

**Office for
Students**



Regulatory advice 18: Notifications about providers from third parties

Guidance for registered providers

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Contents

Introduction.....	3
Notifications as part of a risk-based approach to regulation	4
Submitting a notification to the OfS	4
Engaging with a notifier	5
Assessing a notification and engaging with a provider.....	5
Sharing information about a notification	7

Introduction

1. The OfS routinely receives information about higher education providers from students, their parents, staff members of a provider, or others. This document provides guidance for registered providers about the way in which we will treat such 'notifications' from third parties in our regulatory activities.
2. The guidance is intended to help providers to understand:
 - a. How notifications fit into the OfS's approach to regulation
 - b. How the OfS will assess the information provided as a notification
 - c. The actions the OfS may take in response to notifications, including the circumstances in which the OfS may engage with the notifier and/or the provider about a notification.
3. All registered providers should be familiar with the content of the OfS's regulatory framework (OfS 2018.01)¹ which sets out in full the approach that the OfS will take to the registration and regulation of providers. This guidance provides additional information about how particular sections of the regulatory framework will operate in practice. It should be read in conjunction with the regulatory framework. If there are any inconsistencies between the regulatory framework and this document then the regulatory framework will prevail.

¹ See www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/.

Notifications as part of a risk-based approach to regulation

4. 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 does not expect to recruit the number of students it had planned with consequences for its financial position, or a professional body has removed the provider's accreditation.
 - 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 and their representatives or whistle-blowers.
5. Notifications are an important component of this risk-based approach to regulation. For example, students and staff members may provide us with information about current issues within a provider; issues which might only become apparent through our routine data collections at a later date, or may not be visible at all in data flows. Similarly, whistle-blowers may notify us of concerns about which a provider is unaware or has not reported to us as part of its regulatory obligations.
6. The information provided to us in a notification may be relevant to our assessment of the regulatory risk posed by a provider; that is, the risk that a provider may breach, or has breached, one or more of its conditions of registration.

Submitting a notification to the OfS

7. Third-parties who want to raise concerns about a registered provider with us, are encouraged to email notifications@officeforstudents.org.uk in the first instance. This email address is actively monitored.
8. Notifiers may also choose to write to us by post, and our postal correspondence address is available on our website.²
9. Where a notifier contacts us through other means, for example through our general enquiries telephone number, we will normally signpost them to our 'notifications' email address. However, we want to ensure that everyone who wants to send us information about their

² See www.officeforstudents.org.uk/contact/how-to-find-us/.

concerns is able to do so. We therefore consider any request for reasonable adjustments to our process, such as a request to provide information over the telephone.

Engaging with a notifier

10. The OfS is not a complaints-handling body; we do not have the statutory remit to investigate individual complaints from students, staff or other third parties about providers. Where we decide to carry out further investigation of an issue that has been notified to us by a third party, we cannot do so 'on behalf of' the notifier and nor can we provide individual redress for the notifier.
11. We will acknowledge receipt of a notification and, where we consider it necessary to enable us to fulfil our regulatory functions, may engage with the notifier to clarify the information submitted or to seek additional information. However, we will not usually inform the notifier of any action that we take, or do not take, as a result of the information they have sent to us. This is because there are often circumstances in which confirming or denying that we are investigating a concern could interfere with our ability to investigate effectively, for example by tipping off a provider about our interest. There are also circumstances in which a single notification does not contain sufficient information to affect our regulatory view of a provider, but may do so if further information were to come to light.
12. We may also signpost notifiers to other organisations that may provide a more appropriate route to resolve particular concerns. For example, we may signpost students to the Office of the Independent Adjudicator for higher education (OIA)³, which is the independent body set up to review student complaints about higher education providers in England and Wales. It is usually necessary for students to have made their complaint to the university or college concerned, before complaining to the OIA.
13. Sometimes, a notifier sends information to us anonymously. This may affect what we are able to do with that information. Similarly, some notifiers, such as whistle-blowers, may provide us with information but ask us to maintain their anonymity if we decide to investigate the matter. We will, where possible, seek to protect anonymity where requested. However, we may not always be able to maintain the anonymity of a notifier; the nature of allegations made may reveal the identity of the notifier and there are some circumstances where we are legally required to disclose information, for example when ordered to do so by a court. The privacy policy on our website explains how we will collect and process personal data, including about students and staff at registered providers.⁴

Assessing a notification and engaging with a provider

14. After the OfS has received a notification about a provider, we will review the information and assess its credibility, reliability and completeness. We may ask the notifier for further information if we consider this necessary. We may also make enquires of, or request further information from, other bodies or the provider itself.

³ See the OIA's website at www.oiahe.org.uk/.

⁴ The OfS's privacy policy is available at www.officeforstudents.org.uk/ofs-privacy/.

15. The OfS will consider a notification and may determine one of the following next steps:
 - a. The information contained in the notification should be recorded but no further action is required by the OfS or from the provider at this time.
 - b. A more extensive assessment is required because the information contained in the notification is likely to affect the provider's compliance with its conditions of registration.
 - c. A more extensive assessment is required because the information contained in the notification adds new information to a known issue or to a pattern of events or issues.
16. A more extensive assessment of the notification may lead to one or more of the following decisions:
 - a. The information contained in the notification should be recorded but no further action is required by the OfS or from the provider at this time.
 - b. There is an effect on the risk assessment for one or more conditions or registration (with risk increased or decreasing, or crystallising into a breach of a condition).
 - c. Further assessment or action should be taken to respond to the issues identified in (b) above.
17. We will not routinely contact a provider every time we receive a notification about it. Where we decide that no further action is necessary at this time, we will not usually inform the notifier or the provider of this decision.
18. We will contact the provider if we decide that the issues set out in a notification require further exploration, and we need more information from the provider to enable us to do that. Depending on the nature of the information sought, and the circumstances in which we request it, we may simply ask the provider to send it to us. Alternatively, we may compel the production of information under condition F3 (provision of information to the OfS).⁵ We may not always refer specifically to the notification(s) that we have received in our initial engagement with a provider. Whether we do so will depend on the circumstances of the individual case.
19. After assessing a notification, where the OfS decides that there is a change in a provider's risk assessment 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 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 it would follow the process set out in the Higher Education and Research Act 2017 (HERA) and the OfS's regulatory framework.

⁵ See Regulatory advice 15: Monitoring and intervention, available at www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/.

20. 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 relation to a breach of a condition, can be found in the guidance published by the OfS on monitoring and intervention.⁶
21. As part of our assessment, the OfS will also consider any implications of a notification for a provider's degree awarding powers, or university title.

Sharing information about a notification

22. The OfS may share information about a registered provider sent to us in a notification with third parties.
23. Section 63 of HERA permits the OfS to share information about a registered provider with other persons or bodies. We may do so where we consider it to be necessary to enable us to perform one of our functions. For example, we may share information about a potential breach of consumer protection law with the Advertising Standards Agency. In deciding whether to disclose information in a particular case, we will consider the circumstances of the particular case and we will also have regard to our general duties.⁷
24. We may also share information with other, specified, organisations for the purposes of the performance of their relevant functions. These bodies and their relevant functions are listed in legislation⁸ and include the Competition and Markets Authority, the Office of the Independent Adjudicator for higher education (the 'OIA'), Ofsted and HM Revenue and Customs (HMRC). For example, we may share with HMRC information about a provider's tax arrangements. In deciding whether to disclose information in a particular case, we will consider the circumstances of the particular case and we will also have regard to our general duties.⁹
25. There may also be circumstances where we are legally obliged to disclose information to another body, for example when ordered to do so by a court. Where concerns are raised that suggest criminal activity may have taken place, we may also share this information with law enforcement bodies.

⁶ Available at: www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/

⁷ Our general duties are set out in section 2 of HERA and in paragraph 10 of the regulatory framework.

⁸ See The Higher Education and Research Act 2017 (Cooperation and Information Sharing) Regulations 2018 at: www.legislation.gov.uk/ukxi/2018/607/pdfs/ukxi_20180607_en.pdf

⁹ Our general duties are set out in section 2 of HERA and in paragraph 10 of the regulatory framework.



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