

UA response to the OfS consultation on the integrity and stability of the English higher education sector

Question 1: Do you agree or disagree with the proposed introduction of a new ongoing condition of registration and associated changes to the OfS' regulatory framework as set out in Annex A?

Neither agree nor disagree

The impact of Covid-19 risks creating significant volatility in the home/EU undergraduate student market. We agree that the temporary student number controls announced by the government for the 2020/21 academic year should be underpinned by fair admissions practices, which do not put undue pressure on students and prevent behaviour that could be destabilising even within the confines of temporary student number controls.

We therefore agree with the principle that there should be a temporary registration condition to support the short-term stability of English higher education providers and prevent recruitment practices that are not in the best interests of students. Our response of 'neither agree nor disagree' should be taken in the spirit of wanting to work with OfS to stabilise the English HE sector in a way that is proportionate and transparent, and not as an agnostic position on the proposals. We have serious concerns about the broad scope, time limit and potential unintended consequences of Condition E6 set out in the consultation.

Firstly, the condition should be more targeted and explicitly linked to supporting the stability of the English HE sector through enabling the temporary student number controls implementation to be as effective as possible. It should also be explicit that, as with the temporary student number controls, this temporary condition would only relate to admissions matters for full-time, undergraduate, UK/EU domiciled students.

We are concerned that 'matters that may directly or indirectly have an impact on the interests of past, present or future students' in particular serves to make the condition too wide ranging for institutions to be able to confidently judge what falls within the scope of the condition and act accordingly. It is not clear which of the four issues outlined at the start of the consultation this is addressing, which aren't also covered by 'financial and economic matters'; 'matters relating to good governance'; 'matters relating to admissions practices including offers to students'; and 'any matters that may negatively affect public trust and confidence in the English higher education sector'? On this basis we would suggest this is removed from the condition.

We understand the outcomes focused nature of the regulatory framework means conditions are usually principles based. However, given the speed with which this temporary condition will be implemented, and the extraordinary situation providers are operating in, we think it is necessary and appropriate for OfS to provide more numerous and detailed examples of potentially non-compliant behaviour. If 'matters that may directly or indirectly have an impact on the interests of past, present or future students' were to remain as part of the condition, we would suggest OfS need to provide details in the guidance on the criteria you will use to assess what is and is not in the student interest in the context of this condition.

We need clarity that OfS will consider a provider's adherence to UUK's fair admissions agreement as part of its consideration of compliance with the new temporary registration condition, including the list of exceptions to unconditional offers.

We also need clarity that accepting direct applications, which our members have done for many years for a small proportion of undergraduate students and report through the Record of Prior Acceptance process, would not be considered behaviour that constitutes 'bypassing, or seeking to bypass, the admissions processes of UCAS'. We understand from UCAS that their updated Terms of Service still allow for a limited number of direct applications, as long as providers adhere to the Undergraduate Admissions Guide. UCAS is a subscription service and we are concerned about its processes being levered for and towards quasi-regulation.

On extending the requirement to conduct taking place from 11 March 2020, we strongly disagree with this retrospective date as it could have an unfair and disproportionate punitive effect, and could be subject to legal challenge. The admissions moratorium appears to have been successful in creating a level playing field and stabilising the market in the short-term by addressing the behaviour of what we understand to be a small number of providers over a short period of time. Whilst this behaviour would have been extremely destabilising had it continued and expanded across the sector, we think there needs to be recognition of the unprecedented uncertainty providers have found themselves in.

Nicola Dandridge recently outlined through a Wonkhe blog on 12 March 2020 a desire for OfS and institutions to work towards shared objectives. This goal is unworkable if providers are unaware they are engaging in behaviour that could breach the regulatory framework at a later date. In addition, whilst OfS have publicly expressed concern about certain types of offer-making practices, they have not taken action on this under the regulatory framework to date and only began an "open minded" consultation with the sector on admissions at the end of February 2020.

On this basis, an extension of the requirement should only be from 23 March 2020 and only for matters relating to admissions (i.e. behaviour that would have breached the terms of the moratorium). All other requirements of the condition should only come into effect from the date it is published.

On placing a time limit on the continued effect of the condition and allowing an amendment to the time period, we do not agree with this proposal as presented. We do not agree with allowing for an amendment to extend the time period for which the new ongoing registration condition is in effect, even on the basis of consultation with the sector. A temporary registration condition is needed to meet this unprecedented moment. However, given the broad nature of the condition being proposed, we believe any new temporary condition should be designed according to the specific circumstances at the time E6 expires. Once E6 expires (which we propose should be on or before 15 October 2020) any new registration condition deemed necessary should be consulted on through the normal approach taken by OfS. This would give us greater confidence that OfS' general duties in the Higher Education & Research Act would be kept under sufficient review and fairly balanced, including 'the need to protect the institutional autonomy of higher education providers'.

We are also concerned that the proposed one-year period will mean that changes to offer-making practices take place mid-cycle, as has been the case this year. It should be specified that the condition is in place until no later than 15 October 2020. This would serve to support the temporary student number controls, without impacting on the 2021/22 admissions cycle mid-cycle.

Question 2: Do you agree or disagree with the proposals for implementation of the proposed new general ongoing condition of registration?

Agree

We understand the urgency of the timetable and were pleased to see OfS clarify the condition is expected to come into effect in early June. We think this is important, rather than late May as

mentioned in the consultation, to allow more time for consultation responses to be considered and the issues we have raised to be addressed.

Question 3: Do you have any comments about any unintended consequences of these proposals, for example for particular types of provider or for any particular types of student?

Clarity and further guidance is needed for providers on how this condition might impact on Access and Participation Plans, particularly where plans include evidence of the use of inclusive or contextual admissions processes. We are concerned that offers that are 'not subject to criteria linked to prior educational attainment' is mentioned as an example of potentially non-compliant behaviour, even with the caveat of 'all or a significant proportion of such offers'. This risks disadvantaging particular groups of students and courses if it is not clarified how this relates to contextual admissions and the list of exceptions to unconditional offers in UUK's fair admissions agreement.

If OfS were to consider the list of exceptions to unconditional offers in UUK's fair admissions agreement to be a breach of the condition, it would disadvantage those particular types of student that haven't already accepted an offer.

Consideration and clarity is also needed on whether offering support materials for online learning (e.g. laptops) to prospective students that might be disadvantaged by continued online or blended learning in 2020/21, would be considered non-compliant behaviour. The issue of 'digital poverty' has been raised as an ongoing challenge across all levels of the education sector during the Covid-19 pandemic and it has been the one of the main issues behind requests for hardship support from students in our member institutions since the crisis began.