

Condition B3: Student outcomes

Scope and application

B3.1 This condition applies to the quality of higher education provided in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider).

B3.2 This condition applies as an initial and general ongoing condition of registration for each **relevant provider** and as a general ongoing condition of registration for any provider that is not a **relevant provider**.

Requirement

B3.3 Without prejudice to the principles and requirements provided for by any other condition of registration and the scope of B3.1, the provider must deliver positive outcomes for students on its **higher education courses**.

B3.4 For the purposes of this condition, delivering positive outcomes means that either:

- a. in the OfS's judgement, the **outcome data** for each of the **indicators** and **split indicators** are at or above the relevant **numerical thresholds**; or
- b. to the extent that the provider does not have **outcome data** for each of the **indicators** and **split indicators** that are at or above the relevant **numerical thresholds**, the OfS otherwise judges that:
 - i. the provider's **context** justifies the **outcome data**; and/or
 - ii. this is because the OfS does not hold any data showing the provider's numerical performance against the **indicator** or **split indicator**; and/or
 - iii. this is because the OfS does hold this data but the data refers to fewer than the **minimum number of students**.

Definitions

B3.5 For the purposes of this condition:

- a. '**combination of mode and level of study**' means a specified mode of study combined with a specified level of study, as set out in the **technical documents**.
- b. '**context**' includes, but is not limited to:
 - i. factors that may explain the reasons for a provider's historical performance;
 - ii. actions a provider has taken, or will take, to improve its performance, and the extent to which those actions are **credible**.
- c. '**credible**' includes, but is not limited to, consideration of:
 - i. a provider's track record of improving outcomes for its students;
 - ii. the nature of a provider's plans, including whether they are likely to generate sufficient improvement in the provider's performance; and
 - iii. whether a provider has demonstrated that it will invest sufficient resources to deliver a sufficient improvement.

- d. **'designated data body'** means:
 - i. the body designated under Schedule 6 to the Higher Education and Research Act 2017 for the purposes of sections 64 and 65 of that Act; or
 - ii. if there is no such body, the OfS.
- e. **'higher education course'** is to be interpreted:
 - i. in accordance with the Higher Education and Research Act 2017; and
 - ii. so as to include, for the avoidance of doubt:
 - A. a course of study;
 - B. a programme of research;
 - C. any further education course that forms an integrated part of a higher education course; and
 - D. any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course.
- f. **'indicators'** means measures of the extent to which, for each **combination of mode and level of study**, students achieve positive outcomes in respect of:
 - i. continuing in their studies;
 - ii. completing their studies;
 - iii. progressing into managerial or professional employment, or further study; and
 - iv. any other areas as determined by the OfS,as defined in the **technical documents**.
- g. **'minimum number of students'** means the minimum number of students set by the OfS in the **technical documents**.
- h. **'numerical thresholds'** means the numerical thresholds set by the OfS in the **technical documents** in respect of the **indicators** and **split indicators**.
- i. **'outcome data'** means data that the OfS considers is appropriate for showing a provider's numerical performance against an indicator or a split indicator, including but not limited to:
 - i. Data sourced from the **designated data body**;
 - ii. Data sourced from the Education and Skills Funding Agency; and
 - iii. Data in respect of higher education provided in any manner or form by, or on behalf of that provider (including but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider).

- j. **‘relevant provider’** means a provider for which, in the judgement of the OfS, **outcome data** exists in respect of the five year period preceding the date of the provider’s application for registration.
- k. **‘split indicators’** means the **indicators** broken down into further indicators on the basis of the following:
 - iv. specified student characteristics, including disability, ethnicity and sex;
 - v. students’ year of entry or qualification;
 - vi. subject type;
 - vii. course type;
 - viii. provider partnership and teaching arrangements; and
 - ix. any other bases as determined by the OfS,as defined in the **technical documents**.
- l. **‘technical documents’** means one or more document published by the OfS from time to time which contain detail about the definitions in this condition.

Summary

Applies to: All registered providers (subject to B3.2).

Initial or general ongoing condition: Initial and general ongoing condition.

Legal basis: Section 5 of HERA.

Guidance

Condition B3.1

1. The reference to higher education provided ‘in any manner or form’ includes any higher education course (whether or not that course is recognised for OfS funding purposes, or any other purpose), at any level, and with any volume of learning. This means, for example, that postgraduate research courses, the study of modules or courses leading to microcredentials, and apprenticeships are included within the scope of this condition. It also includes courses provided face-to-face, by distance learning, or a combination of delivery approaches.
2. This condition applies to any higher education provided ‘by, or on behalf of, a provider’. This includes higher education provided to students who are registered with a registered provider, taught by a registered provider or studying for an award of a registered provider (or where these services are provided on a registered provider’s behalf). This includes UK-based and non-UK-based students, and courses delivered through partnership arrangements both within the UK and internationally.
3. The reference to ‘including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider’ means that a provider is

required to comply with the provisions of this condition where it is the awarding body for a course, whether or not that provider has any other role in the design or delivery of that course.

4. Where a provider is not the awarding body for a course, this condition applies to a course the provider itself delivers, or which is delivered on its behalf, regardless of the identity of the awarding body, whether or not that awarding body is registered with the OfS, or the nature of any partnership agreement. For the avoidance of doubt, this means for example, that a provider delivering, or allowing another provider to deliver, courses leading to a qualification awarded by Pearson is responsible for compliance with this condition in relation to those courses. Similarly, a provider delivering, or allowing another provider to deliver, courses leading to a qualification awarded by another higher education provider, whether that awarding provider is located in England or elsewhere, is responsible for compliance with this condition in relation to those courses.
5. In practice, these provisions may result in more than one registered provider being responsible for compliance with this condition in relation to the same course.
6. While this condition, in principle, applies to any higher education within the scope of B3.1, the scope of a provider's obligations under the condition is set by B3.3 and B3.4. The effect of B3.3 and B3.4 is that a provider is required to deliver positive outcomes only in the areas covered by the 'indicators' and 'split indicators' (which are defined by the OfS in technical documents from time to time). By way of a hypothetical example, if the OfS defined the indicators and split indicators so as not to cover students on courses delivered through transnational education, a provider would not be required by the condition to deliver positive outcomes for those students. The OfS may decide to make changes to the definitions of the indicators and split indicators in the future, and this would have the effect of changing the scope of a provider's obligations under the condition.

Condition B3.2

7. A provider applying for registration with the OfS would only need to satisfy condition B3 as an initial condition if it is a 'relevant provider'.
8. A provider is a 'relevant provider' if, in the judgement of the OfS, data showing the provider's performance against the indicators or split indicators exists, and that data relates to any time during the five-year period preceding the date of the provider's application for registration. This data could relate to higher education provided in any manner or form by, or on behalf of, that provider. This would cover, for example, data about a provider teaching courses under a subcontractual arrangement with a lead provider, where that data was collected from the lead provider rather than the delivery provider. It could also cover data collected from an entity which no longer exists, for example where a provider has merged with, or divided from, another provider or where a provider has changed its legal name.
9. Where a provider is not a 'relevant provider', the initial condition would not apply and the OfS would conduct its usual registration process without assessing the provider in relation to initial condition B3.
10. All registered providers are subject to condition B3 as a general ongoing condition.

Condition B3.3

11. This paragraph sets out the overall requirement of condition B3, which is that a provider must deliver positive outcomes for students on its higher education courses.
12. The reference to 'higher education courses' in this condition is to be understood in accordance with the Higher Education and Research Act 2017.

Condition B3.4

13. This paragraph explains the meaning of the overall requirement set out in B3.3, namely that a provider must 'deliver positive outcomes' for students on its higher education courses.
14. The OfS will consider a provider to be 'delivering positive outcomes' if it is performing at or above each of the numerical thresholds that the OfS has set in relation to the 'indicators' and 'split indicators'. The indicators and split indicators are measures of the extent to which a provider is achieving positive outcomes for its students in a range of areas. The OfS will assess a provider against the numerical thresholds using data it considers is appropriate, including but not limited to data sourced from the designated data body and/or the Education and Skills Funding Agency. In making this assessment, the OfS will consider whether there is sufficient statistical evidence to support a view that a provider's performance is at or above a relevant numerical threshold.
15. Where the OfS cannot be satisfied that a provider is performing at or above a relevant numerical threshold on the basis of the data, the OfS will consider whether the context in which the provider is operating nevertheless justifies the provider's outcomes, in that they nevertheless represent positive outcomes for its students. Paragraphs x-x below contain an illustrative non-exhaustive list of examples to demonstrate how the OfS might reach a judgement about a provider's context.
16. Where the OfS does not hold any data on a provider's performance against an indicator or split indicator, or where the OfS does hold data but it refers to fewer students than the minimum number set in technical documents published by the OfS, the OfS will not assess the provider's performance against that indicator or split indicator and this will not prevent the provider from satisfying the condition. The minimum number set out in the technical documents is set by the OfS with the primary aim of preventing individual students from being identified from a provider's data.
17. The OfS will publish a document which contains detail about the definitions of the indicators and split indicators. Where the OfS decides that it is likely to be necessary to add, amend or remove one or more indicators or split indicators, it will consult on those changes.
18. The OfS has determined and published an approach to setting numerical thresholds. The OfS will use that approach to determine and publish numerical thresholds that will apply in relation to each indicator and split indicator. Where the OfS proposes to change the numerical thresholds or it otherwise considers it appropriate to seek views, it will consult. For the avoidance of doubt, when the OfS reviews numerical thresholds, it expects to use the same approach to setting numerical thresholds that it has decided to adopt. The OfS does not intend to consult on that approach unless it proposes to change the approach itself or otherwise considers it appropriate to seek views on the approach.

19. The OfS has published a document, Regulatory Advice 20¹, setting out the approach it will take to assessing a provider's compliance with this condition. Paragraphs 23 to 36 below provide a summary of the main features of that approach. Where the OfS decides that it is likely to be necessary to make material changes to that approach, it will consult on the revised content of that document.
20. The following is an illustrative non-exhaustive list of examples to demonstrate the factors the OfS may consider, and the approach the OfS may take, in determining whether the context in which a provider is operating justifies the provider's outcomes. These factors fall into two broad groups:
- a. Factors that may explain the reasons for a provider's historical performance.
 - b. Actions a provider has taken, or will take, to improve its performance, and the extent to which those actions are credible.
21. The OfS may consider the following factors which relate to a provider's historical performance:
- a. Evidence of a provider's performance in relation to benchmark values (where these are available). The OfS may test how an individual provider's outcome data compares to those of other providers for its specific student population using OfS individual provider benchmarks. The OfS will consider whether it has sufficient statistical evidence that a provider's performance is below a numerical threshold but above its individual benchmark. The OfS is likely to choose to place limited weight on evidence from benchmarking data where a provider makes a large contribution to its own benchmark. For the avoidance of doubt, the OfS will not treat a provider's performance against benchmark values as determinative of whether it satisfies condition B3.
 - b. Any external factors the OfS considers to be outside a provider's control that might reasonably be judged to have affected its past performance. When considering a provider's context, the OfS consider external factors where a provider can evidence the impact of those factors on its outcome data. For example, this might include:
 - i. The evidenced impact of the coronavirus pandemic on a provider's performance and whether such impact is broadly consistent with that for other providers.
 - ii. Regional or localised issues that provide evidence of performance different from established patterns. For example, an evidenced rapid change in employment trends in a local area may be relevant to our decision about whether to take regulatory action where a locally recruiting provider was not able to continue its previously positive progression rates.
 - c. Evidence of particular course or profession attributes that are unique to that provider, or a small group of similar providers, and result in performance consistently below a numerical threshold, but that may otherwise be considered positive. For example, a provider may have courses that are designed to provide access to a particular profession, but that profession is not classified as managerial or professional in the way the indicator has

¹ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

been constructed. The OfS may consider this positively where graduates report through the Graduate Outcomes survey that they are using the skills developed on their course or where graduates are demonstrating above average earnings in Longitudinal Education Outcomes data.

22. The OfS may consider the following factors which relate to actions that a provider has taken, or is planning to take, to improve its performance:
- a. Evidence that a provider no longer delivers, or no longer plans to deliver, courses that are included in the indicators, and the reasons for ceasing the delivery of such courses. For example, the OfS would consider whether a provider had identified poor performance on its courses and taken a strategic decision to cease delivery of those courses. In assessing compliance with the condition in these circumstances, the OfS would interrogate the timing and a provider's rationale for taking that action and would consider whether the provider had:
 - i. Taken action to improve its performance before the OfS's interest.
 - ii. Supported its students.
 - iii. Drawn lessons from its under-performance and applied, or had an intention to apply, those to its other courses.
 - iv. Not sought to evade regulatory action by closing courses with weak performance and launching new courses in their place.
 - b. Evidence of any actions a provider has already taken to improve its performance in relation to numerical thresholds, and the effectiveness and sustainability of those actions. This could include instances where a provider could demonstrate that its aggregate performance for a particular indicator for the past four years was below the relevant numerical threshold because of performance in an earlier year – and that performance showed significant and sustained improvement in the most recent years.
 - c. Evidence of a provider's plans to improve its performance in relation to numerical thresholds, and the credibility and sustainability of those plans. The OfS would expect to see evidence of the actions a provider had already committed to taking to improve performance in the areas in which it had identified concerns. The OfS would consider whether a provider is able to demonstrate that it has credible and sustainable plans that are likely to sufficiently improve performance in an appropriate timescale. In determining credibility and sustainability, the OfS may consider the following factors:
 - i. A provider's track record of improving outcomes for its students.
 - ii. The nature of a provider's plans, including whether they are likely to generate improvement in the outcomes identified as of concern.
 - iii. Whether a provider has demonstrated that it will invest sufficient additional resources to deliver a sufficient improvement in outcomes and its ability to sustain that investment over a relevant period of time. In making this judgement, the OfS

may seek additional information about the costs of proposals and consider the OfS's own assessments of a provider's financial viability and sustainability.

Assessing compliance for providers seeking registration

23. The OfS will assess a provider's compliance with this initial condition itself and will not commission the designated quality body to undertake assessment activity. It will undertake this assessment through the following broad steps. Further details are set out in associated regulatory advice (Regulatory advice 20).²
24. The OfS will review a provider's outcome data and consider whether it is satisfied that it has sufficient statistical evidence that the provider's performance against each of the indicators and split indicators is at or above the relevant numerical thresholds. The provider's outcome data will be assessed on the basis set out in a document published by the OfS which includes the OfS's approach to statistical confidence, including the principle that the closer the OfS is to having 100 per cent statistical confidence in the evidence, the stronger it will likely judge that evidence to be. In undertaking this review, the OfS may also consider, where appropriate, other matters relating to the interpretation of statistics.
25. Where the OfS is satisfied that a provider's performance against each of the indicators and split indicators is at or above the relevant numerical thresholds, it will determine that the provider has satisfied initial condition B3.
26. Where the OfS cannot be satisfied from a provider's outcome data that its performance is at or above each relevant numerical threshold, the OfS will consider whether there is evidence available to the OfS that the provider's context means that any outcome data that is not at or above a relevant numerical threshold is justified, in that it nevertheless represents positive outcomes for students. The OfS will seek further information about contextual factors from a provider where the OfS considers it appropriate to do so.
27. If, after following the step above, the OfS is not satisfied that there is context that means a provider's performance is justified, it will inform the provider that it has taken a provisional decision that the provider has not satisfied initial condition B3. The OfS will consider representations from the provider before reaching a final decision.
28. Where the OfS does not hold any data on a provider's performance against an indicator or split indicator, the OfS will not assess the provider's performance against that indicator or split indicator and this will not prevent the provider from satisfying the initial condition.
29. Where the OfS holds data on a provider's performance against an indicator or split indicator, but that data refers to fewer students than the minimum number set by the OfS in the technical documents, the OfS will not assess the provider's performance against that indicator or split indicator and this will not prevent the provider from satisfying the initial condition.
30. Where a provider, or another legal entity that the OfS considers to be operating substantially the same higher education business, has previously been registered, a history of non-

² See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

compliance with ongoing condition B3 is likely to result in a judgement that initial condition B3 is not satisfied.

31. Where the OfS considers this initial condition to be satisfied, but that there is an increased risk of a future breach of the general ongoing condition, or a relevant wider regulatory concern, it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are appropriate, for example, a requirement to report additional matters as reportable events.

Information gathering, assessment of evidence and enforcement

32. The OfS will prioritise its assessment and enforcement activity for this ongoing condition. The OfS will publish the general approach that it will take to prioritisation in guidance. It may also choose to publish information about its specific approach in any given academic year.
33. In addition to this prioritisation process, the OfS will use its general risk-based approach to monitoring as set out in the regulatory framework to identify providers for which an assessment of compliance with this condition is considered to be appropriate, whether or not that provider is, or is likely to be, selected by the prioritisation process.
34. For a provider selected for assessment, the OfS will take the approach set out in Regulatory advice 20.³ The OfS will assess a provider's compliance with this condition itself and will not commission the designated quality body to undertake assessment activity. Broadly, this approach consists of the following steps:
 - a. The OfS will review a provider's outcome data and consider whether it is satisfied that it has sufficient statistical evidence that the provider's performance against each of the indicators and split indicators is below the relevant numerical thresholds. The provider's outcome data will be assessed on the basis set out in a document published by the OfS which includes the OfS's approach to statistical confidence, including the principle that the closer the OfS is to having 100 per cent statistical confidence in the evidence, the stronger it will likely judge that evidence to be. In undertaking this review, the OfS may also consider, where appropriate, other matters relating to the interpretation of statistics.
 - b. Where performance below a relevant numerical threshold is identified, the OfS will then consider whether there is evidence available to the OfS that the provider's context means that any outcome data that is below a relevant numerical threshold is justified, in that it nevertheless represents positive outcomes for students. The OfS will seek further information about contextual factors from a provider where the OfS considers it appropriate to do so.
35. Having completed its assessment, the OfS will reach a view about a provider's previous and ongoing compliance with the condition. Where the OfS takes the view that there is or has been a breach of the condition, it will write to the provider to set out the reasons for its provisional decision and the evidence it has used to reach this view. The provider is able to submit any

³ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

further information it considers relevant in a representations process and the OfS will consider this before reaching a final decision.

36. Where the OfS has decided that there is, or has been, a breach of this condition, it will consider the use of the full range of its enforcement powers. This includes the imposition of a monetary penalty, suspension of elements of a provider's registration, for example its access to student support funding or OfS public grant funding, or deregistration. The OfS is likely to require improvement, to mitigate the impact of poor performance on students, or to incentivise future compliance by this and other providers. The OfS will follow any statutory consultation process as it takes enforcement action.
37. Where the OfS considers there to be an increased risk of a future breach or a relevant wider regulatory concern, it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are appropriate, for example, a requirement to report additional matters as reportable events.
38. Where there is, or has been, a breach of this condition, or the OfS has imposed a specific condition of registration, the ways in which the OfS may take this into account include, but are not limited to, the following ways:
 - a. A provider's eligibility to participate in the TEF. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may be taken into account in determining eligibility to participate in the TEF.
 - b. A provider's existing TEF rating. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may affect any existing TEF rating.
 - c. Regulation of degree awarding powers. Where the OfS makes a final decision that there is, or has been, a breach of this condition, or where the OfS imposes a specific condition of registration due to regulatory concerns under this condition, it will take that into account in the following ways:
 - i. Where there is a finding that a breach of this condition has taken place or is ongoing, the OfS will consider using its power under section 16 of HERA to suspend the aspects of the provider's registration that relate to the authorisation of DAPs and would be likely to suspend the provider's eligibility to be authorised for new or extended degree awarding powers..
 - ii. Alternatively, without using the power under section 16 of HERA, in circumstances where a finding has been made that a breach of this condition has taken place or is ongoing, the OfS may decide that the provider is not suitable to be authorised for new or extended DAPs. In a similar way, the OfS may also decide that the provider is not suitable to be authorised for new or extended DAPs where the OfS has imposed a specific condition of registration due to regulatory concerns relating to this condition.

The OfS would take this approach whether or not the authorisation sought is to gain new powers, or extend existing powers, for example by time, level or subject.

- d. Regulation of university, and university college, title. Where the OfS makes a final decision that there is, or has been, a breach of this condition, or where the OfS imposes a specific condition of registration due to regulatory concerns under this condition, it will take that into account in the following ways:
- i. Where there is a finding that a breach of this condition has taken place or is ongoing, the OfS will consider using its power under section 16 of HERA to suspend the aspects of the provider's registration that relate to the authorisation of university or university college title and would be likely to suspend the provider's eligibility to be authorised for university or university college title.
 - ii. Alternatively, without using the power under section 16 of HERA, in circumstances where a finding has been made that a breach of this condition has taken place or is ongoing, the OfS may decide that the provider is not suitable to be authorised for university or university college title. In a similar way, the OfS may also decide that the provider is not suitable to be authorised for university or university college title where the OfS has imposed a specific condition of registration due to regulatory concerns relating to this condition.
- e. The criteria for allocation of OfS public grant funding. In accordance with any separate OfS policies on matters relating to public grant funding, the OfS may decide to take account of a provider's current and previous compliance with this condition in determining allocations of some types of OfS public grant funding.