s approach to its regulatory role and does not prevent students exploring alternative routes available to them for any alleged breach of consumer protection law. The OfS does not make judgements about whether consumer law may have been breached for any purposes beyond the conditions of registration and other regulatory requirements – only a court can decide whether a breach of the law has occurred for wider purposes, including whether any remedies for consumers apply.

## **The OfS’s regulatory approach to student and consumer protection**

20. The OfS’s regulatory framework is designed to deliver the OfS’s regulatory objectives: we are seeking to deliver significant improvements in access and participation for particular groups of students and a high-quality higher education experience and good outcomes for all students. The primary regulatory tools we use to do this are access and participation plans, and the baseline conditions of registration for quality and standards (the B conditions). We use the Teaching Excellence and Student Outcomes Framework (TEF) to incentivise excellence and improvement beyond the regulatory baseline.
21. The C conditions are necessary to underpin the delivery of the regulatory objectives. This means that the student protection mechanisms are primarily designed to work effectively in support of our objectives, rather than as ends in and of themselves. In other words, they protect students when, for example, the requirements of the B conditions are not being delivered in practice.
22. The C conditions are generally expressed as a minimum baseline that all providers are required to meet, but the OfS does not prescribe how a provider should do so. This reflects the OfS’s approach as a principles-based, rather than rules-based, regulator as it recognises that specifying particular approaches to be followed risks ‘tick-box’ compliance on the part of providers and would stifle innovation and diversity of approaches.

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<sup>5</sup> See [www.gov.uk/government/news/covid-19-sales-and-pricing-practices-during-coronavirus-outbreak](https://www.gov.uk/government/news/covid-19-sales-and-pricing-practices-during-coronavirus-outbreak).

<sup>6</sup> None of the examples in this document should be interpreted as preventing students from exploring other avenues of enforcement available to them, for example through the OIA, remedies under the Consumer Rights Act 2015, potential litigation, and any other enforcement action that may be taken by bodies that regulate consumer protection. This guidance does not prevent action being brought for any alleged breach of consumer protection law and should not be read as a complete guide on consumer protection law or as legal advice.

23. For example, this means that a provider is required to have regard to guidance on how to comply with consumer protection law, but the OfS does not normally prescribe how the provider should demonstrate such compliance. Judgements about whether condition C1 continues to be satisfied are based on a provider's behaviour and evidence that it is operating in a way that demonstrates that it has due regard to guidance by delivering it in practice and as a result is complying with the law – for example by providing accurate information to prospective students. Similarly, in respect of condition C3, a provider is required to have in place an appropriate student protection plan, but the OfS will not normally prescribe the detailed approach the provider should take to student protection nor the content of its plan.
24. When assessing providers' behaviour in relation to compliance with the C conditions, the OfS expects them to protect the interests of their students by providing clear and timely information to prospective and current students, ensuring that terms and conditions are fair and transparent, and that complaints processes are accessible and fair.
25. As set out in our guidance on quality and standards<sup>7</sup> during the pandemic, providers should make all reasonable efforts to provide alternative teaching and support for students that is broadly equivalent to the provider's usual arrangements. We also expect providers to ensure that they follow the principles set out in their student protection plans in relation to ensuring continuation of study for students, even where their plans do not specifically refer to pandemic-related risks.
26. Providers have already adapted their arrangements for the remainder of the 2019-20 academic year and will be planning for any adjustments that may be necessary for 2020-21. As set out above, we expect only to take regulatory action where we consider that there has been a significant disregard for CMA guidance (and a significant breach of consumer protection law which is not a result of public health advice may be evidence of that), or reasonable efforts have not been made to protect the interests of students. We will, as a matter of course, take into account the impact of the pandemic on a provider's ability to satisfy conditions of registration.
27. During this period, we are using four primary mechanisms to enable us to identify regulatory concerns about student and consumer protection:
- We require a provider to report to us when it intends or expects to cease teaching some or all of its courses to one or more groups of students, and we are likely to seek further information as a result of such a report. Further information about our reduced reporting requirements is available on our website.<sup>8</sup>
  - We will continue to encourage students and other third parties to notify us of any concerns about the arrangements put in place by an individual provider. Such

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<sup>7</sup> Available at [www.officeforstudents.org.uk/publications/guidance-for-providers-about-quality-and-standards-during-coronavirus-pandemic/](http://www.officeforstudents.org.uk/publications/guidance-for-providers-about-quality-and-standards-during-coronavirus-pandemic/).

<sup>8</sup> See [www.officeforstudents.org.uk/publications/regulatory-requirements-during-the-coronavirus-covid-19-pandemic/](http://www.officeforstudents.org.uk/publications/regulatory-requirements-during-the-coronavirus-covid-19-pandemic/).

notifications will be particularly important to help us identify any providers that may not have made reasonable efforts to protect the interests of their students.

- We will use our engagement with providers to understand their approaches to teaching and assessment during the pandemic, ensure they understand our guidance and expectations and to follow up any notifications that cause concern.
- As part of our normal regulatory approach we consider the number and pattern of complaints to the OIA and we will continue to use this information to inform our assessments after the pandemic and so will be able to take into account issues raised by a provider's students and the OIA's response to these.

28. In this context it is important that all providers consider how their approaches to the current situation will affect all students, and in particular those who might be most vulnerable to disruption. This includes students suffering from coronavirus or who need to self-isolate, international students, and students unable or less able to access or effectively engage in remote learning for whatever reason, together with care leavers, those estranged from their families, and students with disabilities.
29. Providers should engage with student unions or other student representative groups in order to understand the concerns of students collectively as well as considering concerns raised by individual students.
30. It is also important that all providers consider the needs of prospective students planning to start courses in 2020-21. It is not clear when the progress of the pandemic might allow for the delivery of courses to return to the format originally intended and advertised. In order for providers to satisfy our regulatory requirements, applicants will need to understand what a provider is committing to deliver, how it intends to achieve this and what plans are in place to manage possible changes should these be required in response to the pandemic and changing public health advice. Prospective students should be able to confirm their choice of a course and a provider with confidence on the basis of such information.

## **Condition C1: Guidance on consumer protection law**

31. All registered providers are subject to ongoing condition of registration C1:

### **Condition C1: Guidance on consumer protection law.**

The provider must demonstrate that in developing and implementing its policies, procedures and terms and conditions it has given due regard to relevant guidance about how to comply with consumer protection law.

32. The regulatory framework says that 'relevant guidance' for these purposes is the Competition and Markets Authority's (CMA's) publication 'UK higher education providers: advice on

consumer protection law<sup>9</sup> (CMA guidance). The CMA guidance sets out three areas which are particularly relevant to ensure compliance with consumer protection law. These areas are:

- a. **Provision of information to students at different stage of their engagement with a provider:** We expect providers to give prospective students clear and timely information about their course. We also expect providers to let prospective and current students know about any planned and possible changes and to keep them well informed as circumstances change.
- b. **Terms and conditions:** Terms and conditions must continue to be fair and students need to have access to complaint processes that are easily accessible, clear and fair.
- c. **Complaints:** It is our expectation that complaint processes should be accessible, clear and fair. They should be operated flexibly and in a way that recognises the significant disruption that students have faced. There should be clarity for students about who they can complain to if their provider is operating in a partnership arrangement.

33. We recognise that providers have had to adapt their approaches to teaching, learning and assessment as a result of the pandemic and this is likely to result in a change to the material information that was provided to both prospective and current students. Such changes have been necessary to comply with public health advice and to protect the health and safety of students, staff and the public.
34. Where the actions a provider has taken were necessary in order to implement public health advice, then regardless of whether there may be a breach of contract or a breach of consumer law, we are unlikely to take regulatory action. In these circumstances we would still expect providers to have regard to requirements set out in the CMA guidance in order to comply with condition C1.
35. Where there is evidence of practice that, in the OfS's view, demonstrates a significant disregard for the CMA guidance or a significant breach of consumer protection law which is not as a result of actions that were necessary to implement public health advice we would be very likely to investigate whether there had been a breach of condition C1. For example, if a website contained misleading or inaccurate information, if prospective students were not informed of material changes to their course, or if current students were prevented from making complaints.
36. Further examples of behaviour that would be likely to cause us regulatory concern are set out in Annex A.

## Prospective students

37. Prospective students will have a different relationship with providers to current students of those providers. This is because they will be making decisions about which course to choose, and where to study, based on the information given by providers. When prospectuses and other marketing materials were published for courses starting in 2020-21 and prospective

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<sup>9</sup> See

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/428549/HE\\_providers\\_-\\_advice\\_on\\_consumer\\_protection\\_law.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/428549/HE_providers_-_advice_on_consumer_protection_law.pdf) The CMA guidance also refers to other relevant guidance on consumer protection law and therefore all such guidance is within the scope of condition C1.



students made their applications, the information provided would have been based on the way a course would normally run.

38. Some information is therefore likely to have changed significantly as a result of the pandemic. Notwithstanding the significant uncertainty regarding the impact of coronavirus, providers will need to be clear about these changes, for example the extent to which teaching is now planned to be delivered online rather than face-to-face and over what period. Prospective students will need to understand what a provider is committing to deliver in the current circumstances and in different scenarios, how this will be achieved, and the changes that might need to be made in response to changing public health advice. Sufficient information needs to be provided to allow prospective students to make an informed decision about whether they are willing to start a course and accept those adjustments or whether they would prefer to defer until the provider is able to deliver the course as originally advertised, or whether they might choose a different course or different provider.
39. It is important to note that when an offer is accepted by an applicant a contract is formed. Any changes to material information that has been provided to the prospective student should be communicated to them before an offer is accepted, and they should expressly consent to those changes. Material information is information that students need to make an informed choice or decision and will cover details about the course and fees and includes the information described in paragraph 40.
40. Sufficient information needs to be given to prospective students about the course, in line with CMA guidance, including information about any planned changes and the provider's plans for different scenarios. Providers must set out information that includes the following:
  - a. **Content of the course.** If the modules, or other course components such as placements or field trips, that will be offered have now changed or reduced, or will be delivered in different years, this needs to be made clear. We expect providers to give applicants clear information about the content that will be delivered in 2020-21 and beyond.
  - b. **Length of the course.** For example, if there are changes to the anticipated length of the course to take account of particular assessment methods or placements that might be core requirements for the course which can only be undertaken in a normal operating environment, then these should be explicit.
  - c. **How the course will be delivered.** This includes the extent to which the course will now be delivered online rather than face-to-face and how the balance between, lectures, seminars and self-learning has changed. Prospective students will be particularly interested in the volume and arrangements of contact hours and support and resources for learning if this is now taking place online and virtually.
  - d. **Cost of the course.** Information about the cost of a course should be explicit up front and should not increase once the course has started and so if a provider is offering a discount only for the year in which any adjustments will be made and the cost will increase to a 'normal' level thereafter this needs to be made clear to the applicant. Providers should also be clear about any extra costs that students might need to bear to access resources or buy equipment as a result of the changes to teaching.
  - e. **How the course will be assessed.**

- f. **Award.** If there are potential changes to the qualification that is awarded, for example professional accreditation, as a result of the pandemic. If professional accreditation has not been confirmed for 2020-21 then this should be made clear.
  - g. **Possible locations.** If the pandemic has affected where teaching may be delivered if and when face-to-face teaching can resume, for example because social distancing requirements may mean additional space may need to be made available at a location that is not the normal teaching location for the course, then this should be explicit.
41. We recognise that in the current circumstances it is difficult for providers to give exact information to students on how a course will be delivered. However, providers should acknowledge what is definite and what is not, set out their plans for the delivery of the course and properly explain the differences in delivery that will apply in different circumstances.
  42. Providers should let students know about their plans for delivery in different scenarios and changes in public health advice, for example by saying that teaching will be online until government restrictions on social distancing are lifted which might mean this is online for the entire academic year, or by describing that face-to-face teaching will be delivered following guidelines on social distancing and increased health and safety measures. Providers should also explain, if face-to-face teaching is resumed, what measures a provider would take in the event of a further lockdown.
  43. Plans need to be explained in a way that would allow a prospective student to make an informed choice about what and where they study and to allow them to change their mind if they are not satisfied with the revised offer.
  44. Providers should also let applicants know how they would communicate with them about these plans and any further changes that are necessary in response to changes in public health advice.
  45. If an applicant is not made aware of, or does not consent to, changes to the material information in their offer and begins their course in 2020-21, we would expect the provider to ensure that those students are aware of the options available to them, such as the right for the students to seek repeat performance or a partial refund (dependent on what is applicable in the circumstances). This is because providers have the opportunity now to set out in advance of the student starting their course in 2020-21 what it plans to deliver in the current circumstances and what its plans are in different scenarios.
  46. In circumstances where offers have already been accepted, the express consent of the student will be needed to make any changes to material information that was included in the offer. The OfS considers that this is likely to be different to a situation where the material information provided to prospective students set out what might change and how this would be implemented. Then, although the course would be different, this was already clearly and properly explained to the prospective student.
  47. Changes to material information should be drawn to the attention of applicants in a timely way so that applicants, whether or not they have already accepted an offer, may pursue other choices. For example, for prospective students planning to start undergraduate courses in September 2020-21, we would expect such information to be made available to them before

confirmation and clearing in August 2020. For other students, information needs to be provided in order to inform decision making.

### **Current students (with existing contracts)**

48. Providers have entered into contractual relationships with their current students and the material information they provided as part of the offer forms part of the contractual responsibility to the student. The content of those contracts and the relevant consumer protection law will determine the scope of the relationship, and potential remedies available for the student for any alleged breach of the contract (or relevant consumer protection law).
49. In the current circumstances where providers have had to make changes to courses to comply with government public health advice it is likely that delivery will have been, in the majority of cases, significantly different to that which was offered to the student. Where providers have existing contracts with their students, the terms and conditions that were agreed at the time the contract was formed will apply to the contractual relationship. This includes information that was provided to students at the application stage about how the course would be delivered.
50. As a general principle, the OfS expects that a provider should make all reasonable efforts to fulfil its contracts with students by continuing to deliver higher education that is broadly equivalent to that which was originally advertised even if that education is being delivered through a different method as a result of public health advice.
51. The OfS will continue to expect providers to comply with its guidance on quality and standards. As set out in paragraph 8 above, we will generally only take regulatory action where a provider has demonstrated significant disregard for CMA guidance, or a significant breach of consumer law which is not a result of public health advice, or where reasonable efforts have not been made to protect the interests of students.
52. We consider that providers will need to provide current students with clear and timely information about any changes to material information about the course as set out in paragraph 40 above and should seek their consent to this change.
53. Providers should also let current students know what options are available to them if they are not satisfied with the changes that have been made; for example, if there is an option for students to take a year out or to transfer to another course.
54. Providers should note that while following this approach may be appropriate for regulatory purposes it does not imply that providers will be compliant with the law.
55. Students have rights under consumer protection law, which includes the right to redress in certain circumstances.
56. We expect providers to properly consider their obligations under consumer protection law, including students' rights to redress. Providers should seek their own legal advice and properly document their decisions in relation to consumer protection law.
57. As noted in paragraph 9, this guidance does not affect students' rights under breach of contract or consumer protection law or prevent action being taken by students or other authorities. Ultimately only a court can decide whether a breach of the law has occurred

including whether any remedies for consumers apply. Students also have the right to complain to the OIA if they have completed their provider's own internal complaints process.

## Condition C2: Student complaints scheme

58. All registered providers are subject to ongoing condition of registration C2:

### Condition C2: Student complaints scheme

The provider must:

- i. Cooperate with the requirements of the student complaints scheme run by the Office of the Independent Adjudicator for Higher Education, including the subscription requirements.
- ii. Make students aware of their ability to use the scheme.

59. Co-operating with the requirements of the OIA scheme includes a provider having rules and regulations that are compatible with the rules of the scheme. Students should be provided with clear accessible information about their right to complain to the OIA if they are not satisfied with a provider's response to a complaint or appeal.

60. The OIA has published a briefing note about complaint handling in general and in relation to the pandemic.<sup>10</sup> We expect providers to take account of OIA guidance and its good practice framework. Where providers work in partnership with other providers, there needs to be clarity for students about which organisation the student can complain to.

61. The OfS is only likely to have regulatory concerns in relation to condition C2 if providers do not operate complaints systems that are compatible with the OIA scheme and guidance.

## Condition C3: Student protection plans

62. All registered providers are subject to ongoing condition of registration C3:

### Condition C3: Student protection plan.

The provider must:

- i. Have in force and publish a student protection plan which has been approved by the OfS as appropriate for its assessment of the regulatory risk presented by the provider and for the risk to continuation of study of all of its students.
- ii. Take all reasonable steps to implement the provisions of the plan if the events set out in the plan take place.

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<sup>10</sup> See <https://www.oiahe.org.uk/resources-and-publications/latest-news-and-updates/oia-briefing-note-complaints-arising-from-coronavirus-covid-19-disruption/>.

iii. Inform the OfS of events, except for the closure of an individual course, that require the implementation of the provisions of the plan.

63. Guidance on the purpose, structure and content of student protection plans was published in February 2018.<sup>11</sup> The guidance says that plans should be written with students as the key audience. They should set out a provider's approach to protecting its students' interests transparently and clearly. They should be tailored to the provider's specific circumstances and be based on its own assessment of the extent of the risks to the continuation of study for its students. They must also include the actions a provider would take to ensure continuation of study.
64. The guidance requires a student protection plan to cover the following main areas:
- a. An assessment of the risks to continuation of study for students.
  - b. The actions a provider will take to preserve the continuation of study for students for any risks identified that are reasonably likely to crystallise.
  - c. Refunds and compensation arrangements for students.
  - d. Communication with students about the provisions of the plan and the implementation of these provisions.
  - e. Involvement of students in the review of the plan.
65. A registered provider is required to notify the OfS when events take place that require the implementation of its student protection plan.
66. We highlighted in our analysis of the key themes from the initial registration process<sup>12</sup> a number of weaknesses with existing student protection plans. Issues have also arisen as the OfS has assessed compliance with the requirement for a provider to implement its plan when certain student protection events take place – plans are often not sufficiently detailed to be implemented effectively.
67. We had intended to consult on revised guidance for student protection plans during 2019-20 and had expected to propose amended requirements in relation to course, subject, campus and whole provider closure. However, we announced in March 2020 that we were pausing planned consultations because of the impact of the coronavirus pandemic on higher education providers.
68. In the current operating environment rather than requiring all plans to be revised we are taking an approach which will ensure robust student protection measures are in place in the event of:
- a. Closure of, or material changes to, courses.

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<sup>11</sup> For current providers, see [www.officeforstudents.org.uk/publications/regulatory-advice-2-registration-of-current-providers-for-2019-20/](http://www.officeforstudents.org.uk/publications/regulatory-advice-2-registration-of-current-providers-for-2019-20/); for new providers, see [www.officeforstudents.org.uk/publications/regulatory-advice-3-registration-of-new-providers-in-2019-20/](http://www.officeforstudents.org.uk/publications/regulatory-advice-3-registration-of-new-providers-in-2019-20/).

<sup>12</sup> See [www.officeforstudents.org.uk/publications/registration-key-themes-and-analysis/](http://www.officeforstudents.org.uk/publications/registration-key-themes-and-analysis/).

- b. Risk of whole-provider market exit and closure.

### **Student protection measures in the event of campus, subject or course closure or material changes to courses**

- 69. In our guidance on maintaining quality and standards during the pandemic we signalled that providers should make all reasonable efforts to deliver any commitments in their student protection plans that are relevant. This includes any commitments to make refunds and compensation available to students.
- 70. Because we have reduced our regulatory requirements we do not intend to require changes to be made to approved student protection plans as a matter of course. However, where significant restructuring of a provider, including in order to avoid market exit, may be required and where the existing plan is not adequate or sufficiently detailed to protect students, we are likely to withdraw our approval of the provider's existing student protection plan and require a new plan to be produced and published. In these instances we will specify the requirements for the revised plan.

### **Student protection measures in the event of market exit**

- 71. In place of the previously planned consultation on new requirements for student protection plans, we intend to consult shortly on just one aspect of our planned proposals. This is because of the risks to students that may arise as a result of the pandemic and a need for the OfS to be able to intervene quickly and in a targeted way where there is a material risk that a provider will exit the English higher education sector or cease trading.
- 72. The proposed consultation will relate specifically to providers that the OfS judges to be at material risk of market exit. Therefore the regulatory burden associated with these proposals would not apply to other providers.
- 73. In the meantime, should we consider any provider to be at material risk of market exit, we will use our existing regulatory tools to ensure that appropriate student protection measures are in place. This may include requiring amendments to a provider's existing student protection plan, but is more likely to involve other mechanisms such as requiring a provider to produce a detailed orderly exit plan.

## **Annex A: Examples of behaviours that during the coronavirus pandemic may cause the OfS concern in relation to compliance with condition C1: guidance on consumer protection law**

1. During the coronavirus pandemic, we do not intend to take regulatory action in relation to condition C1 unless we become aware of practices that appear to us to constitute a significant disregard for the CMA guidance or a significant breach of consumer protection law which is not as a result of actions that were necessary to implement public health advice – the following sections set out examples of behaviour that would be likely to cause us concerns about compliance.

### **Prospective students**

2. The OfS is less likely to have concerns where providers:
  - a. set out upfront their plans for the delivery of the course after a contract is entered into and before the course starts, so that they clearly and properly explain to prospective students the differences in delivery that will apply in different circumstances.
  - b. have set out how the key components of the course, such as content, delivery, assessment and location, will be delivered in response to changing circumstances and changes in government public health advice and the implications of this. For example by saying that teaching will be online until government restrictions on social distancing are lifted (which might mean this is online for the entire academic year), or by describing that face-to-face teaching will be delivered following guidelines on social distancing. This needs to be done in a way that would allow a prospective student to make an informed choice about what and where they study and to allow them to change their mind if they are not satisfied with the revised offer.
  - c. explain to prospective students how they would continue the delivery of the course in the circumstances of a further lockdown.
  - d. let prospective students know how they will communicate with them as planned changes to the delivery of their course are implemented.
3. The OfS is more likely to have concerns where providers take the following (non-exhaustive) approaches in relation to their prospective students:
  - a. The provider does not give information to prospective students in time to inform their decision making, or only vague information is provided.
  - b. Providers supply prospective students all the information set out in paragraph 40 but include a provision in their offered contract which allows them broad powers to change (in broad circumstances beyond the current pandemic) all the information once the contract has been accepted and the course has begun.
  - c. Providers that purposely publish information or provide information to students that they will deliver courses in ways that they are aware at the time of publishing/communicating to prospective students that they will be unable to do so.

- d. The provider offers unfair terms and conditions.
  - e. Providers do not make prospective students aware of any unusual or wide-ranging terms in the proposed contract.
4. In these circumstances the OfS is likely to investigate whether there have been any potential breaches of condition C1 and this may lead to the OfS taking regulatory action.

### **Current students**

5. The OfS is less likely to have regulatory concerns where providers take the following approach in relation to their current students:
- a. The alternative teaching and assessment being offered (and the methods of accessing them) caters for all students.
  - b. Clear and easy to understand information is directly communicated to students. For example by email to tell them:
    - i. changes to the course and its delivery as set out in paragraph 40
    - ii. the reasons for making the changes to courses and why the provider believes this is consistent with the existing terms of the student contract
    - iii. options available to students if they do not wish to continue studying at the provider, including where they wish to transfer to another provider or postpone their studies
    - iv. their complaint handling and redress policies and procedures.
  - c. They only seek to rely on existing contract terms for the purposes of changing the way tuition and other education services are provided, such as being provided online and through other forms of remote services and do insert new clauses that allow for amendments to the entire course that are not necessary as a result of the pandemic.
6. Providers should note that while following this approach may be appropriate for regulatory purposes it does not imply that providers will be compliant with the law and, as noted in paragraph 9, does not prevent action being taken by students or other authorities.
7. In contrast to the above, the OfS is likely to have regulatory concerns with the following (non-exhaustive) type of behaviour:
- a. Providers seek to rely on existing contractual terms as a basis for providing no educational services (including the termination of contracts without liability) or to severely limit the range and availability of alternative services.
  - b. Providers claim to be able to introduce new contractual terms to exclude or limit their liability as a result of the coronavirus pandemic or otherwise seek to force students to agree to such contractual changes.
  - c. Providers make no attempts to communicate directly with students or communicate unclear or misleading information.



- d. Providers seek to introduce a blanket policy to refuse refunds without having due regard for guidance on consumer protection law.
- e. Providers withdraw complaint handing arrangements and other student support services, including where those support services are delivered by other organisations such as student unions.
- f. Providers claim that students have no alternative options or avenues of redress, e.g. via the OIA or the courts.



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[www.nationalarchives.gov.uk/doc/open-government-licence/version/3/](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/)

## Guidance for providers about reportable events during coronavirus (COVID-19) pandemic

Updated 27 January 2021

1. The OfS has revised its requirements for reportable events to minimise the regulatory burden on providers during the period of disruption resulting from the coronavirus pandemic and ensure it has the information necessary in the current circumstances.
2. Paragraph 494 of the OfS's regulatory framework<sup>1</sup> defines a reportable event as:

any event or circumstance that, in the judgement of the OfS, materially affects or could materially affect the provider's legal form or business model, and/or its willingness or ability to comply with its conditions of registration.

3. This document provides guidance for registered providers about how paragraph 494 should be interpreted until further notice. It includes guidance about:
  - Two new narrowly-defined reportable events relating to:
    - i. short-term financial risk
    - ii. cessation or suspension of the delivery of higher education, including the inability to award qualifications or credit
  - The removal of requirements to report some existing types of event
  - An ongoing requirement to report some existing types of event.
4. If providers identify other very significant events not explicitly identified below they should contact the OfS at [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk) to seek guidance. We are taking this different approach in the current circumstances because we recognise that it is difficult to anticipate the issues that may arise and normal judgements about materiality are unlikely to properly recognise the extraordinary circumstances in which providers are operating.
5. Reports should be submitted through the OfS portal in the normal way. Information on the use of the portal and support for use of the portal is included in Annex C of the Notice on new reporting requirements.<sup>2</sup>

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<sup>1</sup> See [www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/](http://www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/).

<sup>2</sup> Available at [www.officeforstudents.org.uk/publications/regulatory-requirements-during-the-coronavirus-covid19-pandemic/](http://www.officeforstudents.org.uk/publications/regulatory-requirements-during-the-coronavirus-covid19-pandemic/).

## New reportable events

### Short-term financial risk

6. This reporting requirement does not apply to further education colleges and sixth form colleges that are regulated by the Education and Skills Funding Agency (ESFA). It applies to all other registered providers.
7. Registered providers are normally required to report to the OfS material events with possible financial viability or sustainability implications. The coronavirus pandemic creates conditions in which many providers are likely to experience a material change in their financial position and performance that would normally be reportable to the OfS. It is not possible at the moment for providers to identify the long-term impact of the pandemic and so we are removing the general requirement for a provider to report events with implications for viability or sustainability over a three- or five-year horizon. However, providers who have identified significant financial concerns on a longer time horizon should contact us on [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk) to seek guidance.
8. Instead we are putting in place a requirement to report short-term financial risk as defined in paragraphs 10 to 14 below. Collecting this information is necessary to allow us to identify quickly those providers that are likely to experience acute financial challenges in the short term. It will also help us to understand patterns across the sector and the exposure of different types of provider to developing events. This information will allow us to consider with government and other stakeholders, the financial risks being faced by providers.
9. We may revise this requirement as the situation develops. Where we consider there may be financial risks to a provider based on our own modelling we may also initiate discussions with it about this.
- 10. A provider is required to report to the OfS if it considers it to be reasonably likely that its liquidity will drop below 30 days<sup>3</sup> at any point during a rolling three month period from the date of the report to the OfS.**
11. If a provider's normal cash management policy is to maintain lower levels of liquidity and a forecast liquidity level below 30 days is a result of active cash management, it only needs to report this to us if it considers that it is reasonably likely that it will not be able to manage this in the usual manner. If a provider would normally fall to 30 days' liquidity but believes it can mitigate this and intends to do so it does not need to report this.
12. In assessing whether its liquidity is reasonably likely to drop below 30 days, a provider must consider the impact of circumstances or events that it believes are reasonably likely to occur in the period. This might include, but is not limited to:
  - A reduction in forecast student recruitment, from UK-based students, EU students, and international students

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<sup>3</sup> Liquidity is defined as the number of days of average cash expenditure covered by liquidity values, i.e. the ratio of cash and cash equivalents over expenditure excluding depreciation multiplied by a factor of 365 (Liquidity days = (cash and cash equivalents)/(expenditure-depreciation)\*365).

- A reduction in forecast income from non-teaching or research activity
  - A reduction in forecast income from the provision of accommodation to students
  - An increase in payment of refunds or compensation to students as a result of changes to course delivery, accommodation, or other services.
13. A provider should report on such short-term financial risk within five days of the date that it concludes that a scenario is reasonably likely to occur or, if that is not possible due to exceptional circumstances beyond the control of the provider, as soon as reasonably practicable thereafter and without undue delay.
14. A report should consist of:
- A brief description of the relevant scenario or scenarios
  - A statement that sets out the date(s) on which the provider considers that liquidity is reasonably likely to drop below 30 days.
15. We recognise the challenges associated with forecasting financial performance in the current environment. Therefore we are not asking providers to submit a full set of updated financial forecasts as part of their report.
16. When a provider reports such short-term financial risk, we will contact it to discuss its report and are likely to ask for further information to help us to understand the issues. We may ask for further information about the longer-term financial implications of these issues at a later date.
17. The financial position of individual providers and of the sector as a whole is likely to continue to change. This means that we may amend or extend these reporting requirements in the future.

### **Cessation or suspension of delivery of higher education, including the inability to award qualifications or credit**

18. This reporting requirement applies to all registered providers.
19. Registered providers are normally required to report to the OfS events or circumstances that materially affect or could materially affect the provider's legal form or business model, and/or its willingness or ability to comply with its conditions of registration, including the B conditions which relate to the quality and standards of courses. They are also normally required to report campus and course closures and other events that trigger an approved student protection plan being implemented.
20. The coronavirus pandemic creates conditions in which many providers are likely to make changes to the way they deliver higher education that would normally be reportable to the OfS. We recognise that there is likely to be significant change and disruption to the delivery of higher education, in particular in relation to teaching and assessment, and so we are removing the general requirement for a provider to report events that would be of interest to us in normal circumstances.
21. Instead we are putting in place a requirement to report significant changes to delivery of higher education as defined in paragraph 23 below. Collecting this information is necessary to allow

us to identify quickly those providers that have stopped delivering higher education teaching or have made significant changes to the way they deliver courses. It will help us to understand patterns across the sector and the impact of developing events on different types of students. This information will allow us to identify where further guidance may be necessary to ensure courses can continue to be delivered and the interests of students protected.

22. We may revise this requirement as the situation develops.

**23. A provider is required to report to the OfS if it has taken, or plans to take, any of the following actions:**

- The provider ceases or suspends delivery of any higher education courses to current students where reasonably equivalent alternative study options are **not** provided.

A provider **does** have to report that it:

- i. is no longer delivering higher education to one or more groups of students
- ii. is ceasing or suspending delivery of one or more modes of study to current students, for example no longer delivering a course on a part-time basis
- iii. is ceasing or suspending delivery of higher education, in whole or in part, to current international students with a visa issued under a Tier 4 licence
- iv. is ceasing or suspending delivery of higher education in such a way that current students who expected to complete their course in the 2020-21 or 2021-22 academic years are unable to do so
- v. has lost accreditation by a professional, statutory or regulatory body (PSRB) because of changes to the delivery of higher education made as a result of the coronavirus pandemic.

A provider **does not** have to report that it:

- i. has moved teaching and assessment to an online or other delivery method
  - ii. has temporarily closed a campus or the provider as a whole, as long as teaching continues to be delivered.
- The provider is unable to award qualifications or credit for any unit, module or course.
  - The provider decides to transfer students between its teaching sites.
  - A provider withdraws offers made to applicants due to start a course in or after April 2020.

A provider **does** have to report that it:

- i. no longer intends to accept an intake where offers have already been made.

A provider **does not** have to report that it:

- i. has postponed the planned start date of a course

ii. has transferred offers to an equivalent course.

24. For courses that are delivered through a sub-contractual arrangement the lead provider should make the report. For courses delivered through a validation arrangement, the provider with a direct contractual relationship with the students should make the report.<sup>4</sup>

25. Reporting on significant changes to the delivery of higher education should include reports on any relevant matters relating to transnational educational activities.

## **Removal of existing requirements to report some types of event**

26. Paragraph 494 of the regulatory framework contains a list of events that are, or are likely to be, reportable. We recognise that this means that governing bodies and leadership teams will have reduced capacity to undertake routine reporting of regulatory matters. We are therefore removing until further notice the general requirement to report the following events:

- The provider becoming aware of legal or court action
- Regulatory investigation and/or sanction by other regulators
- Any new partnerships, including validation or subcontractual arrangements
- Opening a new campus
- Intended campus, department, subject or provider closure
- The implementation of a student protection plan except where this is covered under 'cessation or suspension of delivery of higher education' in paragraph 23 above.

27. If a provider considers that a very significant issue has arisen in relation to any of the types of event listed above, it should contact the OfS at [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk) or telephone 0117 931 7305 to seek guidance as outlined above at paragraph 4.

## **Ongoing requirement to report some types of event**

28. A small number of the events listed in paragraph 494 of the regulatory framework continue to be reportable. These are:

- changes of legal status of the provider
- changes of ownership or control of the provider
- the provider resolving to cease to provide all higher education on a permanent basis
- any material suspected or actual fraud or financial irregularity.

29. In the context of material suspected or actual fraud or financial irregularity, 'material' should be understood to mean:

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<sup>4</sup> Definitions of 'subcontractual' and 'validation' are set out in the glossary of the OfS's regulatory framework (February 2018), available at: [www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/](http://www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/).

- any fraud relating to the misuse of public funds
- any other financial fraud exceeding £50,000 in value or 1 per cent of a provider's annual income if that income is less than £5,000,000
- any type of non-financial fraud or attempted fraud regarding which the provider determines to notify its own governing body.

30. These types of event are likely to have significant implications for a provider's registration and so need to be reported. Our experience is that they occur infrequently and so this should not create significant regulatory burden. If a provider needs to report one of these events it should contact the OfS at [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk) or telephone 0117 931 7305 to seek guidance. We are taking this different approach in the current circumstances because we recognise that it is difficult to anticipate the issues that may arise and normal judgements about materiality are unlikely to properly recognise the extraordinary circumstances in which providers are operating.

31. In addition, all providers are required to continue to report the following events:

- changes to a provider's accountable officer or the chair of its governing body
- changes to the information published on the OfS Register.

32. We need to keep up-to-date records for providers' senior officers to ensure we are able to send information to the correct individuals. We expect a provider to tell us if its accountable officer is unable to work due to self-isolation or due to other illness. In these circumstances we will seek to approve an interim accountable officer. The requirement to tell the OfS about changes to the Register is a statutory requirement that we are unable to remove. Our experience is that providers report changes to the Register infrequently.

33. Reports should be made within five days of the date that the event is identified or, if that is not possible due to exceptional circumstances beyond the control of the provider, as soon as reasonably practicable thereafter and without undue delay.



## Review of Compliance with Consumer Law

In a letter to vice-chancellors on 14 January 2021 regarding regulation during the current phase of the Coronavirus pandemic, the Office for Students asked all universities to undertake a review during the first half of the spring semester of their compliance with consumer law and provide assurance to their governing body of ongoing compliance with ongoing condition C1 (guidance on consumer protection law).

The Senior Executive Team has established a Task and Finish Group to undertake the review.

### Terms of reference:

- a) Re-test whether the University was sufficiently clear with new and continuing students about how teaching and assessment would be delivered in 2020–21, the circumstances in which changes might be made, and what those changes might entail.
- b) Assess whether students received, during the autumn semester, the teaching and assessment they were promised and might reasonably have expected to receive based on the information provided.
- c) Assess whether the University's current plans for the remainder of 2020–21 will ensure that students receive the teaching and assessment they were promised and might reasonably expect to receive based on the information provided.
- d) Identify any cases where new or returning students were not provided with sufficiently clear information about how teaching and assessment would be delivered in 2020–21, or where teaching and assessment were not delivered as promised, and make recommendations on the University's obligations arising from this under consumer law for refunds or other forms of redress in the context of guidance issued by the Office for Students.
- e) Recommend any potential improvements to central and local communications with new and continuing students regarding teaching and assessment during the current phase of the Coronavirus pandemic and on an ongoing basis.
- f) Identify any potential compliance risks with ongoing condition C1 regarding teaching and assessment that meet the threshold to be reported to the Office for Students.

### Membership:

Chief Governance Officer and University Secretary (Chair)  
 Vice-Principal (Education)  
 Director of Marketing and Communications  
 Dean for Education (Humanities and Social Sciences)  
 QMSU Vice-President Humanities and Social Sciences  
 Dean for Education (Science and Engineering)  
 QMSU Vice-President Science and Engineering  
 Dean for Education (Medicine and Dentistry)  
 QMSU Vice-President Barts and the London  
 Deputy Registrar (Admissions)  
 Deputy Registrar (Secretariat and Legal)

### Timescale:

The Task and Finish Group will complete its report by the end of February 2021.



# UK higher education providers – advice on consumer protection law

Helping you comply with your obligations

## 1. Executive summary

- 1.1 The Competition and Markets Authority (CMA) has produced this compliance advice following the findings of the Office of Fair Trading's (OFT's) Call for Information (CfI) on the higher education (HE) undergraduate sector in England<sup>1</sup> and further work it has undertaken into potential consumer protection issues in the UK HE sector.<sup>2</sup>
- 1.2 Following constructive engagement with a range of stakeholders, we have consulted on and published this advice to help HE providers across the UK understand their responsibilities under consumer protection law in their dealings with undergraduate students.
- 1.3 HE providers play a crucial role in the UK economy. They contribute directly to economic growth, employment and local economic activity, delivering skilled workers into the wider economy, and contributing to export earnings. Compliance with consumer protection law is important not only in protecting students but also in maintaining student confidence and the reputation of the HE sector and in supporting competition.
- 1.4 Consumer protection law will generally apply to the relationship between HE providers and prospective and current undergraduate students. It sets out minimum standards that apply to various aspects of an HE provider's dealings with students, for example in relation to information provision and complaint handling, and the requirement of fairness for terms and conditions. It sits alongside sector-specific regulatory obligations that are relevant to many HE providers.
- 1.5 The advice is particularly important at a time when a greater share of HE providers' funding is coming directly from students, which has highlighted particular expectations of providers when it comes to, for example, information they provide about degrees and courses available, the choices on offer, students' rights as consumers, and how complaints by students will be handled. Consumer protection law is therefore an important aspect of an HE provider's relationship with students, together with the existence of a supportive learning and pastoral environment within an academic community.
- 1.6 The issues addressed in this advice are also important for students, given that for most students deciding what and where to study will be a 'one-off' decision involving the investment of a significant amount of time and money. That decision needs to be properly informed and right for them. Once students

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<sup>1</sup> [Call for information on the higher education sector \(undergraduate\) in England.](#)

<sup>2</sup> See [Consumer protection review of higher education in England.](#)

have enrolled, if they are dissatisfied with their experience, it is likely to be difficult for them to switch HE providers or courses.

- 1.7 HE providers should read and consider the advice and ensure that they are complying with the law. If necessary they should make changes to their practices, policies, rules and regulations as soon as possible. Non-compliance with consumer protection law could result in enforcement action by the CMA, local authority Trading Standards services or the Department of Enterprise, Trade and Investment (DETI) in Northern Ireland.
- 1.8 We have specifically considered the law as it applies to HE providers of undergraduate courses but this advice may also be relevant to HE providers of other types of courses and to other students where consumer protection legislation applies. The advice may also be of interest to consumer and student advisers, and to enforcers.
- 1.9 This advice sets out the minimum requirements for compliance with consumer protection law. The advice is not a substitute for the law itself, nor does it replace the role of a court, which provides a definitive interpretation of the law. The advice sets out the views of the CMA, and HE providers may wish to seek their own legal advice on the law.
- 1.10 Information on background to this work, the purpose and scope of this advice and what you need to do is summarised in Chapter 2. Chapter 3 provides an overview of the consumer protection law covered in this advice. The subsequent chapters of the advice broadly follow the 'student's journey' and focus on the issues of information provision, terms and conditions and complaint handling processes and practices. The examples used in the advice are based on issues which we believe are likely to be relevant to students.
- 1.11 Chapter 4 explains what information HE providers need to give to students, and when it should be provided, in order to comply with their obligations under consumer protection law – in particular the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) – and to enable students to make informed decisions about what and where to study.
- 1.12 Chapter 5 sets out advice about ensuring that HE providers' terms and conditions are fair and comply with unfair terms legislation.
- 1.13 Chapter 6 addresses issues around HE providers' complaint handling processes and practices under the CPRs and unfair terms legislation, which should be transparent, clear, easily accessible and fair.

## Summary of requirements for HE providers

### *Information provision: ensuring that students are given up front, clear, timely, accurate and comprehensive information*

#### 1.14 Student research and application stage:

- (a) To comply with the CPRs you must provide prospective students with material information – including about the courses you offer, the structure of courses, and the fees/costs. This should be given **before** they make a decision about which courses and HE providers to apply to. This includes information given in writing, visually and verbally. You should make sure this information is accurate and you should not omit important information that could affect students' decisions.
- (b) The information should be accurate, clear, unambiguous and timely, and should be given up front.
- (c) You should ensure that information is easily accessible – for example, via your website, prospectuses, course and departmental handbooks and at open days.
- (d) You should ensure that you draw prospective students' attention to important and surprising rules and regulations, and make them accessible.

#### 1.15 Offer stage:

- (a) The CPRs and the CCRs both apply at the offer stage. When an offer is accepted, the HE provider and prospective student enter into a contract. To comply with both pieces of legislation you should ensure that:
  - (i) you continue to provide important information to prospective students to inform their decisions about which offer(s) to accept (this obligation continues throughout your dealings with students);
  - (ii) you draw prospective students' attention to your full terms and conditions, that these are easily accessible, and that you highlight particularly surprising or important terms;
  - (iii) you provide prospective students with the necessary pre-contract information under the CCRs at the latest before they accept an offer of a place on a course;
  - (iv) where any pre-contract information (as defined in the CCRs) that you have already provided changes, you have obtained the student's

express agreement to the change before or at the time of making the offer;

(v) where you anticipate that some things might change after the offer is accepted, you make clear in the pre-contract information what could change, when, and how, so that the student can agree to this; and

(vi) any terms in the contract that purport to allow changes to the pre-contract information are fair under unfair terms legislation.

(b) At the stage of offer and acceptance of a place on a course, a contract is concluded between HE provider and student. For distance contracts (for example, offers and acceptances made via the Universities and Colleges Admissions Service (UCAS)), you should:

(i) provide confirmation of the contract on a durable medium, for example as attachments to an email. The confirmation must include all pre-contract information, unless it has already been provided on a durable medium; and

(ii) remember to give prospective students notice of their 14-day right to cancel, where the application and offer are carried out at a distance.

#### 1.16 Student enrolment stage:

(a) In principle, the pre-contract information you gave to students at the offer stage should still be accurate on enrolment. In any event, if it has been necessary to make any changes that affect material information (as defined in the CPRs), you should ensure that you tell students about these at the earliest opportunity – failure to do this may be a misleading omission under the CPRs.

(b) Where a separate contract for educational services is entered into between you and prospective students on enrolment, and enrolment takes place on campus, you should ensure that you comply with the CCRs requirements for on-premises contracts – certain information must be provided if it is not already apparent in the context. If enrolment takes place at a distance, comply with the CCRs requirements for distance contracts (see above).

(c) You should ensure that you draw students' attention to your terms and conditions, and any other rules and regulations, and make them accessible. You should highlight important and surprising terms and provisions to students.

***Ensuring that terms and conditions between HE providers and students are fair***

1.17 You should ensure that:

- (a) your terms (which are likely to include your rules and regulations and other applicable documentation that contains rules that apply to students) can be easily located and accessed (for example, on your website) and are available to students;
- (b) students are aware of your terms and that you give them the opportunity to review them before they accept an offer;
- (c) you highlight any important or surprising terms and draw them to students' attention before they accept an offer, so that their significance is not missed;
- (d) your terms are written in plain and intelligible language so that students understand them and understand how they affect their rights and obligations and how the terms could impact them; and
- (e) your terms are not drafted in such a way that their effect could be unfair. They should strike a fair balance between your rights and obligations and those of students. For example, the following types of blanket term may be open to challenge:
  - (i) terms allowing an HE provider an unreasonably wide discretion to vary course content and structure or increase fees during the duration of the course;
  - (ii) terms seeking to limit an HE provider's liability for non-performance or sub-standard performance of the educational service;
  - (iii) terms giving HE providers a blanket assignment, or a blanket right to receive an assignment, of intellectual property rights (IPRs) from students to the HE provider; and
  - (iv) terms allowing an HE provider to impose academic sanctions against students for non-payment of non-tuition fee debts.

***Ensuring that HE providers' complaint handling processes and practices are accessible, clear and fair to students***

1.18 You should ensure that:

- (a) your complaints procedure is easily located and accessible to students, for example on your website and intranet;
- (b) you provide prospective students with information about your complaints process before they accept an offer of a course. This includes procedures relating to applicants and current students if they are separate;
- (c) you provide students with clear and accurate information about your complaint handling procedures in writing and (where applicable) verbally, for example:
  - (i) where you offer a course in partnership with, or sponsored or awarded by, another HE provider it should be clear where responsibility for complaint handling lies;
  - (ii) you should provide accurate details of any external complaint or redress scheme that students can access; and
  - (iii) where students raise concerns at an informal level, you should inform them that they can make a complaint under your formal complaints process if the matter is not satisfactorily resolved;
- (d) your complaints handling processes are fair, which is more likely to be achieved where you:
  - (i) set out clear and reasonable timescales in which students can expect to hear back about their complaint at each stage of the process, as applicable;
  - (ii) set out clear and reasonable timescales relating to how long students will be given to respond to any requests for further information that you may make;
  - (iii) do not create unreasonable barriers for students pursuing a complaint; and
  - (iv) provide the ability for students to escalate the matter if they are unhappy and, where the regulatory framework allows it, ultimately to appeal if the matter is not satisfactorily resolved;
- (e) you follow any guidelines published by any third party redress or complaint schemes of which you are a member; and
- (f) your staff are trained in and follow your complaint handling procedures in practice.



## Timeline of key events and announcements

Date	Coronavirus developments	Announcements from Ministers/DfE/OfS	Queen Mary communications
10 March 2020			The University is open and please continue to attend lectures and other classes as normal. We are working hard to make course materials available online, and as soon as your course is available digitally your school/institute will let you know
12 March 2020			International students can go home if they would like to (5 <sup>th</sup> year medics to check with Institute first). Students currently studying in partner institutions overseas given the choice to come back to the UK.
13 March 2020			For the majority of subject areas, from 23 March you will not be expected to come onto campus for lectures and other classes, although at this point we expect that the campus will remain open and that you will continue to be able to access the library and other facilities (including those for research). Some learning materials are already available online and will be available online before 23 March, replacing the need for large group lectures. You will be told by your School/Institute where this is the case. UK students should continue to come onto campus. We are putting alternative arrangement in place for assessment and guarantee students will not be disadvantaged.
17 March 2020		Donelan Tweet: Medical and scientific guidance continues to be that universities and other educational settings should remain open unless advised otherwise by PHE. They should take sensible steps to keep students and staff safe, in line with advice from @PHE_uk	We are now working hard to make the final transition to remote education, such that no student will have to come onto campus for lectures or classes from 23 March. Many schools and institutes are already delivering teaching online, and your School or Institute will let you know as soon as they are ready to move to remote education. If your School or Institute has already moved to remote education, there is no expectation that you come onto our campuses unless you want to. If your course is already being delivered remotely and you currently live in University residences, and would now like to leave the residences and return home, you are welcome to do so. Please let residential services and your School/Institute know if you are in this position and are intending to leave the residences.
18 March 2020			Library and counselling move online. Students told everyone due to graduate will get an award; graduation postponed
19 March 2020			No further face-to-face teaching after 5pm today. <b>Students living in residences</b> If you live in student residences we now encourage you to consider going home if you can. If you vacate your room we will release you from your contract and refund any money paid in advance. If it is not possible for you to go home, you are of course

			welcome to stay in your residence and please be reassured key facilities will be available to you and we will continue to support you.
20 March 2020			<p>Assessments:</p> <ul style="list-style-type: none"> <li>• Face-to-face summer exams will not take place.</li> <li>• Instead, there will be online assessment focused on the achievement of learning outcomes. If your course is accredited, these online assessments will meet requirements of professional and regulatory bodies.</li> <li>• Online assessment will comprise a range of approaches, such as open book or summative coursework.</li> </ul> <p>Study space on campus open.</p>
23 March 2020	First national lockdown announced	Donelan announces two week moratorium on changes to offers	All teaching now online
25 March 2020			IT labs closed
2 April 2020			No disadvantage in relation to assessment. Stay put (in residences or at home)
21 April 2020		OfS publish Briefing note on student accommodation during pandemic	
29 April 2020		OfS publish Briefing note on supporting student mental health during pandemic	
30 April 2020	PM announces that country is 'past the peak'		
4 May 2020		Donelan Tweet: No decision has yet been taken on social measures impacting next academic year. Students who are concerned that they aren't receiving adequate quality of provision at the moment should first talk to their Uni or college	

		Donelan Tweet: To be clear, we only expect full tuition fees to be charged if online courses are of good quality, fit for purpose & help students progress towards their qualification. If Unis want to charge full fees they will have to ensure that the quality is there	
10 May 2020	Initial easing of restrictions – possibility of primary pupils having a phased return to school from 1 June		
14 May 2020			<p>Campuses never closed. New academic year - hope to be able to welcome students back to our campuses, in person, for the beginning of Semester 1. We want you to rest assured however that whatever happens – whether you are able to travel safely to our campuses or not – we will ensure you will be able to fully access your education in September. None of us knows at the moment how much freedom of travel there will be come September, within the UK or between countries, so we are preparing for all scenarios.</p> <p>Working to develop some support for students over the support. Any support developed will be optional</p>
21 May 2020			<p>Fully hope to be able to welcome you all back, in person, in September. We realise however there may be travel restrictions still in place and I have already promised you that whether you are able to return to our campuses or not in the Autumn, you will be able to fully access your education. We are in the process of developing a dynamic blended educational offer for the first term, with a backbone education online, and of the world-class quality you rightly expect. You will be able to do all the things you would normally do, in relation to engaging with lectures, seminars, having tutorials and practical work alongside working in groups and on projects. All of these will have a digital version so that everyone, wherever they are, can have full access to their education.</p>

28 May 2020			<p>I fully hope to be able to welcome you all back, in person, in September. However, with uncertainties surrounding coronavirus – including possible ongoing travel restrictions, and the ways in which the UK and other countries ease out of lockdown – we know that this may not be possible in all cases. We have therefore been finalising our plans to ensure that you can fully engage with your education, your teachers and fellow students, whether physically on campus or remotely.</p> <p>For those of you who will be able to join us on campus in September, we will ensure that our premises and activities follow government guidance and that we are Covid-19 Secure. For those of you who cannot be with us in person in September, we look forward to welcoming you back on campus later in the year, and as soon as it is possible for you to join us.</p> <p>For every student, your teaching and learning from September will be ‘blended’, that is, with a core proportion online and wrap-around academic advising and mentoring support embedded in an on-line learning community.</p> <p>Where we can supplement online education with face-to-face campus-based teaching we will, and the proportion of physical provision will increase as quickly as it is safe and practical to do so. We are re-configuring our campuses, including our lecture theatres and other learning spaces, our libraries, and study and social spaces, to ensure we can all maintain social distancing, necessary hygiene standards and keep you, and everyone else on our campuses, safe and well.</p>
3 June 2020		<p>Donelan Tweet: This is a difficult time for students and it is important they have clarity about what to expect. We have published guidance to help universities make informed decisions and plan how courses can run this autumn while minimising risks to students and staff</p>	
4 June 2020			<p>For those of you not graduating, I would like to reiterate that if travel restrictions allow you should plan to return to our campuses in September. From September, our educational provision will be ‘blended’, that is, with the backbone for the first term will be online, and there will also be face-to-face educational activities for those able</p>

			<p>to join us on our campuses. If you can't travel in September, please be reassured you can fully access your education online, and join us as soon as you can.</p> <p>Your safety is our foremost priority. For those of you who will be able to join us on campus in September, we will ensure that our premises and activities follow government guidance and that we are Covid-19 Secure. We are re-configuring our campuses, including our lecture theatres and other learning spaces, our libraries, and study and social spaces, to ensure we can all maintain social distancing, necessary hygiene standards and keep you, and everyone else on our campuses, safe and well.</p>
15 June 2020	Some return of secondary pupils to school		
29 June 2020	First local lockdown in Leicester		
3 July 2020	Travel corridors introduced		
4 July 2020	Some reopening of hospitality		
17 July 2020	Work-from-home guidance eased; PM announces plans for significant return to normality by Christmas		
20 July 2020			<p>Your lecturers and other University staff are working incredibly hard to get everything ready for next term. I think that the work we are doing as a result of Covid-19 will improve your educational experience: you will have more digital resources at your fingertips, inspired by the latest in online teaching methods, and the face-to-face educational activities will be in smaller groups, leading to a richer experience for you. The other aspects of our educational offer, including <a href="#">access to e-mentoring</a>, is available, alongside the extra-curricular activities described above. All aspects of our provision for next term are being carefully thought through to make sure you have the outstanding student experience you expect and deserve.</p>
28 July 2020			<p><b>Please do plan to come back to campus</b>, for the start of term in September if you are an undergraduate, or as soon as you need to if you are a postgraduate. All students will be offered face-to-face educational activities as part of our blended learning approach. In addition, as you heard in the Principal's last email, campus facilities are</p>

			<p>reopening and the library, sports facilities, study areas, cafes and social activities await you. If you can't travel, you can access your education fully remotely – but we very much want to welcome you back in person if you are able to join us.</p> <p><b>We are planning a blended educational approach for the first semester</b> (September – January). This means a blend of online and face-to-face educational activities, with wrap-around academic advising, e-mentoring and peer-to-peer support. We are drawing on the very best teaching methodologies for both online and face-to-face activities, and I am sure you will enjoy it!</p> <p><b>We are currently planning for the second semester to be fully on campus</b>, subject to government guidelines and the progression of the pandemic, in the UK and worldwide.</p> <p><b>We are fully prepared for a local or nationwide lockdown</b>, should one happen, and will support you through it.</p>
1 August 2020	Shielding paused		
20 August 2020		Caps lifted on medicine, dentistry and other courses with number controls	
4 September 2020			<p>Looking forward to seeing you back. Covid-19 pandemic and ongoing travel restrictions means that not all of you will be able to join us on campus for the start of the year. For those of you who can join us, we look forward to welcoming you in person. Wherever you begin this academic year, we are ensuring that you will have full access to your education through a blended offering that has world-class online learning as a golden thread throughout.</p> <p>For those of you who are able to join us on our campuses, in addition to the online offering there is an exciting array of Covid-safe educational, social and sporting activities awaiting you. You will be able to enjoy the full University experience you expect and deserve: all our social facilities, including our cafes, sports and other social spaces will be open. We are of course ensuring that our premises and activities follow latest government guidance and that we are COVID-secure. We have spent the</p>

			summer re-configuring our campuses to ensure that we can all maintain social distancing and the hygiene standards necessary to mitigate the risk of coronavirus.
8 September 2020	Warning of possible second peak		
10 September 2020		DfE publishes updated guidance on campus reopening, including 'advice on what a provider should do in the event of a local lockdown, track and trace procedures, the creation of new households in student accommodation and reflects the latest social gathering restrictions coming into force on Monday'	
11 September 2020	R value rises above 1 for the first time since early March		<p><b>On campus educational activities</b></p> <p>All students who are able to join us on our campuses will have in-person educational activities to enjoy. These activities are exempt from the new Government guidance on numbers of people who can meet together. The nature of the activities will vary between courses and you will receive more detail about them from your School or Institute. The activities will be Covid-safe; we have spent the summer reconfiguring our campuses to ensure that we can all maintain social distancing and the hygiene standards necessary to mitigate the risk of coronavirus.</p> <p><b>Students who are unable to travel to our campuses</b></p> <p>If you are not currently able to travel to London, please be reassured that you can access your education fully remotely. I do however encourage you to come to join us on our campuses if you are able to.</p>
17 September 2020			I know how important in-person educational activities are to all of you. If you can't see them on your timetable please don't worry: if your School/Institute hasn't been in

			<p>touch with details, they soon will be. Please be assured that everyone will have some of these activities to enjoy, and that they will all be Covid-safe.</p> <p>In some cases, Academic Advising may be one of the in-person activities offered. Academic Advising is 1:1 or small group meetings with your Academic Advisor. These meetings are the lynchpin of your university education. They are your opportunities to discuss your learning in depth, to challenge your thinking and to learn many of the techniques that will help you as you progress through your degree and career. Your Academic Advisor is your first port of call throughout your degree.</p> <p>For those of you who are not currently able to travel to London, please be reassured that you can access your education fully remotely.</p> <p>Social activities in line with Government guidance</p>
18 September 2020	Warning of second wave having arrived		
22 September 2020	New restrictions on hospitality announced; recommend working from home		
23 September 2020			<p>The announcement from Government yesterday included explicit guidance that universities and all education institutions, should stay open. Please do continue to go to your face-to-face educational activities, as well as engaging with the online learning. If you have any questions about your in-person educational activities please contact your School/Institute directly. We will also continue to provide support to students, both in person and online.</p>
28 September 2020			<p>I know how important in-person activities are for you. These activities are up and running and I have asked all Schools and Institutes to provide as many of these as possible.</p>
29 September 2020		Williamson addresses House of Commons on student return to HE	
12 October 2020	Three tier system introduced		



31 October 2020	Four-week lockdown announced		
2 November 2020			Universities will stay open. Blended education still offered. Catering outlets open. Qmotion closed, some of our social activities moved online.
6 November 2020			Please do continue to come to our campuses to engage in in-person educational activities, undertake research or use our study spaces, if you are able to. All of these facilities remain fully open. If you can't, or prefer not, to travel to our campuses you can follow your course online.
11 November 2020		Student travel corridor announced	
26 November 2020			More social activities on offer from next week. More social activities offered. Looking forward to welcoming you back in January, if you can travel. Will be offering a blended education, mix of online and in person activities. If you can't travel, you can follow course online
2 December 2020	New three tier system introduced. 'Staggered return' of students in Jan announced.		Students can travel at any time; owing to our term dates new announcement does not really affect us. Campus facilities open from 4 Jan. Looking forward to welcoming you back. Teaching will start as planned on 25 Jan, earlier for med and dent courses. If you can't travel, you can follow your course online (apart for students in some courses, which will have contacted students separately
10 December 2020			Reiterate about staggered start not affecting QM; students can travel back when they wish in line with any Government regs in place at the time. Some facilities will be open over Christmas, all university run facilities open from 4 Jan.
14 December 2020	New strain announced; stricter restrictions in London		
16 December 2020			Move to tier 3 will not affect our operations: you can still travel to and from campuses, will offer blended education inc in person activities as planned next semester. If you can't travel back for semester 2, for most courses you can follow your course online.
19 December 2020	Tier 4 introduced		

31 December 2020			All campuses remain open; students can come onto campus to access study space or support facilities. Medical and dental students start in person teaching as planned
4 January 2021	Lockdown in England	Gvnmt tells universities to stay open, but teach most courses online til at least mid Feb (except clinical and PSRBs)	Campuses, study space and catering outlets stay open. Education online for most subjects until at least mid February, except in clinical subjects where institutes will contact students. Teaching will start as planned, but be online. Can still travel to campuses if you need to access quiet study space or IT facilities. Residences stay open.
6 January 2021		Williamson addresses House of Commons on closure of education settings during national lockdown	
13 January 2021			Fair assessment: must make sure assessment processes are fair and robust, and take into account any overall trends in students' achievement as well as individual students' achievements. Education will be online until at least mid-Feb. Enhanced H&S measures.
18 January 2021			Set out fair assessment principles joint with SU
20 January 2021			Can travel onto campuses if you need quiet study space, IT facilities or feel mental health better served by being on campus
28 January 2021		Announcement that schools not back, and universities not able to offer in-person teaching to any more students, until at least 8 March	Can't offer more students in-person teaching until after 8 March. Hopeful after this date we will be able to. Will update when we know more
2 February 2021			Fair assessment: Covid mitigations policy