

26 November 2020

Dear Accountable Officer

Monitoring of access and participation plans covering academic year 2019-20

This letter and the accompanying annex set out OfS arrangements and reporting requirements for the monitoring of access and participation plans covering academic year 2019-20. The OfS undertakes annual monitoring of access and participation plans to ensure that higher education providers are taking all reasonable steps to comply with the provisions of their plan as set out in condition A1 of the regulatory framework for England.¹

The notice is issued under general ongoing condition F3: provision of information to the OfS which accompanies this letter. It sets out the specified information to be provided, the action that your provider should take to submit the information to the OfS and the date by which this should be done.

Regulatory notice 1: Guidance on access and participation plans for 2019-20² advised higher education providers that the OfS would monitor the implementation of plans and that further information about our overall approach to monitoring would be published in due course. In May 2020, we updated our guidance on access and participation plans³, advising providers that they would be expected to submit a monitoring return to the OfS and publish an access and

¹ See 'Securing student success: Regulatory framework for higher education in England', available at www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

² See Regulatory notice 1: Access and participation plan guidance, available at www.officeforstudents.org.uk/publications/regulatory-notice-1-access-and-participation-plan-guidance/.

³ See Regulatory notice 1: Access and participation plan guidance.

participation impact report each year. Where appropriate, this report may be accompanied by an action plan which sets out any improvements to its strategy.

Access and participation plan monitoring returns must be submitted to the OfS through the provider portal by **16 April 2021**. Students will also be invited to submit an independent return to the OfS on the progress that their provider is making on the delivery of the provisions in its plan.

This letter builds on discussions with representatives of every provider with an access and participation plan at the beginning of November. In these discussions we gave an overview of our broad approach to monitoring the access and participation plans covering academic year 2019-20. This is set out in more detail in Annex A.

Contact details

If you have any questions about the requirements for the monitoring of your 2019-20 access and participation plan please contact: app@officeforstudents.org.uk

Yours sincerely

Susan Lapworth
Director of Regulation

Annex A: How the OfS will monitor 2019-20 access and participation plans

Regulating access and participation plans during the coronavirus (COVID-19) pandemic

On 25 March 2020, in response to the coronavirus pandemic, we wrote to providers with detailed information about the regulatory requirements we would suspend and the information we would require during the pandemic.⁴ This included information relating to access and participation plans. In particular, the letter set out the OfS's expectations in respect of the continued delivery, in full, of the financial commitment made to current students under the 2019-20 plan and future students under the 2020-21 plan. This letter, and those detailed below, set out the OfS's temporary policy position for dealing with the pandemic, and should not be confused with the legal test the OfS would need to follow if we were minded to take formal enforcement action in relation to condition A1.

We subsequently provided further information on the OfS's expectations.⁵ This stated:

'When making regulatory decisions in the future, we will look at whether a provider made reasonable decisions about the delivery of the commitments in its plans. It is critically important therefore that a provider has a clear and robust rationale if it is not able to meet a commitment in its plan and is clear it has explored reasonable alternatives. As with all significant decisions in these uncertain times, this could mean recording the decisions clearly'.

Therefore, if a target or milestone has been missed and the commitments made in the plan relevant to that target not delivered or only partially delivered as a result of the pandemic, we expect you to have a clear and robust rationale, and to have explored reasonable alternatives. It will be useful in that explanation to consider what progress had been made to deliver those commitments prior to the lockdown announced on 23 March 2020.

We wrote to you again on 30 July 2020 to update you on our plans for a phased resumption of certain regulatory requirements.⁶ With respect to access and participation plans, we committed in that letter to gathering evidence on the impact of the coronavirus pandemic to inform our approach to access and participation plan monitoring and regulatory decisions.

Further, in August, we ran a series of roundtables with higher education provider representatives and students to discuss the impact of the pandemic on all stages of the student lifecycle. These meetings, together with our polling of students and our engagement with individual providers, representative bodies and education charities, have helped us understand the challenges to both

⁵ See our Regulatory requirements at www.officeforstudents.org.uk/advice-and-guidance/coronavirus/provider-guide-to-coronavirus/regulatory-requirements/.

⁶ See www.officeforstudents.org.uk/publications/update-on-the-office-for-students-approach-to-regulation-and-information-about-deadlines-for-data-returns/.

students and providers, as well as some of the ways in which those challenges have been addressed.

Information the OfS will use to monitor access and participation plans

In line with the communication sent out earlier this year, and as broadly set out in Regulatory notice 1,⁷ we will consider five key sources of information in order to assess your progress in meeting the objectives and targets set out in your 2019-20 access and participation plan. These are:

- a. Information a provider submits to the OfS. This will include the access and participation monitoring return, as set out in the notice following this letter, and the financial information submitted in response to Regulatory advice 14: Guidance for providers for the financial monitoring returns⁸
- b. Information submitted by a providers' students in an independent submission
- c. The latest available data in the access and participation dataset
- d. Any submissions made by a provider in relation to enhanced monitoring requirements or a specific condition of registration imposed when the plan was approved
- e. Reportable events and other third party notifications.

Risk-based approach to monitoring access and participation plans

The OfS will consider whether a provider has taken "reasonable decisions" in line with the temporary policy position for dealing with the pandemic set out above. If we consider that a provider has not taken reasonable decisions, and where targets and commitments have not been met, we will then decide whether condition A1 continues to be satisfied, by looking at whether a provider has taken all reasonable steps to comply with the provisions of the plan.

Providers are required under condition A1 to:

- i. Have in force an access and participation plan approved by the OfS in accordance with the Higher Education and Research Act 2017 (HERA)
- ii. Take all reasonable steps to comply with the provisions of the plan.

⁷ See page 13 of the latest version of 'Regulatory notice 1: Access and participation plan guidance': www.officeforstudents.org.uk/publications/regulatory-notice-1-access-and-participation-plan-guidance/.

⁸ See Guidance for providers for financial monitoring returns at <https://www.officeforstudents.org.uk/publications/guidance-for-providers-for-financial-monitoring-returns/>.

We have stated that the OfS will take a risk-based and proportionate approach to monitoring and intervention.⁹ For monitoring of access and participation plans that cover students who first registered in academic year 2019-20, this means that if a provider is able to demonstrate that it is meeting its milestones and targets in its access and participation plan, the OfS is unlikely to require any further information.

However, where a provider is failing to make the expected progress set out in its plan against its targets and milestones, the OfS will seek evidence that it is taking all reasonable steps to comply with the provisions of the plan. This will include an explanation of why expected progress has not been made. We will also expect providers to explain what actions will be put in place to ensure that better progress is secured in relation to the 2020-21 onwards plans.¹⁰

The OfS will review the information submitted by the provider and other information that we hold (as set out above). Where we are concerned that a provider may not have taken all reasonable steps to comply with the provisions of its plan, we may request further information to assess the steps that have been taken by the provider. We may consider further interventions, including the imposition of a specific ongoing condition of registration to ensure that reasonable steps are taken and sufficient progress made.¹¹ If we are concerned that a provider has not taken all reasonable steps on the basis of the information it has received through annual monitoring, we will contact the provider to seek further evidence of compliance.

A provider can demonstrate compliance with provisions of the plan by making the expected progress against its targets and milestones and successfully delivering the commitments it has made. However, if a provider is not making expected progress against one or more of its targets or commitments, it will need to demonstrate that it has taken all reasonable steps to comply with the provisions of the plan.

In order to determine whether or not a provider has taken all reasonable steps to comply with the provisions of its plan, the OfS's judgement will be informed by the provider's behaviour as well as the information listed above.

A provider will be expected to demonstrate the steps it has taken in order to deliver its commitments, including any additional investment it made, and to explain why any decision that was made not to pursue further action or investment was reasonable. We will consider what alternative action we consider should have been taken or other steps that were not taken by the provider but should have been taken as a "reasonable step". As specified in Regulatory notice 1,¹² providers should note that in line with the approach taken in other legal and regulatory contexts,

⁹ See: our regulatory framework (paragraph 24), available at www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/; and Regulatory notice 1: Access and participation plan guidance' (paragraph 69).

¹⁰ See paragraph 61 of 'Regulatory notice 1: Access and participation plan guidance'.

¹¹ See paragraph 318 of our regulatory framework: 'The regulatory framework for higher education in England'.

¹² See paragraph 141 of 'Regulatory notice 1: Access and participation plan guidance'.

the OfS takes the view that, to some extent, this compliance standard is likely to require the provider to sacrifice commercial or monetary interests.

Where the OfS determines that a provider has not taken all reasonable steps and we intend to impose a sanction or otherwise reach a formal finding of non-compliance,¹³ we will inform a provider of our provisional decision and provide the opportunity for representations in line with relevant provisions of HERA.

Coronavirus (COVID-19) information requirements

In August 2020, the OfS held a series of round table meetings to discuss the impact of the pandemic on students at the three main stages of the student lifecycle – access into higher education, students' success within higher education, and progression into further study or graduate employment. The discussions explored:

- which groups of students had been most impacted by the pandemic
- the key challenges providers and students had faced
- how providers and students were responding to those challenges
- how the delivery of their 2019-20 plans and the preparatory work for the 2020-21 onwards plans had been affected.

The round table meetings built on the broader engagement we had, throughout the period of lockdown, with providers, representative bodies, education charities, Uni Connect partnerships and other stakeholders.

We also conducted a student poll, with responses from 1,416 students, which suggested that the ability of students to participate remotely in higher education is at risk of being disrupted by a lack of both access to core digital infrastructure and of quiet spaces in which to work.¹⁴

The purpose of this engagement was to find out what information we would need from providers to understand how they and their students had been impacted and to understand how we can most effectively get access and participation plans back on track.

It is critical that we understand the varied impacts the pandemic has had on students and the delivery of providers' access and participation plans across the sector. Therefore, in this monitoring return, all providers will be expected to answer a series of questions in relation to the challenges the pandemic created and how they have responded to them.

This information will be required regardless of whether a provider has made expected progress against targets. This is because, in addition to understanding the impact of the pandemic on the

¹³ See paragraphs 161-201 of our regulatory framework for a full explanation of how the OfS will make use of its powers of intervention.

¹⁴ See www.officeforstudents.org.uk/news-blog-and-events/press-and-media/digital-poverty-risks-leaving-students-behind/.

delivery of commitments within the 2019-20 plan, we are also seeking information on how plans for the implementation of the commitments in 2020-21 plans have been affected.

Furthermore, a number of providers made commitments in their 2020-21 access and participation plan to undertake activity during the 2019-20 academic year to ensure they could meet certain of the provisions in their 2020-21 plan. Where this was the case, in the letters sent to providers approving their access and participation plan, the OfS required them to submit information in respect of the progress made to deliver those commitments. The OfS suspended these requirements in our letter dated 25 March 2020. We do not intend to reimpose these requirements for additional reporting; however, this information remains important to our understanding of the progress that providers are making in implementing their access and participation plans. Therefore, for those providers required to submit this information in January 2021, we have asked that it is, instead, included in this monitoring return.

It is important to note that we do **not** expect providers to publish this part of the monitoring return.

Variation requests for 2020-21 onwards access and participation plans

As a result of the coronavirus pandemic, providers may have:

- Identified additional student groups requiring support (financial, pastoral and academic)
- Identified new priorities in respect of those groups and their existing target groups and strategic measures needed to support them, for example addressing issues around lack of access to digital infrastructure and space to work remotely
- Identified strategic measures in the current plan that cannot be delivered in full or to the timescales originally set
- Identified new objectives and targets.

In such circumstances, a provider may request a variation to its plan. Providers considering making such a request should refer to the guidance on what the Director for Fair Access and Participation will have regard to when considering whether or not to approve a variation in Regulatory Notice 1.

Impact reports

We believe that transparent information on the progress individual providers are making in implementing their access and participation plans is of interest to students and the general public. We stated in the outcomes of our consultation on access and participation plans¹⁵ that we expect providers to publish annual impact reports to achieve this.

To support providers and reduce burden, the OfS will prepare a standard, individual report for each provider which brings together the information submitted in the monitoring return with information on investment included in providers' financial statements. Only information relevant to the delivery of the provisions of the 2019-20 access and participation plans will be included in the published

¹⁵ See 'A new approach to regulating access and participation in English higher education: consultation outcomes', available at www.officeforstudents.org.uk/publications/a-new-approach-to-regulating-access-and-participation-in-english-higher-education-consultation-outcomes/.

impact report. This means that the impact reports will **not** include the information submitted in respect of the impact of the coronavirus pandemic on both the 2019-20 and 2020-21 access and participation plans. It will also **not** include the information providers submit that was required in the OfS approval letters for the 2020-21 plans.

We will send you a copy of your report once we have completed our assessment. We expect you will publish the information contained in your impact report and our intention has been to reduce the burden by providing a standard report. However, you may choose to present the information in a different format if you wish. The notice below requires you to share with us the URL for where the impact report is published or written confirmation that you do not intend to publish it.

Notice under general ongoing condition of registration F3: provision of information to the OfS

Whereas:

- (A) The Provider was registered by the Office for Students (“OfS”) in accordance with section 3 of the Higher Education and Research Act 2017 (HERA) on the register of English Higher Education Providers.
- (B) For the purpose of assisting the OfS in performing any function, or exercising any power, conferred under any legislation, the OfS has the power under general ongoing condition F3(i) (and by virtue of section 8(1)(b) of HERA) to compel the governing body of a registered English higher education provider to provide the OfS, or a person nominated by the OfS, with such information as the OfS specifies at the time, manner and form specified.

Therefore:

1. Pursuant to general ongoing condition of registration F3, the Provider is required to provide the Specified Information at the Specified Time and in the Specified Manner.

Specified Information

2. The Provider is required to submit to the OfS the following information:
 - a. “the 2019-20 access and participation plan monitoring: monitoring return provider submission”, completed in line with the “Relevant Advice” issued by the OfS, specifically:
 - i. The section entitled “The ambitions and strategy of the approved 2019-20 access and participation plan”
 - ii. The section entitled “Progress against targets and written commitments”, including the Excel template called “APP_monitoring_1920_supporting_info_[provider_ukprn].xlsx”
 - iii. The section entitled “The impact of COVID-19 on the delivery of 2019-20 access and participation plans”
 - iv. The section entitled “Progress against key commitments in the 2020-21 onwards plan”
 - v. The section entitled “The impact of COVID-19 on 2020-21 onwards access and participation plans”
 - vi. The section entitled “Investment information” where this section is applicable in accordance with the Relevant Advice, including the Excel template called “APP_monitoring_1920_supporting_info_[provider_ukprn].xlsx”
 - vii. The section entitled “Confirmation and sign-off”.
 - b. either the URL of the location on the Provider’s website of a document setting out information included in the “2019-20 access and participation plan impact report” or written confirmation that it has not published this information.

Specified Manner

3. “Specified Manner” means:

- a. for information submitted in relation to 2.a. via the OfS portal using the 2019-20 access and participation plan annual monitoring return templates, made available to the Provider no later than 28 February 2020 to download from the OfS portal.
- b. for information submitted in relation to 2.b. via regulation@officeforstudents.org.uk.

Specified Time

4. “Specified Time” means:

- a. uploading the completed access and participation plan annual monitoring return workbook by **noon on 16 April 2020**; and
- b. emailing the required URL of the location of the “2019-20 access and participation impact report” no later than fifteen working days after the OfS sends the provider its “2019-20 access and participation plan impact report”.

Definitions

“the 2019-20 access and participation plan monitoring: monitoring return provider submission” means the Word document of the same name which is made available to the provider via the OfS portal and the supporting Excel document.

“Relevant Advice” means Access and participation plan monitoring: Guidance for completing the 2019-20 monitoring return (OfS 2020.53).

“2019-20 access and participation plan impact report” means the document compiled by the OfS containing information submitted by the provider in its 2019-20 access and participation plan monitoring return and, where applicable, information relating to access and participation investment submitted as part of the provider’s annual financial return to the OfS.

Signed on behalf of the OfS and authorised for that purpose

Susan Lapworth
Director of Regulation
26 November 2020