

Office for
Students



Regulatory advice 20

Regulating student outcomes

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Introduction

1. This regulatory advice sets out guidance for higher education providers in England on the approach the Office for Students (OfS) will take to regulating student outcomes under condition of registration B3. It will allow providers to understand how we will:
 - a. Decide whether a provider satisfies initial condition B3 (student outcomes) when it is applying for registration, including when a registered provider is seeking to change its registration category.
 - b. Decide whether a registered provider is compliant with ongoing condition B3 (student outcomes), where we have decided to assess that provider against the ongoing condition.
 - c. Decide what values to set for the minimum numerical thresholds that are used when we make judgements under initial and ongoing condition B3 about whether a provider is delivering positive outcomes for its students.
 - d. Decide what information to publish relating to the regulation of student outcomes.
2. This regulatory advice relates only to the revised initial and ongoing condition B3, published by the OfS on 26 July 2022, which comes into effect on 3 October 2022.¹
3. The full text of the revised initial and ongoing condition B3 can be found on our website.²
4. This document should be read with the OfS's regulatory framework (OfS 2018.01) and with our guidance for registered providers on our approach to monitoring and intervention.³ If there are any inconsistencies between the regulatory framework and this document, then the regulatory framework will prevail. All registered providers should be familiar with the content of the regulatory framework, which sets out in full the approach that the OfS will take to the regulation of providers.
5. For further information about this guidance, contact the Compliance and Student Protection team on 0117 931 7305 or regulation@officeforstudents.org.uk.

¹ See 'Notice of determination of initial and general ongoing conditions of registration' at www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/ for details of the implementation period for the revised condition B3.

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

³ See www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/.

Guidance

Decisions about initial condition B3

6. This section sets out the steps we will follow when making a decision about whether initial condition B3 is satisfied. We will follow this process when a higher education provider⁴ applies for registration with the OfS, including where a registered provider applies to change category on the OfS Register (e.g. from Approved to Approved (fee cap)).

Step 1: Deciding whether the initial condition is applicable to a provider

7. The initial condition will apply to a provider if, in the judgement of the OfS, data showing the provider's performance against at least one indicator or split indicator exists, and that data relates to at least one of the preceding five years.
8. This data could relate to higher education provided in any manner or form by, or on behalf of, that provider. This would cover, for example, data about a provider that taught courses under a subcontractual arrangement with a lead provider, where that data was collected from the lead provider rather than the delivery provider. It could also cover data collected from an entity which no longer exists, for example where a provider has merged with, or divided from, another provider or where a provider has changed its legal name.
9. We will decide that the initial condition does not apply to a provider if:
 - a. Data about the provider's higher education courses has never been submitted.
 - b. Data about the provider's higher education courses has previously been submitted, but that data is more than five years old.
10. Where the initial condition does not apply we will, as part of our registration decision, consider whether it is necessary to impose regulatory requirements to monitor a provider's performance in relation to student outcomes. Such requirements may include, but not be limited to:
 - a. Requiring the provider to submit information to the OfS about its student outcomes in advance of the normal data returns.
 - b. Using data from the Student Loans Company to monitor continuation rates for the provider's students.
 - c. Requiring the provider to publish information about its student outcomes before it is included in DiscoverUni.
 - d. Notifying the provider of our intention to undertake a full assessment of its student outcomes on a specific date, regardless of the approach we take to the prioritisation of assessments of ongoing condition B3.

⁴ This includes institutions applying for registration who intend to become higher education providers. Section 3 of the Higher Education and Research Act 2017 empowers the OfS to register an institution that 'it is, or intends to become, an English higher education provider'.

11. If we decide that initial condition B3 does not apply to a provider, we will set out the reasons for this decision and any regulatory action we consider necessary as part of our registration decision.
12. If we decide that initial condition B3 does apply to a provider, we will move to Step 2.

Step 2: Assessing a provider's data in relation to numerical thresholds

13. We will complete a full assessment of a provider's indicators and split indicators regardless of its performance in relation to numerical thresholds. This means that we will review every indicator and split indicator available in a provider's student outcomes dashboard.⁵ For each indicator and split indicator, we will consider whether we have sufficient statistical evidence that performance is at or above the relevant numerical threshold.
14. In assessing each indicator and split indicator, we will consider performance to be at or above the numerical threshold if the point estimate is at or above the numerical threshold and we judge that we have sufficient statistical evidence that the provider's underlying performance is at or above the numerical threshold.⁶
15. We will generally consider around 95 per cent or higher statistical confidence to be very strong statistical evidence that a point estimate is at or above a numerical threshold. Annex B sets out our general approach to considering statistical confidence in our assessments of condition B3. In considering these issues, we may give specific consideration to matters relating to the interpretation of statistics.
16. We will assess split indicators as part of our assessment of a provider in relation to the initial condition. We recognise that many providers applying for registration may have sparsely populated split indicators. This means that assessing split indicators at registration may mean that a provider would not satisfy the initial condition because of performance relating to a very small proportion of its students. Our proposed approach to data suppression and statistical uncertainty means that this is less likely to occur in practice. This is because we will suppress the split indicator if it relates to fewer than the minimum number of students defined in the condition (this number is 23 at the time of publication).
17. If we judge that all of a provider's indicators and split indicators are at or above relevant numerical thresholds,⁷ the provider will satisfy the initial condition. In these cases, we will not normally expect to impose any additional regulatory requirements in respect of ongoing condition B3.

⁵ We will not assess a provider against an indicator or split indicator if: (a) we do not hold any data showing the provider's numerical performance against that indicator or split indicator; or (b) we do hold this data but the data refers to fewer than 23 students. See Annex A for an explanation of the data reporting structure used by the OfS and our use of the terms 'indicators' and 'split indicators'.

⁶ A 'point estimate' is a factual representation of the actual population of students present at a particular provider at a particular time. This is shown as the black line for each indicator and split indicator in our data dashboards.

⁷ Insofar as there is available data to assess this – see footnote 5.

18. We will proceed to Step 3 if we are not satisfied that all of a provider's indicators and split indicators are at or above relevant numerical thresholds.

Step 3: Using the OfS's existing information

19. We will consider all performance not at or above a numerical threshold in relation to the relevant benchmark value for a provider, where this exists. We will use benchmark values to understand whether there are contextual factors that mean a provider's performance may be positive despite not meeting or exceeding a numerical threshold.

20. We may take this view, for example, where there is evidence that a provider's student population means that the adjustments we have made when setting a numerical threshold do not sufficiently account for historical trends in outcomes for its different student groups. For example, a provider may have a particularly large number of students who we have identified as having significant historical differences in outcomes,⁸ but we may not have entirely accounted for these differences in setting the numerical threshold.

21. Where a provider is, or has previously been, registered with the OfS we will consider information we hold as a result of any previous assessments in relation to revised condition B3.

22. As a result of this step, we may judge that a provider's performance in relation to the indicators and/or split indicators at issue is positive. Where this is the case, we will judge the initial condition to have been satisfied.

23. As part of our registration decision, for each indicator that is not at or above the numerical threshold but nevertheless represents positive outcomes for students, we will consider whether it is appropriate to take any further regulatory action in line with the approach set out in paragraph 10 in the event that a provider is registered.

24. In these cases, we will also make a decision about whether to publish the decision and our reasons for making it.

25. If, as a result of this step, we do not judge that a provider's performance in relation to the indicators or split indicators that are not at or above a numerical threshold is positive, we will proceed to Step 4.

Step 4: Engaging with a provider

26. If we have not identified any information as part of Step 3 that satisfies us that a provider has met the requirements in initial condition B3, we will invite it to submit any relevant contextual information in relation to indicators and/or split indicators where performance is not at or above a numerical threshold, which may justify that performance.

27. We will assess this information and consider the non-exhaustive list of factors set out in Annex C, insofar as relevant. If we judge that a provider's performance has met the requirements in initial condition B3, we will include this in our assessment of the provider's application for

⁸ Through our use of Exploring Student Outcomes www.officeforstudents.org.uk/publications/exploring-student-outcomes/.

registration. We may also take regulatory action to mitigate any increased risk of a future breach of ongoing condition B3. This might include, for example:

- a. Requiring the provider to submit information to the OfS about its student outcomes in advance of the normal data returns.
- b. Using data from the Student Loans Company to monitor continuation for the provider's students.
- c. Requiring the provider to publish information about its student outcomes before it is included in DiscoverUni.
- d. Notifying the provider of our intention to undertake a full assessment of its outcomes on a specific date, regardless of the approach we take to the prioritisation of assessments of ongoing condition B3.
- e. Imposing one or more specific ongoing conditions of registration.
- f. Imposing additional monitoring requirements; for example, a requirement to report additional matters relating to student outcomes as reportable events.

28. If we do not consider that the initial condition is satisfied, we will proceed to Step 5.

Step 5: Provisional decision

29. If the information submitted in Step 4 does not satisfy us that a provider's context justifies its performance, we will make a provisional decision that the provider does not satisfy initial condition B3.

30. We will write to the provider about this provisional decision and the reasons for it as part of a representations process in respect of a provisional decision to refuse registration.

31. The provider will have at least 28 days to make representations regarding our provisional decision. The provider may take this opportunity to submit further information about the context in which it is operating, or in respect of any other aspect of our provisional decision.

32. If, at any stage in Steps 4 or 5, a provider relies on its own data regarding student outcomes, we may require the data to be audited to confirm its accuracy and reliability. If a provider refuses to participate in such an audit, we may be unable to reach a positive decision about its application for registration.

Step 6: Final decision

33. When we have considered a provider's representations, we will make a final decision about whether initial condition B3 is satisfied and determine the impact this may have on the provider's application for registration.

34. Where the OfS considers this initial condition to be satisfied, but that there is an increased risk of a future breach of the general ongoing condition, or a relevant wider regulatory concern, it may take regulatory action to mitigate any increased risk of a future breach of ongoing condition B3. This might include any of the actions set out in paragraph 27 above.

Decisions about ongoing condition B3

35. When a provider is registered with the OfS, it is subject to the general ongoing conditions set out in the regulatory framework. This includes ongoing condition B3.
36. Each year the OfS will, as part of its general monitoring activity, identify a number of registered providers that may be at increased risk of non-compliance with ongoing condition B3.⁹ The OfS will determine which of these providers should be subject to assessment in relation to ongoing condition B3, using the prioritisation approach set out below. The number of providers subject to an assessment is likely to vary from year to year.

Prioritisation approach for assessing ongoing condition B3

Selection of prioritised categories

Each year we will decide:

- Which student outcome measures, modes and levels of study we wish to prioritise.
- Whether we should focus in that particular year on any particular split indicators, such as subject of study or student characteristics, or on any other themes, such as partnership arrangements.
- How many cases we will assess in that year. We anticipate that in most years there will be more indicators or split indicators below a relevant threshold than we decide to assess.

Selection of individual providers for assessment

We will identify any provider with performance below a relevant numerical threshold in relation to the prioritised categories.

We will select providers for assessment from within this group, including by considering the following factors:

- the number of students affected by performance below a numerical threshold in the prioritised categories
- the distance from the relevant numerical threshold in the prioritised categories
- the statistical certainty we have that a provider's underlying performance is below a relevant numerical threshold
- the number of a provider's indicators or split indicators not in the prioritised categories that are below a numerical threshold

⁹ In addition to this, the OfS will use its general risk-based approach to monitoring as set out in the regulatory framework to identify providers for which an assessment of compliance with the ongoing condition is considered to be appropriate, whether or not that provider is, or is likely to be, selected by this process.

- other regulatory intelligence, including but not limited to notifications from third parties, outcomes from the Teaching Excellence Framework exercise, and previous compliance with condition B3 or other conditions of registration.

Selection of scope of assessment

If a provider is prioritised for assessment, we will determine the scope of our assessment for that provider (see paragraph 37). This may result in our assessment focusing on only the indicators or split indicators falling into the prioritised categories, or on a wider selection of indicators and split indicators where performance is below a relevant numerical threshold.

Where a provider has other indicators and split indicators below a relevant numerical threshold, we will determine the scope of our assessment by considering matters including but not limited to:

- the number of students affected by those indicators and split indicators
- the distance from the relevant numerical threshold
- the statistical confidence we have that a provider's underlying performance is below a relevant numerical threshold.

Scope of assessment

37. We will determine the scope of our assessment on a case-by-case basis, for a provider selected through our approach to prioritisation (set out in the yellow box above). For example, the scope of an assessment for an individual provider could be:

- a. Focused only on the indicators or split indicators that were identified through the selection of prioritised categories.
- b. Focused only on the outcome measure for which the indicator or split indicator was identified. For example, if we selected a provider for assessment in relation to its full-time first degree continuation outcomes for its business and management courses, we could decide to extend our assessment to include any other full-time first degree continuation indicators that were below the minimum numerical threshold.
- c. An assessment of some or all of the provider's indicators or split indicators that were below a relevant minimum numerical threshold, whether or not these were identified through the selection of prioritised categories.

38. The steps that follow set out the approach we will take when a provider has been prioritised for assessment or otherwise identified for assessment through our other general monitoring activities.

Step 1: Using the OfS's existing information

39. We will consider data on the size and shape of higher education provision to help understand a provider's context. We will consider performance below a numerical threshold in relation to the

relevant benchmark value for a provider, where this exists.¹⁰ We will use benchmark values to understand whether there are contextual factors that mean a provider's performance may be positive despite being below a numerical threshold.

40. We may take this view, for example, where there is evidence that a provider's student population means that the adjustments we have made when setting a numerical threshold do not sufficiently account for historical trends in outcomes for its different student groups. For example, a provider may have a particularly large number of students who we have identified as having significant historical differences in outcomes,¹¹ but we may not have entirely accounted for these differences in setting the numerical threshold.
41. We will further interrogate the data we hold in relation to the indicators we are assessing. This means that we will look both at the indicators we are assessing, the split indicators that relate to them and, where appropriate, the underlying individual student data, to develop a full understanding of where a provider may not be delivering positive outcomes for its students. In considering these issues, we may give specific consideration to matters relating to the interpretation of statistics.
42. We will consider other information we hold that is relevant to condition B3. For example, we may have relevant information from previous assessments of a provider's performance in relation to revised condition B3.
43. As a result of this step, we may judge that a provider's performance in relation to indicators and split indicators that are below a numerical threshold is justified. Where this is the case, we will judge the provider to be compliant with condition B3 and will confirm this in writing for the provider.
44. In these cases, we will also make a decision about whether to publish the decision and our reasons for making it.
45. We may find that a provider is compliant with condition B3 but is at increased risk of a breach in future. In these circumstances, we may take further regulatory action in line with our normal approach to monitoring and intervention, as set out in the regulatory framework and Regulatory advice 15.¹² This may include, but not be limited to, notifying a provider that we will make a further assessment of its outcomes on a specific date, regardless of the approach we take to the prioritisation of assessments of ongoing condition B3.

¹⁰ We will consider an indicator or split indicator to be below a numerical threshold if we are satisfied that we have sufficient statistical evidence is below the relevant numerical thresholds. We will make this assessment on the basis set out in Annex B, including the principle that the closer the OfS is to having 100 per cent statistical confidence in the evidence, the stronger it will likely judge that evidence to be. In undertaking this review, we may also consider, where appropriate, other matters relating to the interpretation of statistics.

¹¹ Through our use of Exploring Student Outcomes www.officeforstudents.org.uk/publications/exploring-student-outcomes/.

¹² Available at www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/.

46. If, as a result of this step, we do not judge that a provider's performance in relation to the indicators or split indicators that are below a numerical threshold is positive, we will proceed to Step 2.

Step 2: Engaging with a provider

47. If we have not identified any information as part of Step 1 that satisfies us that a provider has met the requirements in ongoing condition B3, we will invite it to submit any relevant contextual information in relation to the indicators and/or split indicators subject to assessment, which may justify performance below a numerical threshold. We normally expect this to take around four weeks.

48. We will assess this information and consider the contextual factors that we have set out in Annex C, insofar as relevant. If we judge that a provider's performance has met the requirements in ongoing condition B3, we will confirm this in writing for the provider.

49. We may also take regulatory action to mitigate any increased risk of a future breach of ongoing condition B3. For example, this may include, but not be limited to, notifying a provider that we will make a further assessment of its outcomes on a specific date, regardless of the approach we take to the prioritisation of assessments of ongoing condition B3.

50. If we do not consider that a provider is complying with ongoing condition B3, we will proceed to Step 3.

Step 3: Provisional decision

51. If the information submitted in Step 2 does not satisfy us that performance below a numerical threshold is justified, we will make a provisional decision that there is a breach of ongoing condition B3.

52. We will write to the provider about this provisional decision and the reasons for it. We may also set out the regulatory action we propose to take and our reasons for this.

53. The provider will have at least 28 days to make representations regarding our provisional decision. The provider may take this opportunity to submit further information about the context in which it is operating, or in respect of any other aspect of our provisional decision.

54. If, at any stage in Steps 2 or 3, a provider relies on its own data regarding student outcomes, we may require the data to be audited to confirm its accuracy and reliability. If a provider refuses to participate in such an audit, we may be unable to reach a positive decision about its ongoing compliance with condition B3.

Step 4: Final decision

55. When we have considered a provider's representations, we will make a final decision about whether there is a breach of ongoing condition B3 and determine whether any further regulatory action is necessary.

56. Where the OfS has decided that there is, or has been, a breach of this condition, it will consider the use of the full range of its enforcement powers. This includes the imposition of a monetary penalty, suspension of elements of a provider's registration (for example its access to student support funding or OfS public grant funding), or deregistration. The OfS is likely to require

improvement, to mitigate the impact of poor performance on students, or to incentivise future compliance by this and other providers. The OfS will follow any statutory consultation process as it takes enforcement action.

57. Where the OfS considers there to be an increased risk of a future breach or a relevant wider regulatory concern, it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are appropriate; for example, a requirement to report additional matters as reportable events.
58. Where there is, or has been, a breach of this condition, or the OfS has imposed a specific condition of registration, the ways in which the OfS may take this into account in relation to the Teaching Excellence Framework, regulation of degree awarding powers, the regulation of university, and university college, title and allocation of OfS public grant funding are set out in the guidance for condition B3 in the regulatory framework.¹³

Setting numerical thresholds for student outcomes

59. This section sets out how we will set numerical thresholds, and how this approach will work for each individual indicator for which we will set a numerical threshold.
60. Our approach has three stages:
- a. Identifying the starting point for a numerical threshold using analysis of sector performance.
 - b. Considering policy and contextual factors.
 - c. Setting the final numerical threshold.

Identifying the starting point for a numerical threshold

61. The purpose of this stage is to make a judgement about the point at which we consider there be to minimal risk that a provider is not delivering positive outcomes. We refer to this as the 'starting point value'.
62. We review the following data sources when considering where the appropriate starting point value is for each numerical threshold:¹⁴
- anonymised sector distributions for the indicator
 - the mean performance of all students in the sector (the sector overall rate)
 - the median performance of all providers in the sector, both unweighted and weighted by size of provider.

¹³ See paragraph 35 in the revised condition – see www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

¹⁴ This data is available through a series of interactive charts on our website.

Anonymised sector distributions for the indicator

We use graphs that show the point estimate indicator values for every registered higher education provider. These are not weighted by the size of the provider, or the student population informing the calculation of the indicator (its denominator). This means that the student outcomes delivered by each provider carry equal value for this purpose. These charts are available in interactive format on our website.¹⁵

The sector overall rate

This is the rate at which students in the sector overall achieve each outcome, for each level and mode of study. This value is not calculated from provider-level indicator values. It expresses the total number of students who achieve each positive student outcome, as a proportion of the total number of students for whom we are measuring that outcome.

The median performance of all providers in the sector

We use two different types of median value when setting the starting point value:

1. Unweighted sector median performance. These medians are not influenced by the number of students in each provider's student population that inform calculation of the indicator value.
2. Weighted sector median performance. These medians are weighted to reflect each provider's student population that inform calculation of the indicator value.

We have calculated weighted and unweighted medians for each combination of level and mode of study. In addition, we have calculated medians from distributions of split indicators. All of these medians are available through our published data dashboard.¹⁶

63. We use the 'taught or registered' population as the basis for setting a numerical threshold because we consider that this view best reflects the outcomes which individual providers deliver for their students.¹⁷

64. The starting point value we identify will generally:

- reflect the average performance of providers registered with the OfS, considering the sector rate, weighted and unweighted median performance
- be broadly in line with levels set for other numerical thresholds for similar levels of study.

¹⁵ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

¹⁶ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

¹⁷ This population includes all students who providers teach or register. This includes those who are taught and registered by a provider and those who are subcontracted in or out from the provider.

65. We consider that the English higher education sector generally performs highly, and therefore that a provider with performance at or close to the sector average is in many circumstances likely to be delivering positive outcomes for its students. This being the case, we anticipate that our starting point values for setting numerical thresholds will generally be in line with sector average performance.
66. However, there may be occasions when we use our regulatory judgement to set our starting point value closer to or above the sector average, if we identify that quality in a particular part of the sector has been low. If we were setting a numerical threshold in relation to a particular indicator where the English higher education sector was not particularly high-performing (noting that we do not consider this to be the norm), a starting point value that was at or below the overall sector rate might result in a numerical threshold that we would not consider to be an appropriate minimum expectation to achieve our policy objectives and adequately protect the interests of students or taxpayers.
67. In such circumstances, we may consider it appropriate, having regard to reasonableness and proportionality, to adopt a starting point value and numerical threshold that are higher than the sector overall rate. This may result in some providers being below the numerical threshold but above the overall sector rate. In practice, we do not normally expect to take this approach, but we may where we consider it appropriate to do so, having regard to our policy objectives, including protecting the interests of students and taxpayers, the relevant factors and information available at the time, and having regard to reasonableness and proportionality.

Considering contextual and policy factors

68. When we have established the starting point value, the next step is to consider whether there are any policy or contextual factors at a sector level that mean this value should change. The purpose of this stage is to account for the impact that different relevant contextual factors may have had on student outcomes in the indicators we use to set the numerical thresholds. This stage ensures that we set numerical thresholds that represent the point at which we consider we may need to intervene to protect students, if there is no context that justifies that performance.
69. Any adjustments to the starting point value may take account of the following discretionary contextual or policy factors:
- a. Our policy ambition to ensure a minimum requirement for outcomes for students from all backgrounds, regardless of what or where they study.
 - b. Value for money considerations. These relate to our regulatory judgement about whether a numerical threshold would be sufficient to protect the interests of students and taxpayers. We anticipate that we may consider this factor relevant in cases where a numerical threshold would otherwise result in students and taxpayers funding higher education courses where the majority of students were unlikely to receive a positive economic benefit from their experience of higher education.
 - c. We will operate from a starting point that the English higher education sector is, in general, high-performing. We would therefore not normally expect to set numerical thresholds higher than the average performance of the providers registered with the OfS, because a provider with performance at or close to the sector average is in many

circumstances likely to be delivering positive outcomes for its students. However, as explained in paragraphs 65 to 67, it may be appropriate in some circumstances to set numerical thresholds higher than the average performance having regard to our policy objectives, including protecting the interests of students and taxpayers, the relevant factors and information available at the time, and having regard to reasonableness and proportionality.

- d. Guidance from the Secretary of State. We will have regard to any relevant statutory guidance from the Secretary of State issued under section 2 of the Higher Education and Research Act 2017.
- e. The Public Sector Equality Duty.
- f. The OfS's general duties in section 2 of the Higher Education and Research Act 2017.

70. We will identify the adjustment to be applied to a numerical threshold by considering whether:

- a. Our analysis of sector performance indicates a wider distribution of performance when compared with other indicators, particularly those where there are fewer providers operating, or where overall sector averages have been particularly affected by the performance of a small group of providers. We will consider this adjustment because it will allow us to reflect circumstances where there have been unusual patterns of performance across the sector, or where the data used to set a particular numerical threshold is dominated by a small number of providers.
- b. Our analysis of sector performance for that indicator shows that there has been a generally observable difference in student outcomes in the past, when accounting for particular student or course characteristics for all providers in England. The text in the blue box below sets out how we will use this analysis. We will consider this adjustment because it enables us to take account of the impact that different student and course characteristics have had on student outcomes. Our regulation of student outcomes is intended to reduce these differences in the future, but we accept that, in setting numerical thresholds for the purpose of condition B3, it is appropriate for the time being to take account of these general historical trends.
- c. An analysis of individual provider benchmarks shows that, for a particular indicator, a significant number of providers are below the proposed numerical threshold, but above their benchmark. We will consider this adjustment because it will enable us to test whether our sector analysis is able to adequately account for the variation of different student populations at individual providers. We consider that this test will allow us to see whether the adjustment made for observable differences has been sufficient to account for the impact of past performance across the higher education sector.
- d. The final threshold level would otherwise not meet our policy objectives or would be inappropriate with regard to our general duties, and given our other statutory responsibilities and having regard to reasonableness and proportionality. We will consider this adjustment because we are using regulatory judgement to set our numerical thresholds rather than a formulaic approach. This means that we may, for example, make further downward adjustments if we are concerned about the impact on a particular group of students or subject area. We expect final thresholds to represent a point that a

reasonable person would interpret as identifying underperformance in the sector. We also expect that there would be broad consistency between numerical thresholds where there is reasonable similarity between types of courses.

Taking account of observable differences in past student performance

We will use a regression analysis to inform our judgment about the general impact that different student and course characteristics have had on student outcomes in the past. This modelling draws on information from all registered providers in England that have previously submitted data.

This analysis shows where particular student, course or provider characteristics have historically been associated with outcomes that are worse than those of other students, once we have controlled for a range of their other characteristics. The purpose of using this analysis is to account for the impact that different relevant contextual factors may have had on student outcomes in the past four years of data that contribute to the indicators.

We will use this analysis to consider the maximum size of any observed marginal effects of different characteristics and whether it is appropriate to make a downward adjustment that would account for the impact this gap may have on providers in general. We will make an appropriate adjustment to allow for the typical variation between individual provider populations and the impact of multiple different characteristics. We will not, however, make an adjustment for observed gaps where the population of students covered by those gaps is so small as to make it unlikely that any one provider would recruit such a significant proportion of those students that it would affect its overall performance. This means that we will be less likely to make a downward adjustment for smaller populations of students in the analysis.

As a result of our analysis, we will identify a downward adjustment that would be appropriate for setting numerical thresholds for different modes of study and different student outcome measures.

The effect of this approach will be to identify a value by which to reduce the starting point that accounts for the historical outcomes providers have delivered on different courses and for students with different characteristics.

Setting the final numerical threshold

71. Following the stages set out in paragraph 60, we will determine the level of the final numerical threshold. The numerical threshold levels will represent our minimum expectations for the percentage of students achieving positive outcomes for each indicator.
72. This level will be the point below which we may need to consider intervention to protect students from a provider that is not delivering positive outcomes. In setting these numerical thresholds, we will have taken into account the general context in which registered providers are operating.
73. These numerical thresholds will then be used as part of our assessment of condition B3.

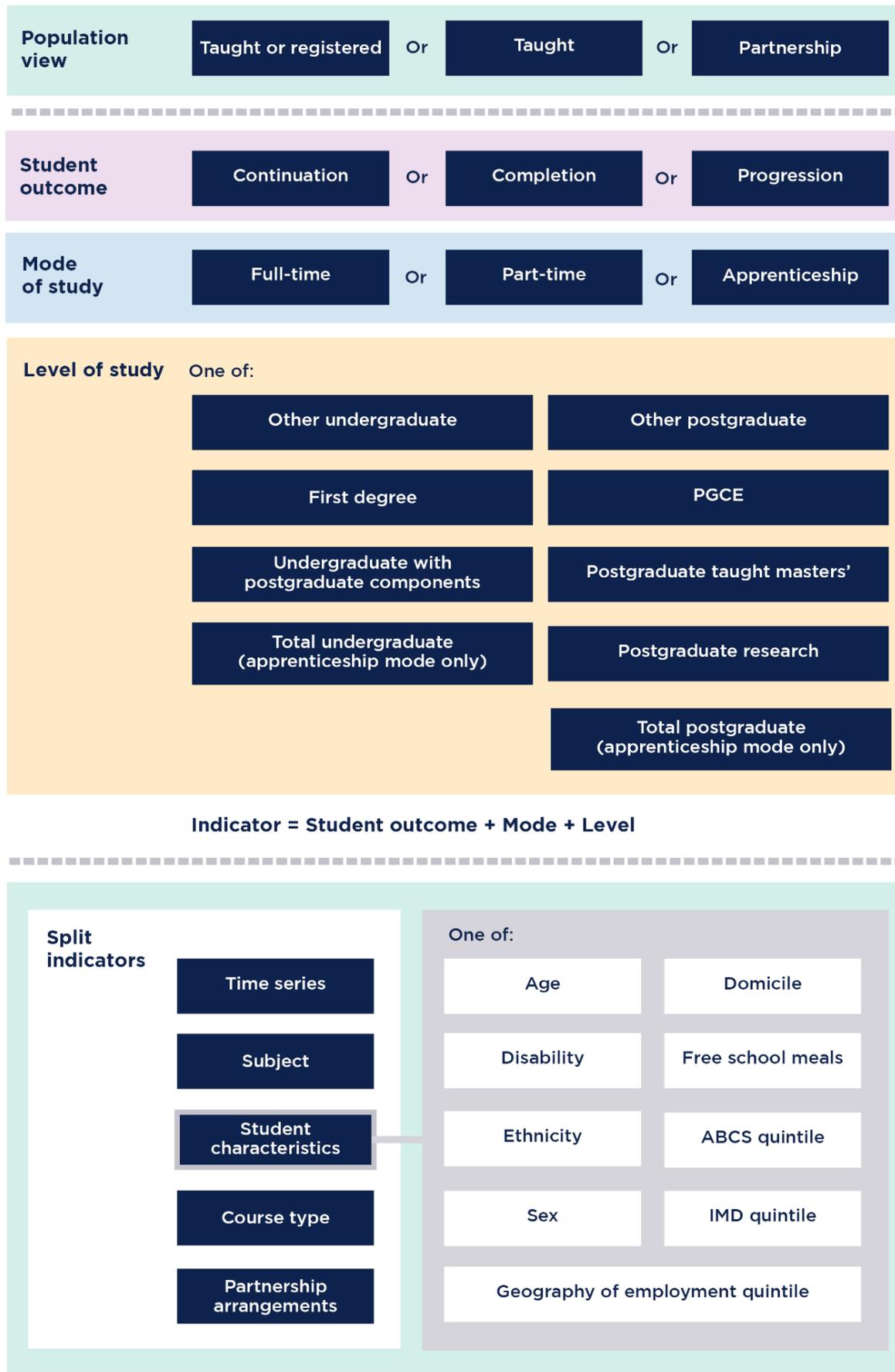
Annex A: Data reporting structure

1. This annex explains the terminology we use to describe the different ways in which we disaggregate our student outcome measures. It explains what indicators and split indicators are, and provides a visual representation of our data reporting structure.

What are indicators and split indicators?

2. We set numerical thresholds in relation to three student outcome measures as part of our regulation of student outcomes through condition B3: continuation, completion, and progression.
3. In the future we may consult on including further outcome measures where we identify additional, reasonable statistical measures of the outcomes of cohorts of students on higher education courses.
4. We produce 'indicators' for each higher education provider that represent the performance of cohorts of students for a particular mode and level for a given student outcome measure. For example, we produce an 'indicator' for continuation for full-time, first-degree students.
5. We also produce 'split indicators', in which we disaggregate performance in relation to a specific indicator by time series, subject, student characteristics, course type (for example whether the course has an integrated foundation year) and teaching arrangements.
6. Finally, when we present data about providers, we can choose to apply different 'views'. These change the student population that is used to calculate the indicators and split indicators. We may use one or more of the following:
 - a. Taught or registered (TorR) population – these are students who are either registered or taught at the provider in question, including those who are taught and registered by the same provider, subcontracted into the provider for teaching, and subcontracted out to another provider for teaching.
 - b. Taught population – these are any students who are taught at the provider in question. This may be the same provider where they are registered or it may be that the provider in question is teaching the student on behalf of another one, under a subcontractual partnership arrangement (subcontracted in).
 - c. Partnership population – used for assessments of condition B3 only: These are students who are either:
 - i. Registered by the provider in question and taught elsewhere, at another provider, under a subcontractual partnership arrangement (subcontracted out); or
 - ii. Neither taught nor registered by the provider in question, but that provider acts as the awarding body for the qualification that a student is studying (validation-only).
7. Figure A1 is a visual representation of the reporting structure we use to create indicators and split indicators for our student outcome measures.

Figure A1: Reporting structure for indicators



Note: 'ABCS' = 'Associations Between Characteristics of Students'; 'IMD' = 'Index of Multiple Deprivation'.

Annex B: Considering statistical confidence in assessments of condition B3

Statistical confidence and why is it relevant to our approach

1. The indicators we use to assess condition B3 are point estimates, meaning that they provide a factual representation of the actual population of students present at a particular higher education provider at a particular time.
2. If our interest were solely the observation of past events, then it would be appropriate to rely solely on these values. However, we are seeking to use the indicator values as representations of the most likely underlying performance in respect of student outcomes. As the actual students in a provider's observed population are just one possible realisation of many other populations of students who could have attended that provider, or may do so in the future, statistical uncertainty exists because of the potential for random variation in student behaviours and outcomes.
3. This means that the indicator values may not always be accurate or precise measures of the underlying performance that they aim to represent. Our proposals take account of this uncertainty by using a statistical approach that identifies the range within which each provider's underlying performance measure could confidently be said to lie. The full details of this approach are set out in our statistical methods document.¹⁸

Our general approach to using statistical confidence

4. We use indicators and split indicators for each provider as the first part of our assessment of compliance with initial and ongoing condition B3. As described, for each of these indicators there is a range in which each provider's underlying performance could be said to lie. Our general policy is that we will place more weight on an indicator or split indicator the more assured we are that the provider's underlying performance is below our numerical threshold. We will have more confidence the closer we are to 100 per cent statistical confidence that this is the case.
5. To explain how we would apply this general policy in practice, we propose to use four different indicative categories that describe the strength of statistical evidence which we would use to guide judgements. These categories are deliberately not discrete, as they describe the strength of statistical evidence, which is on a continuous scale, and are designed to avoid arbitrary divisions; and because the OfS proposes to determine the strength of statistical evidence on a case-by-case basis. The four categories are as follows:
 - a. Around 99 per cent statistical confidence would provide compelling statistical evidence on which to make regulatory judgements.

¹⁸ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

- b. Around 95 per cent or higher statistical confidence would provide very strong statistical evidence on which to make regulatory judgements.
 - c. Around 90 per cent or higher statistical confidence would provide strong statistical evidence on which to make regulatory judgements.
 - d. Around 80 per cent or higher statistical confidence would provide probable statistical evidence on which to make regulatory judgements.
6. We use these levels of statistical confidence during our assessment of condition B3. In general, we:
- a. Begin an assessment of compliance with ongoing condition B3 where we have a minimum of strong statistical evidence (i.e. around 90 per cent or higher statistical confidence).
 - b. Take more intrusive regulatory action where we have at least very strong statistical evidence (i.e. around 95 per cent or higher statistical confidence) that student outcomes are below a numerical threshold.
7. We apply regulatory judgement in each case, rather than using the categories as a determinative way of deciding whether and how we act. For example:
- a. We would be more likely to rely on evidence in which we may have lower statistical confidence, the further a provider's performance is from a numerical threshold.
 - b. Where a provider's performance in a range of indicators is below relevant numerical thresholds, these may collectively be of concern such that the statistical confidence we require for each individual indicator will be lower.
 - c. We will have regard to our public sector equality duty and our general duty to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers. This may mean that we choose to rely on evidence in which we may have lower statistical confidence than we would otherwise have chosen to, because a provider's performance in relation to students who share protected characteristics is below a numerical baseline.

Annex C: Contextual factors

1. The following is an illustrative non-exhaustive list of examples to demonstrate the factors the OfS may consider, and the approach we may take, in determining whether the context in which a provider is operating justifies its student outcomes.
2. These factors fall into two broad groups:
 - a. Factors that may explain the reasons for a provider's historical performance.
 - b. Actions a provider has taken, or will take, to improve its performance, and the extent to which those actions are credible.

Historical factors

3. We may consider factors that may explain the reasons for a provider's historical performance. These include, but are not limited to, the following:
 - a. Evidence of a provider's performance in relation to benchmark values (where these are available). The OfS may test how an individual provider's outcomes compare with those of other providers for its specific student population using OfS individual provider benchmarks. We will consider whether we have sufficient statistical evidence that a provider's performance is below a numerical threshold but above its individual benchmark. We are likely to choose to place limited weight on evidence from benchmarking data where a provider makes a large contribution to its own benchmark. For the avoidance of doubt, the OfS will not treat a provider's performance against benchmark values as determinative of whether it satisfies condition B3.
 - b. Any external factors the OfS considers to be outside a provider's control that might reasonably be judged to have affected its past performance. When considering a provider's context, the OfS will consider external factors where a provider can evidence the impact of those factors on its outcome data. For example, these might include:
 - i. The evidenced impact of the coronavirus pandemic on a provider's performance and whether such impact is broadly consistent with that for other providers.
 - ii. Regional or localised issues that provide evidence of performance different from established patterns. For example, an evidenced rapid change in employment trends in a local area may be relevant to our decision about whether to take regulatory action where a locally recruiting provider was not able to continue its previously positive progression rates.
 - iii. Evidence of particular course or profession attributes that are unique to that provider, or a small group of similar providers, and result in performance consistently below a numerical threshold, but may otherwise be considered positive. For example, a provider may have courses that are designed to provide access to a particular profession that is not classified as managerial or professional in the way the indicator has been constructed. The OfS may consider this positively where graduates report through the Graduate Outcomes survey that they are using the

skills developed on their course, or where graduates are demonstrating above average earnings in Longitudinal Education Outcomes data.

Actions taken

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

Annex D: General policy on publication of information relating to regulation of student outcomes

1. We have published our general policy on the publication of information in regulatory advice 21.¹⁹ This annex sets out our general policy in relation to the publication of information relating to the regulation of student outcomes.

Information we normally expect to publish

2. In line with regulatory advice 21, we will normally expect to publish the following information:

- a. Information about an assessment of a provider's compliance against ongoing condition B3, which found no breach.
- b. Information about an assessment of a provider's compliance against ongoing condition B3, which found a breach or increased risk of a breach.
- c. 'Improvement notices' issued in respect of ongoing condition B3 on our website. These would be issued in the form of a specific ongoing condition of registration.

3. In addition, for condition B3 we will normally expect to publish:

- a. Information to show whether the OfS has assessed a provider in relation to ongoing condition B3 (as part of the data dashboards for individual providers) and to show that, where the OfS has not made an assessment, no assumptions should be made about a provider's compliance with the condition.
- b. Dashboards and individual provider workbooks that allow users to access data about each registered provider in relation to the following:
 - i. Providers' student outcomes as shown by indicators and split indicators for each of our student outcome measures.
 - ii. Providers' performance in relation to our numerical thresholds.
 - iii. Information about the statistical confidence we have in the performance shown in those indicators.
 - iv. Providers' individual benchmarks.
 - v. Sector-wide data showing providers' student outcomes and performance in relation to our numerical thresholds (called 'sector distributions').
 - vi. A data dashboard showing information about the size and shape of each provider's student population.

¹⁹ See www.officeforstudents.org.uk/publications/regulatory-advice-21-publication-of-information/.

4. This data will be published as, and/or accessed from, interactive dashboards as set out in our addendum to the analysis of responses to the consultation on constructing student outcome and experience indicators for use in OfS regulation and associated technical documents.²⁰
5. We expect to operate in line with the commitments in our data strategy to openness and transparency. As such we would also normally expect to publish the underlying data in open source format alongside documents setting out our methodology for constructing the student outcome measures.
6. We expect to publish data dashboards at the same time each year.
7. We expect to publish information that a provider's performance has not been assessed at the point we publish data dashboards. We expect to publish other contextual information once we have completed any assessment of compliance with condition B3. This will happen more frequently than data dashboards will be updated, and it will not happen at set times in the year.

Decision making and factors that we will consider

8. When making a publication decision, we will have regard to the factors set out below and will consider them in the manner we consider to be appropriate for an individual case.
9. We will consider the factors as we decide whether information about a particular subject matter should be published and, if so, the particular content of that publication. It follows, for example, that our consideration of the factors may result in content being included in a publication that seeks to address the potential for publication to result in misunderstanding or unintended consequences. We may also consider these factors when deciding when, how or where to publish information.
10. In addition to the factors set out below we will have regard to other relevant factors on a case-by-case basis. For example, we may consider principles from relevant legal cases or judgments insofar as they remain good law. For example, at the time of publication of this document, we consider the judgement of the High Court in *R (on the application of Barking & Dagenham College) v Office for Students* [2019] EWHC 2667 (Admin) to be a particularly relevant judgement, particularly following the endorsement by the Court of Appeal in *R (on the application of the Governing Body of X) v Ofsted* [2020] EWCA Civ 594. Similarly, in some cases we may consider case law relating to privacy rights.
 - a. **The student interest.** We will consider the interests of students on higher education courses provided by English higher education providers and the interests of people thinking about undertaking, or who have undertaken, such courses.
 - b. **The public interest.** We will consider the public interest.

²⁰ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/ and www.officeforstudents.org.uk/publications/description-and-definition-of-student-outcome-and-experience-measures/.

- c. **The provider interest.** We will consider the impact of publication on English higher education providers.
- d. **The risk of seriously and prejudicially affecting the interests of a body or individual.** We will consider the need for excluding from publication, so far as practicable, any information which relates to the affairs of a particular body or individual, where publication of that information would or might, in the opinion of the OfS, seriously and prejudicially affect the interests of that body or individual.
- e. **Other legal duties on the OfS.** We will consider matters to which we are required to have regard, for example, our general duties under section 2 of HERA.



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