



## OfS Guidance on Reportable Events

<b>Outcome requested:</b>	Audit and Risk Committee is asked to <b>note</b> the revised guidance from the Office for Students on Reportable Events (Regulatory Advice 16: Reportable Events)
<b>Executive Summary:</b>	<p>The Office for Students (OfS) has revised its guidance on reportable events. The changes were consulted upon early in 2021 and the revised guidance became effective from 1 January 2022.</p> <p>The OfS has amended the guidance in response to requests from institutions for more extensive guidance on reportable events. The revised guidance also aims to improve reporting practices across the sector.</p> <p>The definition of a reportable event in the regulatory framework (para 494) has been amended (para 11 of the attached guidance) to link more closely to a provider's conditions of registration, in particular a provider's:</p> <ul style="list-style-type: none"><li>a) eligibility for registration</li><li>b) compliance with the conditions of registration</li><li>c) Eligibility for degree awarding powers or university title, and compliance with the criteria for degree awarding powers.</li></ul> <p>Table 1 of the attached provides a non-exhaustive, illustrative list of reportable events, which includes those events that are always reportable. As this aspect of the previous guidance had caused difficulties in the past when providers were unsure if an event was reportable, the OfS has provided a materiality test to help providers make a judgement:</p> <p><i>In interpreting 'the reasonable judgement of the OfS', the OfS will, as a matter of policy, consider whether a reasonable provider intent on complying with all of its conditions of registration and acting in the interests of students and taxpayers (rather than in its own commercial, reputational or other interests), would consider the event or matter to be material.</i></p> <p>The revised guidance aims to help providers understand how the OFS will assess the information provided as a reportable event and how the provider will be informed of the outcome and any next steps. The guidance also provides clarity on the actions that the OFS could take if the provider does not submit a reportable event as required.</p> <p>It is expected that Queen Mary will report the development of London City Institute of Technology with Newham College to the OfS in the coming weeks.</p>

<b>QMUL Strategy: strategic aim reference and sub-strategies [e.g., SA1.1]</b>	Effective governance contributes to all aspects of the Strategy.
<b>Internal/External regulatory/statutory reference points:</b>	<i>Office for Students: the regulatory framework for higher education in England</i>
<b>Strategic Risks:</b>	16. Compliance vii OfS compliance
<b>Equality Impact Assessment:</b>	n/a
<b>Subject to prior and onward consideration by:</b>	n/a
<b>Confidential paper under FOIA/DPA</b>	No
<b>Timing:</b>	Effective from 1 January 2022
<b>Author:</b>	OfS
<b>Date:</b>	8 March 2022
<b>Senior Management/External Sponsor</b>	Jonathan Morgan, Chief Governance Officer and University Secretary

Office for  
Students



# Regulatory advice 16: Reportable events

Guidance for registered providers

Applies from 1 January 2022

**Reference** OfS 2021.44

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

**Publication date** 20 October 2021

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## Introduction

1. This document provides guidance for registered providers about the events or matters they are required to report to the Office for Students (OfS) to inform the OfS's risk-based approach to monitoring. These are called 'reportable events'. With effect from 1 January 2022, this document replaces the previous version of our guidance 'Regulatory advice 16: Reportable events' that we published in October 2019 (OfS 2019.40).<sup>1</sup> This document sets out more fully the way in which we are delivering in practice on the commitment we made in the regulatory framework that providers that do not pose specific increased risk should experience less regulatory burden, now that the regulatory framework is established.<sup>2</sup>
2. The guidance is intended to help providers to:
  - a. Understand how reportable events fit into the OfS's approach to regulation.
  - b. Identify those events or matters that could constitute a reportable event and those that would not.
  - c. Understand and meet the requirement to submit reportable events imposed through an F3 Notice.
  - d. Understand how the OfS will assess the information provided as a reportable event and tell the provider the outcome of that assessment and any next steps.
  - e. Understand the actions the OfS could take if a provider does not submit a reportable event as required.
3. We provide guidance about our requirements for reportable events but it is a provider's responsibility to decide whether a particular event or matter constitutes a reportable event and should be reported. The Compliance and Student Protection team can be contacted on 0117 931 7305 or [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk).
4. All registered providers should be familiar with the content of the OfS's regulatory framework (OfS 2018.01) which sets out in full the approach that the OfS will take to the registration and regulation of providers.<sup>3</sup> This guidance provides additional information about how particular sections of the regulatory framework will operate in practice and will inform the OfS's interpretation of a provider's compliance with ongoing condition F3 (provision of information to the OfS). It should be read in conjunction with the regulatory framework.

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<sup>1</sup> The previous version of this guidance is also available at: [www.officeforstudents.org.uk/publications/regulatory-advice-16-reportable-events/](http://www.officeforstudents.org.uk/publications/regulatory-advice-16-reportable-events/).

<sup>2</sup> This guidance is being published following a consultation on our approach to reportable events. Our analysis of the responses to that consultation, together with our policy response, is available at: [www.officeforstudents.org.uk/publications/consultation-on-ofs-approach-to-reportable-events-analysis-of-responses-and-decision/](http://www.officeforstudents.org.uk/publications/consultation-on-ofs-approach-to-reportable-events-analysis-of-responses-and-decision/).

<sup>3</sup> Following our consultation on our approach to reportable events, we have made some amendments to the regulatory framework. These amendments take effect from 1 January 2022. The regulatory framework is available at: [www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/](http://www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/).

## Reportable events as part of a risk-based approach to regulation

5. The OfS takes a risk-based approach to regulation. This means that we focus regulatory attention on those providers that are at greatest risk of breaching their conditions of registration. For such a risk-based approach to work effectively, the OfS needs to assess the risk of a breach of each condition. We undertake a risk assessment when a provider is first registered and this assessment is updated as the OfS receives new information about the provider. New information comes from four main sources:
  - a. Indicators constructed for all providers from routine data collections, for example indicators of student outcomes or indicators of financial performance.
  - b. Reportable events submitted by a provider, for example because the provider is proposing to merge with another provider, or may be unable to pay its creditors as its debts fall due.
  - c. Additional information that the OfS has required from a provider, for example because the OfS has already judged that provider to be at increased risk of a breach of one or more of its conditions of registration.
  - d. Notifications about an individual provider from third parties, such as students or whistle-blowers.
6. Reportable events are an important component of this risk-based approach to regulation because relying solely on indicators and notifications would not allow the OfS to maintain a reliable assessment of the risk that a provider may breach its conditions of registration. There are several reasons for this:
  - a. The OfS currently receives the data needed to construct indicators at a fixed point of the year and most of this data is lagged. This means that a change in risk may not be visible to the OfS until a scheduled data return.
  - b. The currently available data allows an assessment of risk for some conditions (for example financial viability and sustainability) more readily than others (for example, management and governance). This means that risk factors in relation to some conditions of registration are not routinely visible to the OfS.
  - c. Notifications from third parties are an important part of our risk-based approach to regulation but are not consistently made in relation to all providers. This means that notifications do not provide a comprehensive view of all relevant matters in a provider.
7. If the information contained in reportable events were not available to the OfS, we would need to consider whether to increase the range of information routinely collected from all providers. For example, we may need to introduce more frequent routine reporting on matters such as student recruitment and financial forecasts to ensure we understood any adverse developments for every provider in a timely manner. This would increase regulatory burden. Relying on each provider to identify and report reportable events is therefore an important part of a proportionate, risk-based approach to regulation.

8. The judgement about whether to report a particular matter as a reportable event is for an individual provider to determine. This is because a reportable event for one provider may not be for a reportable event for another provider. For example, the threshold at which an adverse change in student recruitment becomes material to a provider's financial viability (and therefore could constitute a reportable event as defined below) will vary depending on the provider's size, business model and the amount of cash it holds. This reflects the OfS's approach as a principles-based, rather than a rules-based, regulator as it recognises that specifying an exhaustive list of events to be reported and the circumstances in which reports should or should not be made risks tick-box compliance on the part of providers. It would also mean that events that happened not to be listed but were nevertheless relevant to the OfS's assessment of risk of an individual provider's compliance with its conditions of registration might not be reported at all.
9. Reporting a reportable event, would not, in itself, result in regulatory action in relation to a provider. It may trigger a request for further information from the provider, or it may result in no further activity at all.
10. The following sections of this guidance provide a principles-based explanation of the type of events that should be reported and guidance about some of the factors that a provider should consider in reaching a judgement about reporting a reportable event.

## Definition of a reportable event

11. The regulatory framework defines a reportable event as:

A reportable event is any event or matter that, in the reasonable judgement of the OfS, negatively affects or could negatively affect:

- a. The provider's eligibility for registration with the OfS.
- b. The provider's ability to comply with its conditions of registration.
- c. The provider's eligibility for degree awarding powers, or its ability to comply with the criteria for degree awarding powers, where the provider:
  - i. holds degree awarding powers; or
  - ii. has submitted an application for degree awarding powers to the OfS, and for which the OfS has yet to reach a final decision.
- d. The provider's eligibility for university title, where the provider:
  - i. holds university title; or
  - ii. has submitted an application for university title to the OfS, and for which the OfS has yet to reach a final decision.

In interpreting 'the reasonable judgement of the OfS', the OfS will, as a matter of policy, consider whether a reasonable provider intent on complying with all of its conditions of registration and acting in the interests of students and taxpayers (rather than in its own commercial, reputational or other interests), would consider the event or matter to be material.

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12. This definition sets out the principles that determine, in the first instance, whether an event is likely to be reportable. The OfS is concerned with matters that relate to a provider's:
  - a. Eligibility for registration.
  - b. Compliance with its conditions of registration.
  - c. Eligibility for degree awarding powers or compliance with the criteria for degree awarding powers.
  - d. Eligibility for university title.
13. The first of these set out in (a) above is important because the OfS needs to know of any matters that may mean that a provider no longer meets the requirements in the Higher Education and Research Act 2017 (HERA) and the regulatory framework that determine eligibility for registration with the OfS.
14. The second of these in (b) above means that the OfS needs to know about matters that may have implications for a provider's ability to continue to satisfy its conditions of registration. In other words, this is information that we need to use to ensure that our risk assessment for one or more conditions of registration is up to date and properly reflects the regulatory risk presented by a provider. This requirement might appear to be broadly drawn but is, in practice, limited by the matters covered by a provider's conditions of registration. The more familiar a provider is with the requirements of its ongoing conditions of registration, the more straightforward it will be to identify events that are in principle likely to be reportable.
15. Similarly, the third and fourth of these in (c) and (d) above mean that the OfS wants to know about matters that may have implications for a provider's eligibility for degree awarding powers or university title, and compliance with the criteria for degree awarding powers (where the provider holds, or has applied to the OfS for, degree awarding powers or university title, as applicable). Again, this is limited in practice by the matters relevant to eligibility and these criteria.
16. The definition also sets out the basis on which the OfS will judge whether an event or matter should be reported – see paragraphs 25-29 below.

## **Identifying matters that should be reported**

17. In the OfS's principles-based regulatory system it is the responsibility of a provider to determine whether a particular event or matter constitutes a reportable event and should be reported. This approach ensures that reporting is informed by the circumstances and context in which an individual provider is operating, rather than by a set of rigid rules that cannot take context into account.
18. The overarching definition of a reportable event reproduced in paragraph 11 above encapsulates the OfS's requirement for events or matters it considers need to be reported. The definition also includes the test the OfS will apply in interpreting the 'reasonable judgement of the OfS' to judge whether a particular event or matter is reportable. The OfS will consider whether a reasonable provider intent on complying with all of its conditions of registration and acting in the interests of students and taxpayers (rather than in its own



commercial, reputational or other interests), would consider the event or matter to be material – we refer to this as the ‘materiality test’.

19. We consider that there are some matters that must always be reported, by all providers,<sup>4</sup> because these are matters that, in our judgement, a reasonable provider would always consider to be reportable. This is because we would expect these to be directly relevant to our assessment of a provider’s eligibility for registration, or compliance with its conditions of registration, or its eligibility for degree awarding powers or university title, or compliance with the criteria for degree awarding powers. These matters are identified in Table 1 in Annex A and, for example, include matters that relate to a change of ownership or control of a provider. The F3 Notice issued to providers refers to these matters, specifically.
20. We may identify some additional matters that must always be reported by an individual provider. These are matters that, in our judgement, the individual provider would always consider to be reportable. This is because we would expect these to be directly relevant to our assessment of the matters set out in the overarching definition, given the provider’s particular context and our assessment of risk for that provider. These matters will be identified in the F3 Notice issued to the provider.
21. For other events or matters, a provider will need to consider whether the event or matter negatively affects or could negatively affect the provider’s:
  - a. Eligibility for registration.
  - b. Compliance with its conditions of registration.
  - c. Eligibility for degree awarding powers or compliance with the criteria for degree awarding powers (where the provider holds, or has applied to the OfS for, degree awarding powers).
  - d. Eligibility for university title (where the provider holds, or has applied to the OfS for, university title).
22. We are clear therefore that, for some events or matters, a provider will need to make a judgement about whether a report is required or not. A provider will need to consider the materiality test as it decides whether a report should be made. Table 1 in Annex A includes a non-exhaustive list of matters that may, in principle, fall under the definition of a reportable event. These are illustrative examples only. For these, and any other matters which are not ‘always reportable’ for a provider, a provider will need to reach a judgement about reporting in a particular instance by applying the materiality test.

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<sup>4</sup> Further education and sixth form colleges, whose primary regulator is the Education and Skills Funding Agency (ESFA), are not required to report certain events and matters relating to their financial viability and sustainability to the OfS. These events and matters are identified in Table 1 in Annex A. The OfS will obtain relevant information from the ESFA. This does not affect the generality of the overarching definition of a ‘reportable event’, reproduced in paragraph 11 above, and it remains the case that further education and sixth form colleges are required to comply with the requirements of initial and ongoing condition of registration D (financial viability and sustainability) to register, and remain registered, with the OfS.

Similarly, Ofsted, rather than the OfS, is responsible for monitoring the implementation of the Prevent duty by further education and sixth form colleges. Those providers are not required to report matters relating to their compliance with the Prevent duty to the OfS. This is made clear in Table 1 in Annex A. The OfS is able to obtain the relevant information from Ofsted.

23. That judgement may depend on a number of factors, including the size and complexity of a provider and the context in which an event or matter takes place. For example, an investigation into a possible low value fraud involving one of a provider's senior officers would be likely to constitute a reportable event, whereas an investigation into a fraud of a similar value involving a junior member of staff, would not. Similarly, submitting an additional 10 humanities students in the HESES return would not be likely to constitute a reportable event, but submitting an additional 10 clinical stage medicine students would. Such contextual factors should be taken into account in determining whether a matter falls into the definition of a reportable event set out above.
24. In practice, the OfS expects a provider to make a reasonable decision about whether a particular event or matter should be reported or not. In reaching its decision, a provider should consider the particular event or matter and the context in which it has arisen, rather than the number and type of matters it has previously reported, or not reported. To assist a provider in reaching its reporting decisions, Table 1 in Annex A sets out the factors that are likely to be relevant to a provider's judgements about reporting for some common matters. The factors are included as guidance only and do not constitute an exhaustive list of relevant factors in each case. Their inclusion does not detract from the need for a provider to exercise judgement in relation to the events and matters that may be reportable on the basis of the definition of reportable events contained in paragraph 494 of the regulatory framework (and reproduced above). In particular, the references to monetary amounts in the examples relating to fraud and court action should not be viewed as absolute thresholds which trigger reporting in all cases.
25. We will determine for ourselves whether we consider an event to be, in fact, reportable. This must be the case because the requirement to report flows from a condition of registration and the OfS needs to assess on a routine basis whether the requirements of conditions of registration are met. It is possible that the judgement a provider makes about whether a particular event or matter should be reported may be different from the judgement of the OfS. We are unlikely to draw negative conclusions about such a difference in judgement where the event or matter is not one that must always be reported and it is clear that a provider has properly considered the OfS's requirements for reporting. For cases where a significant decision about reporting is finely balanced, a provider should consider whether recording the reasons for its decision, whatever that decision may be, would allow it to demonstrate to the OfS that the decision had been taken with due care and attention and with regard to relevant matters.
26. The OfS will judge whether the event should have been reported in accordance with the Notice issued under condition F3, and the definition of reportable event set out above. We will consider whether a reasonable provider, intent on complying with all of its conditions of registration and acting in the interests of students and taxpayers (rather than in its own commercial, reputational or other interests), would consider the event or matter to be material and therefore reportable. If the OfS concludes that a provider has not made a reasonable judgement about reporting, we will consider whether we should take further regulatory action. This includes where we conclude that a provider, in reporting an event, has not met the timescales for reporting which are set out in the F3 Notice and explained in this guidance document. Reportable event requirements stem from ongoing condition of registration F3 which governs the provision of information to the OfS. This means that a failure to report in the way specified in an F3 Notice could cause us to revisit our risk assessment for condition F3 or

consider whether there may have been a breach of that condition. Increased risk of a breach, or an actual breach, would cause the OfS to consider whether further regulatory action was required.

27. The circumstances in which further regulatory action in relation to a provider's reporting decisions is most likely to be relevant are those cases where the OfS judges that a provider has not made a reasonable decision, for example where it has deliberately or recklessly failed to report a significant event, acted dishonestly or sought to cover up information. This approach reflects the way in which the OfS considers the intervention factors in paragraph 167 of the regulatory framework when deciding whether and how to intervene in cases of concern. An intervention in relation to a failure to comply with the reporting requirements imposed through condition F3 is more likely where the provider has not informed the OfS and we have become aware of an event or matter from other sources, such as through our own regulatory activity, whistleblowing, or media reporting.
28. Similarly, a pattern of over-reporting, such that events that clearly do not meet the OfS's definition of a reportable event are repeatedly reported, may cause the OfS to consider whether a provider's governing body is properly exercising its responsibilities to ensure that it continues to comply with its reporting obligations. The OfS may, for example, reconsider in these circumstances its risk assessment for ongoing conditions E2 (management and governance) and E3 (accountability).
29. More information about the OfS's approach to regulatory intervention can be found in Regulatory advice 15: Guidance on monitoring and intervention.<sup>5</sup> The OfS's Compliance and Student Protection team is able to provide guidance about the OfS's requirements for reportable events but, as set out above, it is a provider's responsibility to decide whether a particular event or matter constitutes a reportable event and should be reported.

## Timing for submitting a reportable event

30. It is important that events are reported to the OfS in a timely way. This is because we need the information contained in a reportable event to ensure our risk assessment for a provider is up to date. A provider is required to report an event within five working days<sup>6</sup> of the date that the event is identified or, if that is not possible due to exceptional circumstances beyond the control of the provider, as soon as reasonably practicable thereafter and without undue delay. This time frame is set out in the F3 Notice we issue to each provider imposing the requirement to report reportable events. We will consider whether a provider met the timescales for reporting an event, as part of our assessment of the event. Where a provider is reporting outside the 'five working days' time frame, it should set out the reasons for this as part of its submission of a reportable event.
31. It is helpful to think about these timing requirements separately for:
  - a. Events or matters that have yet to happen.

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<sup>5</sup> See [www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/](http://www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/).

<sup>6</sup> For these purposes, a 'working day' is any day that is not a Saturday, a Sunday, or a day which is a bank holiday in England under the Banking and Financial Dealings Act 1971.

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- b. Events or matters that have already happened.

32. The following paragraphs deal with these two scenarios.

## Events that have yet to happen

33. An event or matter that is likely to be a reportable event may relate to a provider's future plans, for example a merger, a new campus, or the closure of a subject area. Or it might relate to information that may have a future consequence for the provider, for example the impact on its financial forecasts of an unplanned reduction in student recruitment.

34. A provider should consider the following factors when determining the timing of a report in these circumstances:

- a. Where the provider or its owner is planning or can foresee an event or matter that is **relevant to the provider's eligibility for registration with the OfS**, the event should be reported within five working days of the matter being **first contemplated** by the provider or, if that is not possible due to exceptional circumstances beyond the control of the provider, as soon as reasonably practicable thereafter and without undue delay. 'First contemplated' means when the provider first formally discusses its plans or the matter with its governing body, owners or shareholders, even where details may not be firm. A provider is not expected to report to the OfS when a matter of this kind is first considered or discussed informally by individual office holders. Events in this category might include a change of ownership or control, or a plan to cease offering higher education courses.
- b. Where the provider or its owner is planning or can foresee an event or matter that is **relevant to the provider's compliance with its conditions of registration or to its authorisation for degree awarding powers or university title**, the event should be reported within five working days of the provider **becoming aware** that the event or matter may or will have that effect or, if that is not possible due to exceptional circumstances beyond the control of the provider, as soon as reasonably practicable thereafter and without undue delay. Events in this category might include the closure of a campus, or a likely breach of banking covenants, or a provider realising that it will not be able to meet a deadline for the submission of data.

## Events that have already happened

35. A provider may become aware of an event or matter that is likely to be a reportable event after it has already happened. This might include, for example, discovery of a possible fraud, or notification to the provider that another regulator is taking action in relation to the provider.

36. In these circumstances, the OfS expects the event or matter to be reported within five working days of the date that the event is identified by the provider. If that is not possible due to exceptional circumstances beyond the control of the provider, the event should be reported as soon as reasonably practicable and without undue delay.

## Informing the OfS of a reportable event

37. A provider's governing body is responsible for interactions between the provider and the OfS. This includes responsibility for ensuring that the OfS is informed of reportable events on the

basis set out in the F3 Notice, the requirements of the regulatory framework and this guidance. However, it may not be practical for a governing body to make decisions itself about whether particular events or matters should be reported and it is for a provider to determine how best to comply with the governing body's reporting obligations. For example, a governing body may wish to put in place appropriate arrangements to delegate authority, to the accountable officer and other senior officers, to ensure that the OfS is informed of reportable events. We would expect a governing body to ensure effective oversight of the arrangements for reporting events where this is delegated to senior officers. This is important because the information contained in a reportable event may change the OfS's risk assessment for a provider and could lead to regulatory action.

38. If a reportable event relates to the accountable officer, it is not likely to be appropriate for the accountable officer to make the report to the OfS. In these circumstances, the governing body must itself make the report or delegate the action to report the matter to another appropriate individual who is not the accountable officer. The accountable officer is usually copied into the OfS's response to a reportable event, regardless of the identity of the individual making the report. Where the accountable officer is the subject of a report, the individual making the report must clearly state that it would not be appropriate for the OfS to respond to the accountable officer.

## Events that relate to more than one provider

39. The OfS recognises that events or matters will sometimes occur that must be reported by more than one registered provider. This may be the case, for example, where more than one provider registered with the OfS is part of a partnership arrangement. In such circumstances, each provider should make its own judgement about whether an event or matter should be reported, by reference to the F3 Notice, and using the information in the regulatory framework and this guidance.
40. An unregistered provider working in partnership with a registered provider is not required to submit reportable events to the OfS but may choose to notify the OfS about matters which it judges may be of concern to the OfS, using [notifications@officeforstudents.org.uk](mailto:notifications@officeforstudents.org.uk).

## Information required with a reportable event

41. A provider should ensure that all relevant information is included in its report. 'Relevant' in this context means all the information that the OfS would need to have to understand the implications of a reportable event for its regulation of the provider. Some types of reportable event may require specific information to be submitted with the report and some may require additional documents to be uploaded.
42. The requirement to report reportable events is imposed on a provider under ongoing condition F3 (provision of information to the OfS). This is underpinned by section 8(1)(b) of HERA and this statutory provision does not provide any exemptions in relation to the type of information that the OfS may require to be provided. For example, a provider would be required to submit information to the OfS relating to named individuals that would normally be subject to the provider's own data processing notices. Information that a provider may consider to be commercially confidential would also need to be submitted if it is relevant to an event or matter that should be reported. The OfS may decide to share information about a registered provider

with other persons or bodies, on the basis set out in HERA. Further information about this is set out in our guidance for providers on our approach to monitoring and intervention.<sup>7</sup>

## Submission of a reportable event

43. A reportable event must be submitted online via the OfS portal. This is a secure mechanism for the submission of confidential information. The OfS recognises that information submitted via the portal can be of a sensitive or personal nature and has arrangements in place to ensure that such information is dealt with appropriately and with due regard for confidentiality when it is received.
44. When a provider uses the portal to submit a reportable event, we will ask for all the information we need as part of the initial submission. This is likely to include a description of the event that is being reported, an explanation of why the provider considers the event to be material where the materiality test has been applied, and a description of any action the provider is taking to mitigate any impact of the event. Where a provider is reporting amendments to documents, it should clearly identify those changes. Where a provider is reporting outside the normal 'five working days' time frame, it should also explain the reasons for this, as set out in paragraph 30 above.
45. The OfS will send an email to confirm that the reportable event and any associated documents have been received. This acknowledgement email is usually sent to the accountable officer and is not automatically generated and so there may be a short delay between the submission of the reportable event and the receipt of the email confirmation.
46. All registered providers have been provided with guidance on how to use the OfS portal. If a provider needs practical assistance completing the forms to submit a reportable event or has difficulty uploading supporting documents, it should contact [portal@officeforstudents.org.uk](mailto:portal@officeforstudents.org.uk) for technical issues. For other issues, contact the Compliance and Student Protection team using [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk) or 0117 931 7305.

## Assessing a reportable event

47. After a provider has submitted a reportable event, the OfS will review the information and assess its credibility, reliability and completeness. We may ask the provider for further information, if this is required. We may also make enquires of, or request further information from, other bodies.
48. The OfS will consider the reportable event and may determine one of the following next steps:
  - a. The information contained in the report should be recorded but no further action is required from the provider at this time.
  - b. A more extensive assessment is required because the information contained in the report is likely to affect the provider's eligibility for registration, its compliance with its conditions of registration, or its eligibility for degree awarding powers and university title, or its ability to comply with the criteria for degree awarding powers (where relevant).

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<sup>7</sup> See Regulatory advice 15: Guidance on monitoring and intervention, available at: [www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/](http://www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/).

- c. A more extensive assessment is required because the information contained in the report adds new information to a known issue or to a pattern of events or issues.
49. Where no further action from the provider is required, we will write to the provider to confirm that this is the case. We may also explain to the provider the circumstances in which the OfS may have a future interest in this event. Whether we do so, in any particular case, will depend on the particular facts of the event and the provider's context.
50. A more extensive assessment of the reportable event may lead to one or more of the following decisions:
- a. The information contained in the report should be recorded but no further action is required from the provider at this time.
  - b. There is an effect on the provider's eligibility for registration, a change in the OfS's risk assessment for one or more conditions or registration (with risk increased or decreasing, or crystallising into a breach of a condition), or an effect on the provider's eligibility for degree awarding powers or university title or its ability to comply with the criteria for degree awarding powers (where relevant).
  - c. Further assessment or action should be taken to respond to the issues identified in (b) above.
51. Where, following that more extensive assessment, we decide that no further action is required from the provider, we will write to the provider to confirm that this is the case. We may also explain to the provider the circumstances in which the OfS may have a future interest in this event. Whether we do so, in any particular case, will depend on the particular facts of the event and the provider's context.
52. For some types of reportable events, for example a change of ownership or control of the provider, further assessment is more likely to be necessary. We may be unable to conclude our assessment and confirm any regulatory consequences of the event in advance of that event happening. This means that we would expect a provider to continue to engage with us as a transaction or event progresses, to understand and address its likely regulatory impact.
53. Where the OfS decides that the provider may be at increased risk of breaching one or more conditions of registration such that action is required, we will write to the provider to set out the issues. If the OfS has reached a provisional view that there has been a breach of one or more conditions and/or that we are minded to impose one or more specific ongoing conditions, the notification to the provider will set out the OfS's reasons for our provisional decision. A representations process will be followed before the OfS reaches a final decision. The process for this representations process will be set out in any notification of a provisional decision to the provider. Similarly, if the OfS were minded to take other enforcement action, we would follow the process set out in HERA and the regulatory framework.
54. Further information about how the OfS will assess the risk of a future breach of a condition, and the actions we may take to mitigate such risk, and information about enforcement action in

Applies from 1 January 2022

relation to a breach of a condition, can be found in the advice published by the OfS on monitoring and intervention.<sup>8</sup>

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<sup>8</sup> Available at: [www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/](http://www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/).



## Annex A: Examples of reportable events

1. The regulatory framework defines a reportable event as:

A reportable event is any event or matter that, in the reasonable judgement of the OfS, negatively affects or could negatively affect:

- a. The provider's eligibility for registration with the OfS.
- b. The provider's ability to comply with its conditions of registration.
- c. The provider's eligibility for degree awarding powers, or its ability to comply with the criteria for degree awarding powers, where the provider:
  - i. holds degree awarding powers; or
  - ii. has submitted an application for degree awarding powers to the OfS, and for which the OfS has yet to reach a final decision.
- d. The provider's eligibility for university title, where the provider:
  - i. holds university title; or
  - ii. has submitted an application for university title to the OfS, and for which the OfS has yet to reach a final decision.

In interpreting 'the reasonable judgement of the OfS', the OfS will, as a matter of policy, consider whether a reasonable provider intent on complying with all of its conditions of registration and acting in the interests of students and taxpayers (rather than in its own commercial, reputational or other interests), would consider the event or matter to be material.

2. Reportable events must be reported to the OfS in accordance with a Notice issued under condition F3. The definition contained in the regulatory framework and the information in this guidance document are designed to ensure that events are appropriately reported.
3. Some events or matters set out in Table 1 below are identified as 'always reportable' and a provider must report these regardless of its view of the materiality of an individual event or matter.<sup>9</sup> From time to time, the OfS may identify further events or matters that are always reportable and will inform registered providers of such reporting requirements. The focused mandatory reportable event requirements we put in place during the coronavirus pandemic are an example of how this is likely to work in practice.
4. Similarly, the OfS may decide that, for an individual provider, a particular type of event or matter is always reportable. This is likely to be because the OfS judges that regulatory risk is increased for that provider and additional reporting is required to mitigate that risk. Where this is the case, we will set this out in the F3 Notice for that provider.
5. Where an event or matter is not identified as 'always reportable' in Table 1 below, and is not 'always reportable' for that individual provider (see paragraph 4 of this annex), a provider will

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<sup>9</sup> Further education and sixth form colleges are not required to report some matters to the OfS. These matters are identified in Table 1 below.

need to make a decision about whether it should be reported, on the basis of the definition in the regulatory framework and the information in this guidance document.

6. Table 1 does **not** contain an exhaustive list of reportable events and, again, a provider must consider the definition in the regulatory framework and the information in this guidance document as it discharges its reporting obligations in accordance with the Notice issued under condition F3.
7. The list of events in Table 1 is grouped into themes to illustrate why the OfS may have an interest in a particular event or matter. This is for illustrative purposes only and it is likely to be the case that a particular event or matter is relevant to a number of themes. For example, a redundancy programme may be relevant to a provider's financial position and to the quality and standards of its courses.
8. Where an example in Table 1 is not identified as 'always reportable' to the OfS (and is not 'always reportable' for that individual provider – see paragraph 4 of this annex), or where an event or matter is not listed in Table 1, a provider will need to consider the materiality test as it decides whether a report should be made. The materiality test is explained further in this guidance document. We are clear that, for some events or matters, a provider will need to make a judgement about whether a report is required or not. That judgement may depend on a number of factors, including the size and complexity of a provider and the context in which an event or matter takes place. These contextual factors should be taken into account as a provider decides whether to report an event or not.
9. To assist a provider in making decisions about reporting, Table 1 also provides further guidance about some common events or matters that may, in principle, fall within the scope of our reporting requirements, by setting out the factors that are likely to be relevant to a provider's judgement about complying with its reporting obligations.

## Table 1: Non-exhaustive, illustrative list of reportable events, which includes some events that are always reportable

We may amend this guidance from time to time, including following the conclusion of current consultations on our approach to the regulation of quality and standards.

Type of event or matter	Is it always reportable?
a. Matters relating to a provider's ownership, legal form or corporate structure, including but not limited to:	
i. The legal entity that is registered ceasing to exist. This might be as a result of: <ul style="list-style-type: none"> <li>• The acquisition by another legal entity of the business operated by a provider</li> <li>• A merger of the provider with another registered or unregistered higher education provider.</li> </ul>	Yes
ii. A merger of the provider with another registered or unregistered higher education provider.	Yes
iii. A change of ownership, including through a sale, of the provider (see Definitions below). <sup>10</sup>	Yes
iv. A change in the provider's legal form.	Yes
v. Amendments to the provider's governing documents. <sup>11</sup> Factors in favour of reporting may include: <ul style="list-style-type: none"> <li>• Amendments which affect the provider's ability to uphold and deliver in practice the public interest governance principles that apply to the provider</li> <li>• Amendments which relate to the treatment of the provider's charitable assets on dissolution of the provider.</li> </ul> Factors against reporting may include: <ul style="list-style-type: none"> <li>• Administrative amendments which do not affect the operative provisions of the governing document(s).</li> </ul>	No
vi. An acquisition by the provider of another entity. Factors in favour of reporting may include:	No

<sup>10</sup> If, following the change of ownership, the provider will be owned by another OfS-registered provider, or by a provider that has submitted an application for registration and for which we have not yet made a final decision, the provider must make this clear in its report.

<sup>11</sup> With effect from 1 January 2022, paragraph 446 of the regulatory framework is amended to remove the requirement for a provider to provide the OfS with the latest version of its governing documents when any changes are made.

Type of event or matter	Is it always reportable?
<ul style="list-style-type: none"> <li>The entity (to be) acquired is registered with the OfS or has submitted an application for registration and for which the OfS has not yet made a final decision.</li> </ul>	
vii. A sale of a part of the provider or its parent.	No
<b>b. Matters related to the delivery of higher education in England, including but not limited to:</b>	
i. The provider resolving to cease carrying on its business principally in England.	Yes
ii. The provider resolving to fully or substantially cease providing higher education, whether or not this results in the closure of the provider.	Yes
iii. A change in the provider's business model, such as a move to focus on further instead of higher education.	No
iv. Loss, including suspension, of the provider's student sponsor licence.	Yes
<b>c. Matters relating to the quality and standards of a provider's higher education courses, including but not limited to:</b>	
i. A notification to the provider of an investigation by an awarding organisation or awarding body or by a professional, regulatory or statutory body. <sup>12</sup>	Yes
ii. A notification to the provider that its awarding organisation or awarding body is to withdraw from the arrangement, where this is not a routine consequence of a planned contract review.	Yes
<b>d. Matters relating to student and consumer protection, including but not limited to:</b>	
i. The provider receiving a complaint that it has charged or advertised fees that exceed a statutory fee limit or a fee limit imposed as a result of an approved access and participation plan.	Yes
ii. A new campus, whether in the UK or internationally.	Yes
iii. Closure of a campus, department, or subject area, whether or not this is in the provider's approved student protection plan.	Yes
iv. Termination of a partnership arrangement, whether in the UK or internationally, where this results in a contract change for students.	Yes
v. Complaints from students that are upheld in full or in part by the provider, or by the OIA, and that result in redress for a student (including a full or partial fee refund) or changes within the provider.	No

<sup>12</sup> Professional, statutory and regulatory bodies (PSRBs) are a diverse group of organisations which accredit, recognise and approve courses which may lead to a professional or vocational qualification. They are to be distinguished from other regulatory bodies such as the Charity Commission.

Type of event or matter	Is it always reportable?
<p>e. Matters relating to a provider's financial viability or sustainability, including but not limited to: (Further education and sixth form colleges, whose primary regulator is the Education and Skills Funding Agency, are not required to report the events and matters set out in this section (e), to the OfS.)</p>	
<p>i. A likely drop in the provider's liquidity<sup>13</sup> to below 30 days' average expenditure unless this is the provider's normal cash management policy or is mitigated through an agreed revolving credit facility, overdraft or other financing.</p>	<p>Yes</p>
<p>ii. A likely breach of any financial covenant attached to a loan, where that breach has not been waived by the lender.</p>	<p>Yes</p>
<p>iii. For a provider with a legally binding obligation of, or which otherwise receives, financial support underpinning its financial viability and sustainability, the withdrawal of the obligation or that financial support (including as a result of a change of ownership or control of the provider, even where the new owner will offer a similar obligation or financial support), or an adverse change in the counterparty's financial position or other standing that could affect its suitability as a counterparty.</p>	<p>Yes</p>
<p>iv. A provider's external auditor has notified the provider that it may conclude that the provider is not a going concern, including where the provider is asked to submit additional information to the auditor in response to such a notification.</p>	<p>Yes</p>
<p>v. A provider's trustees or directors are considering making an assessment that the provider is not a going concern.</p>	<p>Yes</p>
<p>vi. Any matter or event that may result in the provider being unable to pay its creditors as debts fall due.</p>	<p>Yes</p>
<p>vii. A change in the provider's actual or forecast financial performance or position.</p>	<p>No</p>
<p>viii. A change in financial commitments or borrowings.</p>	<p>No</p>
<p>ix. A change in forecast or actual student numbers that was not included in the most recent financial forecasts submitted to the OfS.</p>	<p>No</p>
<p>x. For a provider that is part of a larger corporate group, any adverse change in the group's financial position.</p>	<p>No</p>
<p>xi. The sale of assets.</p>	<p>No</p>
<p>xii. A redundancy programme.</p>	<p>No</p>

<sup>13</sup> Net liquidity days is calculated as: ((cash and cash equivalents + current asset investments - overdrafts - bank loans and external borrowing falling due within one year - loans from directors falling due within one year) / (total expenditure - depreciation and amortisation - changes to pension provisions and pension adjustments))\*365. The requirement here reflects the terminology used for the OfS's annual financial return.

Type of event or matter	Is it always reportable?
<b>f. Matters relating to management and governance, including but not limited to:</b>	
i. Changes to the identity of the individual a provider wishes to nominate to the OfS as its accountable officer.	Yes
ii. Changes to the identity of the chair of a provider's governing body.	Yes
iii. A change of control of the provider (see Definitions below). <sup>14</sup>	Yes
iv. A matter relating to the provider's compliance with the Prevent duty as set out in the OfS's monitoring guidance. <sup>15</sup>	Yes
v. The initiation of a governance review where this is not a routine part of a provider's planned arrangements. Factors in favour of reporting may include: <ul style="list-style-type: none"> <li>• The review is initiated in response to whistleblowing, or other complaints</li> <li>• The review is initiated in response to welfare or safeguarding concerns about students or staff.</li> </ul>	No
vi. The following events or matters relating to fraud or financial irregularity: <p>(a) The provider receives a complaint or allegation that it may have committed fraud</p> <p>(b) The provider initiates an investigation into a possible fraud or financial irregularity involving the provider</p> <p>(c) The provider is notified that a third-party is investigating the provider in relation to a possible fraud or financial irregularity</p> <p>(d) A third-party makes a finding that the provider has committed fraud.</p> Factors in favour of reporting may include: <ul style="list-style-type: none"> <li>• Involvement of any member of the governing body, the accountable officer, or any other senior officer</li> <li>• The fraud exposes a systemic weakness in the provider's internal control arrangements that suggest other, as yet unidentified, cases could be taking place</li> <li>• The fraud involves public funding</li> <li>• The fraud is one of a repeating pattern of even small-scale frauds.</li> </ul>	No

<sup>14</sup> If, following the change of control, the provider will be under the control of another OfS-registered provider, or a provider that has submitted an application for registration and for which the OfS has not yet made a final decision, the provider must make this clear in its report.

<sup>15</sup> Further education and sixth form colleges that are monitored by Ofsted in relation to the Prevent duty are not required to report matters relating to their compliance with the Prevent duty to the OfS. Further information about the OfS's Prevent monitoring requirements is available at: [www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/counter-terrorism-the-prevent-duty/](http://www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/counter-terrorism-the-prevent-duty/).

Type of event or matter	Is it always reportable?
<p>Factors against reporting may include:</p> <ul style="list-style-type: none"> <li>The monetary scale of the fraud is below £25,000 or two per cent of the provider's total income (whichever is smaller).</li> </ul>	
<p>vii. Legal or court action.</p> <p>Factors in favour of reporting may include:</p> <ul style="list-style-type: none"> <li>Involvement of any member of the governing body, the accountable officer or any other senior officer where this relates to their duties for the provider</li> <li>An individual case, or a pattern of cases, exposes a systemic weakness in the provider's management and governance arrangements</li> <li>Findings of a coroner where these relate to a student death and expose a systemic weakness in the provider's management and governance arrangements.</li> </ul> <p>Factors against reporting may include:</p> <ul style="list-style-type: none"> <li>Isolated employment tribunal cases</li> <li>The issue is a commercial dispute relating to business activities where the monetary scale of any adverse outcome is likely to be below £25,000 or two per cent of the provider's total income (whichever is smaller).</li> </ul>	No
<p>viii. Regulatory investigation and/or sanction by other regulators or funding bodies, for example the Education and Skills Funding Agency, Ofsted, the Charity Commission,<sup>16</sup> the Equality and Human Rights Commission or the Arts Council.</p> <p>Factors against reporting may include:</p> <ul style="list-style-type: none"> <li>The action is a routine inspection that is undertaken as part of a regulator's planned oversight activities.</li> </ul>	No
<b>g. Matters relating to information provision, including but not limited to:</b>	
<p>i. Any matter which affects the accuracy of the information contained in the provider's entry in the OfS Register.<sup>17</sup></p>	Yes
<p>ii. Inaccuracies or omissions in the information finally submitted by a provider to the OfS or the designated data body, including where this may have an impact on the OfS's use of the data including in determining compliance</p>	No

<sup>16</sup> Some registered providers are charities registered with, and subject to direct regulation by, the Charity Commission. Those providers must also comply with the Charity Commission's reporting requirements. Some registered providers are exempt charities; they are exempt from registration with, and direct regulation by, the Charity Commission. The OfS is the principal regulator of exempt charities and has published guidance for those exempt charities (Regulatory advice 5: Exempt charities). This is available at: [www.officeforstudents.org.uk/publications/regulatory-advice-5-exempt-charities/](http://www.officeforstudents.org.uk/publications/regulatory-advice-5-exempt-charities/).

<sup>17</sup> The OfS Register is available at: [www.officeforstudents.org.uk/advice-and-guidance/the-register/the-ofs-register/](http://www.officeforstudents.org.uk/advice-and-guidance/the-register/the-ofs-register/).

Type of event or matter	Is it always reportable?
<p>with another condition of registration, the provider’s funding allocation, or statistics published by the designated data body.</p> <p>Factors in favour of reporting may include:</p> <ul style="list-style-type: none"> <li>• Inaccuracies or omissions mean that students or other activities are not included in returns when they should be or vice versa.</li> </ul> <p>Factors against reporting may include:</p> <ul style="list-style-type: none"> <li>• Minor or administrative errors which have been resolved through a validation process following initial submission of the data</li> <li>• Inaccuracies or omissions are restricted to a small number of students</li> <li>• Inaccuracies or omissions have a small impact on the OfS’s decisions or publications or on the designated data body’s process or publications.</li> </ul>	

## Definitions

### Change of ownership

The OfS is principally, but not exclusively, concerned with situations where 50 per cent or more in the shareholding of the registered provider (or the closest equivalent, where the provider is not limited by shares) are, or may be, in common ownership. Common ownership includes:

- Ownership by the same person or entity
- Ownership by multiple entities themselves under common ownership or control
- Ownership by multiple individuals or entities who, by agreement or practice, exercise their ownership rights in a co-ordinated way (and without restricting the scope of our understanding of what constitutes common ownership, we will deem people who are ‘connected’ to be exercising their ownership rights in a co-ordinated way)
- Ownership by multiple individuals or entities on behalf of, or acting under the direction or in the interests of, the same third party, including a case where ownerships are held on trust for a common beneficiary
- Any similar structure.

Ownership does not require beneficial ownership. A provider:

- must inform the OfS of any changes in ownership where 50 per cent or more of the ownership of the registered provider is in common ownership, and a change affects the majority ownership rights. This includes the creation of majority ownership rights for the first time, the transfer of majority ownership rights to a new holder, the introduction of a new entity to majority ownership rights and majority ownership rights coming to an end
- must inform the OfS of any change in ownership that affects 15 per cent by value or voting rights of the registered provider’s shares, or closest equivalent. A provider must do so



whether the change is brought about in one transaction or a series of connected transactions. A provider does not need to inform the OfS of entirely unconnected transactions provided none of those transactions is individually above our notification threshold

- is not required to inform the OfS of changes in ownership where 50 per cent or more of the ownership of the registered provider is in common ownership, and the changes only affect less than 15 per cent by value or voting rights of the minority ownership rights.

Some examples of changes that must be reported include:

- Where all or any part of the majority ownership rights in the provider change:
  - i. Example 1: there are five shareholders, each holding 10 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One shareholder sells their shareholding to the others. This must be notified.
  - ii. Example 2: there are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One sells a 10 per cent shareholding to a relative who is a connected person. This must be notified.
  - iii. Example 3: There are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One sells their shareholding to a third party. This must be notified.
- Where additional share capital is issued, or shares are bought back, or the voting rights that attach to existing shares are changed.
- Where a controlling proportion of a provider's shares is directly, or indirectly such as through those of its parent organisation(s), acquired by another individual(s), partnership(s) or organisation(s).

## **Change of control**

'Control' has the meaning given by section 1124 of the Corporation Tax Act 2010, and 'change of control' means a change in control so defined. Where two or more entities or individuals, by agreement or practice, exercise their rights in a co-ordinated way, with the result that they together have control so defined, each will be treated as having control of the provider. A provider is required to notify the OfS of any change in the individual(s) or entity(ies) who have control of the provider.



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