

# University Alliance response to the OfS consultation on proposed ongoing condition C6: Treating students fairly

## Executive summary

University Alliance (UA) represents professional and technical universities. We strongly support the objective of ensuring that students are well informed, treated fairly and appropriately protected throughout their engagement with higher education, and we share the OfS's ambition that students should receive the experience they were promised.

However, we do not believe the proposals as drafted are the right way to deliver that objective, and we are concerned that they would in practice make matters worse for students as well as providers. Our central concerns are as follows.

**First, the proposed condition introduces a standalone, overarching test of fairness that extends beyond established consumer protection law without defining the benchmark against which providers will be assessed.** The consultation acknowledges that some requirements differ from, and in some cases go beyond, existing consumer protection law. A provider could therefore comply with consumer law, CMA guidance and every specified OfS requirement and still be found in breach. This is a recipe for legal uncertainty.

**Second, the proposals risk duplication and divergence at precisely the moment the underlying legal framework is changing.** The Digital Markets, Competition and Consumers Act 2024 (DMCCA), whose consumer protection provisions came into force in April 2025, already extends protection across the student lifecycle through the expanded concept of transactional decisions. Providers are adapting to that framework now. Layering a parallel regulatory fairness regime on top — in which judgments would be regulatory judgments rather than consumer law findings — creates overlapping standards, and overlapping enforcement routes involving the OfS, CMA, National Trading Standards, the OIA and, in places, the ICO.

**Third, the proposed scope is not workable as drafted.** The treatment of ancillary services lacks a clear boundary; the application to existing contracts raises serious retrospectivity concerns; and the approach to third parties and agents does not adequately reflect the degree of control providers can realistically exercise. The position of apprenticeships and employer-sponsored provision — a substantial part of our members' portfolios — requires much more careful treatment given the tripartite relationships and extensive existing regulation involved.

**Fourth, the implementation timetable is neither reasonable nor proportionate.** Bringing the fairness duty into immediate effect on publication of the consultation outcome, with only around three months for publication requirements, does not reflect the scale of contractual, legal and operational change required, and compares unfavourably with the year-long implementation period allowed for condition E6.

**Fifth, there is a material risk of unintended consequences.** An expansive and uncertain fairness standard will drive risk-averse behaviour: a narrowing of optional and enhancement services, retreat from innovation in flexible and modular provision, and defensive, legalistic engagement with students — outcomes that would harm the very students the condition is intended to protect.

There is a better route to the OfS's objectives. UA does not recognise the implication that widespread poor practice exists across the sector. The overwhelming majority of providers already devote substantial resource to complying with consumer protection law and to ensuring students receive accurate information and appropriate support

However, if the OfS considers that existing protections are insufficient, it should work with the CMA to update its 2023 higher education guidance to reflect the DMCCA, continue and strengthen its enforcement partnership with National Trading Standards, and introduce any genuinely additional requirements in a targeted, clearly evidenced and precisely defined way. **A revised approach anchored in existing legal frameworks, with clear guidance, worked examples and proportionate implementation, would deliver better outcomes for students with far less collateral cost.**

Our key recommendations are:

- Do not proceed with a standalone fairness test that extends beyond consumer protection law. Anchor any condition to consumer law and to CMA guidance updated, with the OfS, to reflect the DMCCA.
- If the condition proceeds, define the overarching obligation exhaustively by reference to the specified principles and requirements, so that providers can know what compliance requires.
- Add principles of proportionality and respect for academic judgment and institutional autonomy, and focus the condition on material and systemic harm rather than ordinary operational and academic decisions or isolated errors.
- Recast outcome-based duties (ensuring student “understanding”) as duties about the steps a provider takes, and restore a materiality threshold to the information requirements.
- Adopt a two-part scope test for ancillary services — material connection to the learning and teaching experience, and meaningful provider control — and apply the condition prospectively only, to contracts and decisions made after commencement.
- Replace the single-webpage prescription and mandatory wording with an outcomes-based publication requirement.
- Phase implementation: application to new cohorts from 2027-28 at the earliest, with at least a full academic year between publication of final requirements and commencement, mirroring the approach taken for condition E6.

## **Proposal 1: Introduce a new ongoing condition requiring providers to treat students fairly**

### **Question 1**

*We are proposing to replace ongoing condition C1 (Guidance on consumer protection law) with a new ongoing condition C6 that would require a provider to ‘treat students fairly’. To what extent do you support this proposal?*

#### **Response: Oppose**

UA does not support the proposal in its current form, although we strongly support the principle that students should be treated fairly and protected in accordance with consumer law.

The core concern is that the proposed condition introduces a standalone and overarching test of fairness that extends beyond established consumer protection law without defining

the benchmark against which providers will be assessed. The consultation is explicit on both points: the proposed requirements differ from, and in places go beyond, consumer law, and the overarching obligation to treat students fairly “would include, but would not be limited to” compliance with the specified principles and requirements. A provider could therefore satisfy every requirement the OfS has articulated and still be found in breach of an obligation whose content has not been defined. This leaves providers unable to know, with reasonable certainty, what compliance requires — a fundamental problem for any regulatory condition, and one that no volume of subsequent guidance can fully cure. It is also difficult to reconcile with the Regulators' Code, which requires regulators to provide clear information and guidance so that those they regulate understand what is expected of them, and with the OfS's own duties under section 2 of the Higher Education and Research Act 2017 to have regard to proportionality and to best regulatory practice.

The current C1 works differently and provides a clearer benchmark. By requiring providers to demonstrate due regard to the CMA's guidance on consumer protection law, C1 effectively incorporates a well-understood, judicially anchored body of law and guidance into the regulatory framework, avoiding double regulation. Responsible providers have built their policies, contracts and processes around that framework and typically take a cautious, “belt and braces” approach to compliance. The proposed C6 would replace a clear benchmark with an open-ended one, creating situations in which activity that is fully compliant with consumer law remains open to regulatory challenge. Where legal compliance ends and regulatory interpretation begins would be unclear — to providers, and importantly to students, whose expectations about their entitlements may be raised in ways that neither the law nor their contract supports.

This uncertainty has concrete operational consequences. Universities operate many processes whose outcomes some students will inevitably be unhappy with, even where the process has been conducted scrupulously: attendance and engagement interventions, decisions on hardship and financial assistance funds (where eligibility criteria are constrained by access and participation commitments and finite budgets), academic misconduct findings, degree classification decisions, and fitness to practise processes on professional programmes, to name a few. In these contexts, treating students fairly cannot mean giving students the outcome they seek. Without a clear articulation of what “fair” means — and confirmation that a fair and properly followed process satisfies the condition irrespective of outcome — providers face the prospect of protracted appeal and complaint cycles testing an ambiguous standard, at significant cost to staff, to institutional resources and to the students involved.

We are also concerned about duplication of enforcement. The consultation states that, in deciding whether to act, the OfS proposes to consider whether another body such as the OIA, CMA or National Trading Standards is already taking action. That intention is welcome but too weak. The demarcation between regulators should be built firmly into the condition and its guidance, so that providers and students know which body is responsible for which issues, how overlapping complaints and investigations will be managed, and how the OfS will avoid creating parallel enforcement routes for matters already covered by consumer law, contractual remedies or the OIA scheme. Individual grievances, in particular, should remain squarely within internal processes and the OIA, whose scheme exists for that purpose.

Finally, we have seen no compelling justification for treating higher education so differently from other sectors in which consumers also make major, long-term and life-shaping purchasing decisions, and which rely on the same body of consumer law. Consumer protection law and the CMA's sector-specific guidance already provide a robust framework, underpinned by judicial decisions and supported in this sector by the OfS's referral partnership with National Trading Standards. If the OfS considers that framework insufficient, the proportionate response is to work with the CMA to update its guidance — including to reflect the DMCCA — and to strengthen enforcement of the existing condition, rather than to

construct a parallel regulatory regime. We expand on this alternative in our response to question 16.

## **Proposal 2: Establish principles and requirements that are consistent with treating students fairly**

### **Question 2**

*To what extent do you support our proposed approach of reflecting key elements of existing consumer protection law – adapted specifically for the higher education context – within the proposed condition?*

#### **Response: Oppose**

Adapting consumer protection principles to the higher education context is, in principle, sensible. Higher education is a long-term, complex, academically led and evolving service: providers have duties to keep curricula current, to respond to professional, statutory and regulatory body requirements, and to maintain academic standards. Sector-specific guidance and illustrative examples showing how consumer law applies in that context — of the kind the CMA already provides — are genuinely valuable, and we would support the OfS contributing to them.

Our objection is that the proposals move well beyond adaptation and into the creation of a broader, less clearly defined standard. The consultation acknowledges that the proposed requirements differ from and in some cases extend beyond consumer law — for example, by decoupling information requirements from any assessment of materiality or effect on a student's decision, and by recasting the Consumer Rights Act's "grey list" of terms that may be unfair as terms that are always unfair. It is also explicit that judgments under the condition would be "regulatory judgments, not consumer protection law findings". The result is two parallel fairness regimes applying to the same conduct, capable of reaching different conclusions.

The timing compounds the problem. The DMCCA's consumer protection provisions came into force in April 2025, expanding the concept of transactional decisions to cover a much wider range of student interactions, including decisions taken during and after study. Providers are adapting their contracts, policies and marketing practices to that new framework now. Introducing regulatory expectations that are not clearly aligned with it risks duplication, inconsistency and continual reinterpretation as consumer law itself evolves through guidance and case law. The priority at this moment should be alignment and coherence: any restatement of legal principles within a condition should track the legislation, and any genuinely additional expectation should be precisely defined, clearly justified and evidenced.

Guidance should also distinguish clearly between conduct that causes material or systemic harm to students — which is the proper focus of regulation — and the ordinary operational and academic decisions that a dynamic institution must be free to take.

### **Question 3**

*To what extent do you support our proposal to establish a combination of principles and requirements that would be consistent with treating students fairly?*

#### **Response: Support**

If the OfS proceeds with a new condition, a framework combining high-level principles with more specific requirements is the right architecture. Well-designed principles can encourage

institutions to embed student-centred thinking across governance and decision-making rather than treating compliance as a technical, tick-box exercise, and clearly specified requirements can give certainty about red lines. Our support for the architecture should not, however, be read as support for the content currently proposed, for the reasons set out in our answers to questions 1, 2 and 4 to 6.

For this model to work, three conditions must be met. First, the principles must be sufficiently clear and grounded in practice; as drafted they are open-ended and rely on undefined, subjective concepts. Second, the principles should be caveated rather than absolute — which we note is consistent with the feedback the OfS itself reports receiving during pre-consultation engagement — so that legitimate operational and academic judgement is not retrospectively recharacterised as unfairness. Third, the model must preserve providers' ability to determine and self-assess how the principles are met in their own context; it should be clear where the OfS is being prescriptive and where it is not, because ambiguity between the two modes is itself a source of compliance confusion and inconsistent enforcement.

#### Question 4

*What are your views on the proposed principles, including any reflections on the individual principles? If there are any other principles you think are important, please include these here.*

The principles are broadly aligned with the objective of ensuring fair treatment. However, they rely heavily on concepts — fairness, good faith, reasonableness, “all reasonable steps” — that are inherently open-textured and require substantially more definition to be operationally useful. We offer the following reflections on individual principles.

**Promoting students' understanding of their consumer rights.** As drafted, this goes beyond ensuring that information provided to students is clear, accurate, transparent and accessible; it appears to create a positive duty to promote students' understanding of consumer law itself, assessed by reference to an outcome (understanding) that providers cannot control or reliably evidence. Providers can and should communicate well and signpost rights; they cannot guarantee comprehension, and it is unclear what evidence the OfS would rely on to assess compliance. This principle should be reframed around the quality, clarity, timing and accessibility of the information and signposting a provider gives.

**Delivering the provider's commitments.** We welcome the caveat for unavoidable circumstances outside a provider's control, reflecting the CMA's guidance. However, “commitments” is defined to include all written, verbal and visual information given to encourage study at the provider — offer letters and contracts, but also the provider's website, marketing materials and statements made by agents or representatives acting on its behalf. This creates an evidential scope that is effectively unbounded and particularly difficult to manage in relation to verbal statements and the words of third parties. The principle should be anchored to the contract and to material written representations. The problem of dependencies is not hypothetical for our members: healthcare programmes, which UA members deliver at scale, depend on clinical placement capacity that is determined by NHS employers and commissioning arrangements, not by the university. A principle framed around delivering all “commitments” must accommodate dependencies of this kind, which are structural features of professional education rather than exceptional events.

**Proactively identifying and planning for risks.** Sound in intention, and consistent with the mature business continuity and risk management practice that already exists across the sector. The condition and guidance should build on that practice, and clarify how this principle interacts with condition C4 (student protection directions) so that providers are not subject to overlapping and differently framed expectations about the same risks.

**Enabling access to advice on complaints and redress.** This principle should explicitly recognise the role of students' unions, which typically operate free, independent and confidential advice services supported by grant funding from the provider, and the role of the OIA's Good Practice Framework, which already governs complaints handling. It should be clear that supporting and funding independent SU advice provision satisfies this principle; providers cannot themselves be the source of "independent" advice.

**Acting in good faith; reasonable care and skill.** Both are established legal concepts with settled meanings — good faith in the law on unfair contract terms, and reasonable care and skill under the Consumer Rights Act 2015. If the OfS intends to apply these concepts as the law applies them, the condition should say so and defer to that body of law; if it intends something broader, that departure should be spelled out and justified. We also note the acknowledged overlap between "reasonable care and skill" and the B conditions on quality and standards, with the route to be determined "on a case-by-case basis". That approach risks the same academic matter being examined twice under differently framed conditions, and needs a clearer demarcation.

Across all of the principles, there is insufficient clarity about how they will be applied where providers must balance competing considerations — for example, decisions about changes to delivery, resource allocation, responses to industrial action, or measures to secure financial sustainability, all of which involve legitimate operational and academic judgement alongside considerations of fairness. It is not clear how the OfS will assess whether a provider has acted fairly in such cases, whether contractual terms will take precedence, or how competing factors will be weighed. Without clear guidance there is a real risk of retrospective reinterpretation of decisions that were reasonable when they were made, judged with hindsight against an undefined standard.

We propose two additional principles. First, **proportionality**: the condition should be explicitly focused on material and systemic issues, not on isolated administrative errors or the ordinary exercise of academic and operational judgement. Second, **respect for academic judgment and institutional autonomy**: consistent with the OfS's duties under section 2 of HERA, the condition should state clearly that the exercise of academic judgment, and legitimate institutional decisions taken through proper processes, are not of themselves unfair treatment. The guidance should also clarify how the duty to treat students fairly interacts with providers' obligations relating to academic freedom and freedom of speech, as institutions may otherwise be required to balance competing regulatory expectations without a clear framework for doing so.

## Question 5

*What are your views on proposed positive requirements (the things that a provider must do to treat students fairly), including the information we are proposing to require a provider to give to students as set out in the proposed OfS information requirements list?*

The emphasis on clear, accurate and comprehensive information, particularly at key decision points such as the invitation to purchase stage, is well established and supported. Beyond that starting point, we have four significant concerns.

First, the proposals introduce an expectation that a provider ensures students understand the higher education and ancillary services being promised. That is a fundamentally different, and far more demanding, standard than presenting information clearly, accurately and consistently — which is itself a substantial information management challenge, particularly where third parties are involved. Providers can improve clarity, accessibility and timing; they cannot control or guarantee how individual students interpret information. There is no indication of how compliance would be assessed — whether through metrics, engagement measures or other evidence — and the requirement as framed risks being

unenforceable in principle and unlimited in practice. It should be recast in terms of the steps a provider takes, not the comprehension it achieves.

Second, the OfS proposes to decouple its information requirements from consumer law's materiality threshold, so that information must always be clear and accurate irrespective of any effect on a student's decisions, and proposes that clarity and accuracy requirements apply to communications with any prospective, current or former student across the lifecycle, including individual correspondence about complaints or course changes. Taken together, this means any inaccuracy in any communication with any student could constitute a breach of a condition of registration, with no materiality filter. That is disproportionate. A materiality threshold — or at minimum a clear statement that the OfS will act only on material or systemic failures — is essential.

Third, the information requirements list is highly detailed and risks becoming an exercise in prescription rather than communication. More information does not reliably produce better-informed decisions, and consolidating everything in one place does not necessarily make it more accessible: for many students, information is easier to find where they would naturally look for it. Operational reality also means information is rarely static; requirements should accommodate legitimate, well-communicated change.

Fourth, it remains unclear how the information obligations interact with third parties — partners, agents and subcontractors — including who is responsible for which information and how conflicts or errors originating with a third party will be treated. This needs to be resolved before any requirement takes effect.

We therefore ask the OfS to recast the understanding requirement in terms of the steps a provider takes; to restore a materiality threshold to the information requirements, or commit clearly to acting only on material or systemic failures; to rationalise the information list around what students demonstrably use; and to specify how responsibility for information is allocated where third parties are involved.

## Question 6

*What are your views on the proposed negative requirements (things that a provider must never do to treat students fairly), including those set out in the OfS prohibited behaviours list?*

Clearly defined prohibited behaviours are an important part of any such framework, and we support the principle of unambiguous red lines. However, several elements of the proposals depart from established law in ways that need justification or correction.

First, the proposals take terms from the Consumer Rights Act 2015 “grey list” — terms which under the Act may be regarded as unfair, subject to contextual assessment — and treat those it has selected as always unfair. That is a significant recalibration of settled law, removing the contextual assessment Parliament provided for. If the OfS considers that particular terms should be prohibited outright in higher education, each should be individually justified, with the evidence for why context can never make it fair in this sector; the selection should not be hardened wholesale. The proposal to extend these prohibitions to “key documents” beyond those with contractual effect widens the divergence from consumer law further and also requires justification.

Second, “aggressive commercial practices” is insufficiently defined and broader than the corresponding provisions of the DMCCA: the proposals remove both the statutory factors of timing and location and the transactional-decision test. The definition should be anchored to section 228 of the DMCCA, and any broader OfS interpretation clearly articulated and justified. Without that anchoring, and without sector-specific examples, there is a real risk that normal and legitimate recruitment, marketing and conversion activity — including time-limited processes such as Clearing, which are inherently fast-moving — could be

characterised as non-compliant. Worked examples distinguishing legitimate practice from prohibited practice are essential.

Third, the prohibited behaviours relating to course change policies and refund and compensation policies do not map to specific legal provisions. We understand the rationale, but the OfS should be clear about the implications for legitimate in-year decisions on portfolio and estate rationalisation and for course change and closure policies — decisions that providers may need to take, through proper processes, precisely in order to remain sustainable and protect students' longer-term interests. Providers may also be required to change courses by professional, statutory and regulatory bodies — for example, where the NMC or HCPC updates programme standards with effect for students already enrolled — and the prohibited behaviours must clearly accommodate changes of that kind, which are made in students' interests and are outside the provider's discretion. The condition must not have the effect of making orderly, well-managed change impracticable.

Fourth, the overarching framing — under which any act or omission causing or likely to cause student detriment or unfairness may breach the condition — confers very wide discretion on the OfS in assuring compliance with an already complicated set of requirements. This reinforces the need for the proportionality principle proposed in our answer to question 4.

Finally, we are concerned by the proposal that, where a provider has signed up to the UUK/GuildHE or ANUK/Unipol accommodation codes, non-adherence to those codes would be treated as a failure to meet the OfS's requirements. Incorporating compliance with third-party codes — assessed and administered by other bodies — into a condition of registration raises due process questions about how such findings would be established and contested, and should be clarified and reconsidered.

## **Proposal 3: Include all students, higher education and ancillary services in scope of the condition**

### **Question 7**

*What are your views on our proposal that the condition should apply to all students, including prospective, current and former students (as defined in the condition) and those on apprenticeships or employer-sponsored courses?*

The intention to protect students across the lifecycle is understandable, and we support the principle that apprentices and employer-sponsored students should be treated fairly. However, the proposed scope raises significant legal and practical questions.

**Retrospective application.** It is unclear how the condition would apply to contractual arrangements entered into with current students before C6 comes into effect — arrangements made in good faith under condition C1 and the CMA guidance then in force. This concern is sharpened by the fact that the proposed requirements go beyond that framework in places. Applying new regulatory requirements to past contracts and decisions raises fundamental rule-of-law concerns. The OfS should clarify that C6 will apply only to decisions made, and contracts entered into, after it comes into effect, and set out clear transitional arrangements; providers should not be expected to reinterpret existing contracts or revisit past decisions against a standard that did not exist when they were made.

**Former students.** Limiting scope to former students with a current relationship, such as an ongoing complaint, is sensible, but the term “former students” is misleading as drafted: in practice it means individuals with a live complaint or appeal, typically within twelve to eighteen months of leaving. The condition should say so plainly, and should limit scope to

matters arising from or closely connected to the individual's higher education experience. The proposal to include alumni seeking access to information about their previous study, regardless of the lapse of time, overlaps with rights individuals already hold under data protection legislation and risks duplicate regulation by the OfS and the Information Commissioner; transcript and certificate requests are better left to that regime and to providers' ordinary service standards.

**Prospective students.** The definition captures individuals from the point of offer, but since all pre-offer marketing information is separately brought within scope, the definitional limit does little limiting work in practice. The OfS should be transparent that the condition effectively reaches all recruitment-facing activity, and frame guidance accordingly.

**Apprenticeships and employer-sponsored provision.** This is an area of particular importance to UA members, who are among the largest providers of degree apprenticeships in England. We support fair treatment for these students, but the consultation does not engage with the distinctive complexity of the arrangements: tripartite relationships between apprentice, employer and provider; employer agreements; apprenticeship funding rules; end-point assessment arrangements; professional, statutory and regulatory body requirements; and placement agreements. Apprenticeships are already heavily regulated, and key matters — including recruitment, wages, workplace experience and, in many cases, whether an apprentice can continue — are not wholly within the provider's control. Any requirements must be practical, must not cut across or duplicate existing regulation, and must be clear about where responsibility sits between provider, employer and other bodies. We would welcome the opportunity to work with the OfS, drawing on our members' experience, to develop workable guidance for this provision.

More broadly, the proposed approach does not adequately recognise the external forces that constrain and redirect providers' activities — fee caps set by government, immigration policy affecting international recruitment, and skills reforms such as the Lifelong Learning Entitlement that require providers to redesign provision at pace. A condition built around delivering fixed commitments must accommodate a policy environment that requires providers to be innovative and reactive, often within a single recruitment cycle.

## Question 8

*What are your views on the inclusion of ancillary services within the scope of the condition? Please explain your views, including whether there are particular ancillary services that should or should not be included.*

The inclusion of ancillary services is one of the most challenging aspects of the proposals. The proposed definition — services that are part of a student's higher education experience, illustrated by a non-exhaustive list — is broad, and the stated exclusion of on-site launderettes and coffee shops demonstrates that a common-sense boundary is being applied without being articulated. That leaves providers to infer where the line falls, with a condition of registration attached to guessing correctly. Ancillary services also vary enormously in their connection to the academic course, in whether they are optional, and in the degree of control the provider exercises, particularly where they are delivered through subsidiaries, third parties or partnerships; a single broad approach is not proportionate to that variety.

We propose a two-part test: ancillary services should fall within scope only where they are materially connected to the student's higher education learning and teaching experience, and where the provider has meaningful control over their delivery.

Accommodation illustrates the duplication risk. It is already subject to consumer law, landlord and tenant law, health and safety requirements, licensing regimes and the UUK/GuildHE and ANUK/Unipol codes. Adding a further regulatory layer creates parallel and overlapping

regulation, and — as noted in our answer to question 6 — the proposal to treat non-adherence to signed accommodation codes as a failure to meet OfS requirements needs clarification. Clarity is also needed on students' unions: they are typically grant-funded by the provider to support the student experience, but are legally separate bodies subject to their own regulatory framework, and it is not clear whether services they deliver are in scope.

Finally, the unintended consequence identified in the consultation's own logic should be taken seriously: if uncertainty around scope and responsibility increases, institutions will rationally reduce optional and enhancement services to manage regulatory exposure. That would narrow the breadth and quality of the student experience — the opposite of the intended outcome. Clear boundaries and practical examples are therefore essential.

## Question 9

*What are your views on applying the condition to services delivered by third parties on behalf of providers (including ancillary services and services provided by agents)?*

Providers should take appropriate responsibility for services delivered on their behalf, and we support expectations built around due diligence, contractual safeguards and oversight. However, regulatory expectations must reflect the degree of control and oversight a provider can reasonably exercise, which varies considerably across arrangements — from closely managed subcontracts to international recruitment agents operating in other jurisdictions, where providers cannot directly oversee every communication or action, and where enforcing contractual remedies against a third party in breach can be slow and complex.

The condition should therefore focus on the effectiveness of a provider's contractual arrangements, governance, monitoring and intervention mechanisms, rather than imposing what amounts to absolute liability for all third-party actions. Clear guidance on what constitutes “reasonable steps” in managing third-party relationships — differentiated by the nature of the arrangement — is essential to a proportionate and workable approach. In relation to international agents, the OfS should also set out how its expectations interact with the Agent Quality Framework that Student Route sponsors are required to adopt, to avoid duplicative or conflicting obligations.

## Proposal 4: Require publication of specified documents and information

### Question 10

*What are your views on our proposal that all registered providers should be required to publish specified documents on a single, easily accessible webpage?*

UA supports the aim of improving the accessibility of key information for students. However, the requirement as specified is overly prescriptive and likely to be self-defeating.

The volume of material involved — higher education contracts for every applicable cohort and partnership arrangement, separate ancillary service contracts, course change, complaints, refund and compensation policies, agent lists, and historical versions maintained for an appropriate period — is substantial. Combined with the requirement that links from the single webpage reach each specified document in a single click, the result will be an extremely long page that is difficult to navigate and, for many students, effectively unusable. Length and comprehensiveness are not the same as accessibility, and a page constructed to satisfy a compliance specification risks achieving the opposite of the intended outcome. It may also perform poorly for students using assistive technologies. Students are more likely

to engage with information when it is presented at the point of relevance rather than aggregated into a single repository.

A more flexible approach would achieve the objective better: a clearly signposted landing page with well-organised links — for example, grouped by academic year or document type, reaching the documents within a small number of clicks — should satisfy the requirement. The mandatory standard wording at Annex E is similarly over-prescriptive and sits oddly with a principles-based approach; the OfS should specify what must be communicated and allow providers to determine the precise wording, with freedom to add explanatory material suited to their students.

More fundamentally, compliance effort should be directed at the effectiveness of communication — ensuring information is clear, accessible and presented at the point it is most useful to students — rather than at the format of publication. Maintaining the proposed repository will be resource-intensive, and that resource is better spent on communication that students actually use.

## **Proposal 5: Remove requirements relating to student protection plans**

### **Question 11**

*We are proposing that we should remove ongoing condition C3 and instead protect students through the proposed requirements of ongoing condition C6 as well as existing ongoing condition C4. Do you support this proposal?*

#### **Response: Yes (with reservations)**

We support the removal of student protection plans, which have not consistently delivered the intended benefits and have often been of limited practical value. The proposed list of documents to be published in their place is, in itself, sensible: providers complying responsibly with consumer protection law should already hold these provisions, whether as standalone documents or embedded in wider policies.

Our reservation is that it is not yet clear the replacement framework will protect students more effectively at the moment they most need assurance. A collection of separate documents is not a plan: during institutional disruption — course closure, campus closure, market exit — students need a coherent account of what will happen and who is responsible, not a set of policies to assemble for themselves. Greater clarity is needed on how the proposed arrangements will operate in such scenarios and how they will interact with condition C4. There is also an opportunity, currently missed, to draw explicitly on the sector's established expertise in business continuity planning and risk management, which is considerably more mature than the student protection plan regime ever reflected.

## **Proposal 6: Take a phased approach to implementation**

### **Question 12**

*We are proposing that the requirement to treat students fairly would come into immediate effect, but a provider would have longer to comply with the requirements relating to publication. To what extent do you think this approach is reasonable?*

The proposed approach is neither reasonable nor proportionate to the scale of the changes required, and we urge the OfS to reconsider it.

First, bringing the fairness duty into immediate effect on publication of the consultation outcome implies that providers should be preparing now to comply with requirements that have not been finalised — which in turn implies that the outcome of the consultation is predetermined. That undermines the purpose of consultation and sits uncomfortably with the government's Consultation Principles, with which the OfS states this consultation complies, and with the well-established common law requirements for lawful consultation — including that consultation takes place while proposals are at a formative stage and that its product is conscientiously taken into account before decisions are made. Providers must have a genuine opportunity to assess and respond to the final requirements before being expected to comply with them.

Second, the timetable does not reflect the work involved. Complying with the condition as drafted would require providers to review and, where necessary, revise student contracts, terms and conditions, course change, complaints, refund and compensation policies, marketing and recruitment materials, agent and third-party contracts, and partnership agreements — work requiring careful legal consideration, governance approval and, in some cases, consultation with students. A period of around three months for the publication requirements, and no period at all for the substantive duty, is not credible for changes of this scale. We would contrast this with condition E6 on harassment and sexual misconduct, where the OfS allowed providers a full year between publication of the final requirements and the condition coming into force — an appropriate precedent for a condition of comparable reach.

Third, the application to current students is particularly problematic. Providers cannot realistically re-contract with current students mid-cycle, and, as set out in our answer to question 7, applying new requirements to existing contracts and past decisions raises retrospectivity concerns of principle as well as practice.

Finally, there is no demonstrated rationale for urgency. Consumer protection law, the CMA's guidance and the OfS's enforcement partnership with National Trading Standards are all in force now and address the harms the consultation identifies; this is not an unregulated space requiring immediate intervention. We propose a genuinely phased implementation: the condition applying to new cohorts from the 2027-28 academic year at the earliest, with at least a full academic year between publication of final requirements and commencement, and a realistic, separately consulted timetable for the publication requirements.

## **Additional questions**

### **Question 13**

*Please share any comments or feedback you have on proposed ongoing condition C6: Treating students fairly, as drafted in Annex C.*

Two points. First, on the drafting itself: the overarching obligation in the condition is expressly not limited to the specified principles and requirements. This is the root of the uncertainty described throughout our response — a provider cannot achieve compliance by complying with everything the condition specifies — and we urge the OfS to close that gap by defining the obligation exhaustively by reference to the principles and requirements, or by anchoring it explicitly to consumer protection law.

Second, on framing: the consultation repeatedly characterises the sector through power imbalance, information asymmetry and the need for cultural change. That framing does not match the evidence of mainstream provider behaviour, including across our membership,

where fair treatment of students, investment in student voice and careful attention to consumer law compliance are the norm. Consumer law compliance is already a condition of registration through C1; and providers routinely review contracts and information against CMA guidance

Where poor practice exists it should be dealt with firmly through targeted enforcement — which existing powers permit — rather than through a narrative that characterises the whole sector as requiring cultural correction. Regulation built on an adversarial premise risks corroding the cooperative regulator-provider relationship on which effective student protection ultimately depends, and sends a damaging signal about English higher education at home and internationally.

### Question 14

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

The read-across between the text of the condition and the accompanying guidance — a feature of the OfS's standard format — is difficult to follow, and what is actually being required can get lost. The cross-referencing between Annex C and the lists in Annex D is particularly hard to navigate; colleagues reviewing the documents were unable to locate provisions cross-referenced in the guidance (for example, references to parts of the prohibited behaviours list) without significant effort. We recommend a consolidated presentation with consistent numbering and a clear mapping between condition, guidance and lists. The guidance would also benefit substantially from more real-world worked examples, particularly on the boundary between legitimate operational and academic decisions and unfair treatment.

### Question 15

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

The aspects we consider most unclear are set out in our earlier answers: the benchmark for the overarching fairness obligation (question 1); the evidence by which “understanding” would be assessed (questions 4 and 5); the boundary of ancillary services (question 8); what constitutes “reasonable steps” in relation to third parties (question 9); the treatment of existing contracts (question 7); and the interaction of the condition with conditions C4 and the B conditions (questions 4 and 11).

### Question 16

*In your view, are there ways in which the objectives of this consultation could be delivered more efficiently or effectively than what we propose here?*

Yes. The objectives — students making informed choices, providers honouring commitments, and accessible redress — can be delivered more efficiently, at lower cost and with less legal uncertainty, through the following combination:

First, the OfS should work with the CMA to update the CMA's 2023 higher education guidance to reflect the DMCCA and any sector-specific concerns the OfS has identified, keeping a single authoritative account of what the law requires of providers. Second, the OfS should continue and strengthen its enforcement partnership with National Trading Standards, including publishing outcomes, which has demonstrably changed provider behaviour on unfair terms. Third, retaining a condition anchored to that framework (as C1 is today) would preserve regulatory reach without creating a parallel standard. Fourth, any genuinely additional requirements — for example, on publication of key documents, where

we see merit — should be introduced in a targeted, precisely defined and clearly evidenced way, with proper implementation periods. Finally, the OfS should invest in guidance and worked examples, developed with the sector, the OIA and students' unions, which would do more to improve day-to-day practice than an open-ended fairness obligation.

### Question 17

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

The equality analysis should look beyond the intended benefits to distributional effects of the design choices. The single-webpage requirement, as specified, may perform poorly for disabled students and those using assistive technologies, and dense consolidated legal documentation is least accessible to students with lower prior familiarity with higher education or with English as an additional language — the groups the proposals most seek to help. Conversely, if the condition drives risk-averse behaviour, the services most likely to be scaled back — discretionary hardship support, enhancement activities and wraparound ancillary services — are disproportionately relied upon by students from underrepresented and disadvantaged groups. The impact assessment should address both effects.

There is also a risk that institutions become more cautious about targeted interventions for particular student groups if there is uncertainty about how fairness will be interpreted across different cohorts.

### Question 18

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

Yes. The consequences we foresee flow from the combination of an undefined overarching standard, broad scope and wide regulatory discretion. Providers already take a cautious approach to consumer protection compliance, and the proposals will reinforce that: greater risk aversion in course and portfolio decisions; a narrowing of optional and enhancement services to manage exposure to the ancillary services provisions; retreat from innovation in flexible, modular and employer-facing provision — including the provision the Lifelong Learning Entitlement depends on — because novel delivery models are hardest to specify exhaustively in advance; more defensive, legalistic communication with students in place of frank and helpful engagement; escalating internal appeal and complaint cycles testing an ambiguous fairness standard; and the diversion of resource from student-facing activity into compliance infrastructure and legal advice. Each of these outcomes would leave students worse off. A condition anchored in defined legal standards, with proportionate scope and implementation, would avoid them.

## Conclusion

UA supports the aim of ensuring that students are treated fairly and have clear, accessible information to inform their decisions, and we recognise the OfS's evidence that practice across the sector is not uniformly good. But the answer to specific, identifiable failures is targeted, well-defined regulation and effective enforcement of the substantial framework that already exists — not an open-ended fairness obligation whose content providers cannot know in advance, applied across an uncertain scope, on an unrealistic timetable.

The proposals in their current form would create a more complex, duplicative and uncertain regulatory environment without clear evidence of improved outcomes for students, and with a material risk of harming them through the behavioural responses they would provoke.

We urge the OfS to pursue the alternative set out in our response to question 16, and the

specific recommendations set out in our executive summary: alignment with consumer protection law through updated CMA guidance, strengthened enforcement in partnership with National Trading Standards, targeted and precisely defined additional requirements where the evidence supports them, and a phased, realistic implementation timetable. We would welcome the opportunity to work with the OfS, drawing on our members' experience across professional, technical and apprenticeship provision, to develop that approach.