



**AUDIT & RISK COMMITTEE
14 OCTOBER 2019**

OFFICE for STUDENTS REPORTABLE AND MATERIAL ADVERSE EVENTS

The following was approved by Audit and Risk Committee on 14 October 2019

**POLICY AND PROCEDURE FOR NOTIFYING REPORTABLE AND MATERIAL
ADVERSE EVENTS**

1.0 OFFICE FOR STUDENTS REPORTING REQUIREMENTS

- 1.1 Condition F3 of the Office for Students' ("OfS") regulatory framework, "Securing student success: Regulatory framework for higher education in England (February 2018)" (the "Conditions of Registration"), requires the University to report particular incidents or circumstances to the OfS (a "Reportable Event"). Extracts of Condition F3 of the Conditions of Registration which are set out in **Appendix 1**
- 1.2 A Reportable Event is one which arises from or is connected with University activities in the UK or abroad and has, or may result in, a significant loss of University funds; an event which materially affects or which could materially affect the University's legal form or business model; or which may materially affect the University's ability to comply with the OfS' ongoing Conditions of Registration.

2.0 MATERIAL ADVERSE EVENTS

The University also has a requirement under the OfS terms and conditions of funding for Higher Education Institutions (OfS 2018.15) to report any material adverse change in the University's position without delay – such as a significant and immediate threat to the financial position, significant fraud (defined as fraud of £25,000 or over), or impropriety or major accounting breakdown. An extract from the OfS Terms and Conditions of Funding relating to 'material adverse events' is set out in **Appendix 2**

**3.0 NOTIFICATION OF A REPORTABLE EVENT OR MATERIAL ADVERSE EVENT
TO THE OfS**

- 3.1 The Chief Operating Officer (COO) is responsible for matters of compliance with the prudential aspects of OfS regulation. This includes determining whether an event is 'reportable or materially adverse' in liaison with the Vice-Chancellor as the 'accountable officer'.
- 3.2 The Registrar and Secretary is responsible for matters of compliance which are non-prudential in nature. This includes determining whether an event is reportable in liaison with the Vice-Chancellor as the 'accountable officer'.

- 3.3 The Head of Governance will be responsible for ensuring that events are reported in line with the procedures established by OfS and will make the submission of any report once instructed by either Vice-Chancellor, COO or Registrar and Secretary.
- 3.3 If it is concluded that an event is reportable, the matter will be recorded by the Governance Team and reported to the Audit Committee at its next meeting. Due consideration will be given as to whether the Chair of Trustees, Treasurer or members of Executive Management need to be informed as to the submission of a report.
- 3.4 For each incident, the Governance Office will work with the Responsible Officer to ensure that clear audit trail as to the rationale for the decision and held in an accessible record.

4.0 PROCEDURE FOR NOTIFYING THE RESPONSIBLE OFFICERS OF A REPORTABLE EVENT OR MATERIAL ADVERSE EVENT

- 4.1 In order to assist the University in identifying and notifying reportable and material adverse events to the OfS (in compliance with its Conditions of Registration), staff, students and stakeholders should be aware of and understand how to report Potentially Notifiable Incidents (PNIs). It is not the responsibility of a reporter to determine whether a report should be made to the OfS. As above, PNIs will be assessed by the Responsible Officer to determine whether the criteria for a Reportable Event or Material Adverse Event have been met and therefore whether a report to OfS is required.
- 4.2 Any individual involved or connected to the business of the University, should report any incident which *could* be considered “*significant*”. If there is any doubt, the default should be to notify of the incident. By “*significant*”, it is intended that this means that the impact of an event could meet any of the criteria within the “*significant*” definition in the risk assessment matrix.
- 4.3 In the first instance, and as soon as reasonably practicable, details of any PNI should be submitted to the Head of Governance. The Head of Governance will perform an initial assessment and make necessary enquiries to clarify the incident before referring to the appropriate individual for assessment.
- 4.4 When making a report, the reporting individual should include the following information:
- a) the nature of the incident or circumstance (so far as it is possible to describe this e.g. fraud, breach of the University's governing documents, the loss of accreditation);
 - b) the impact or potential impact the incident or circumstance has, or could have, on the University;
 - c) the date of the incident or circumstance, or whether the incident or circumstance is suspected;
 - d) the names of any individuals involved connected in the incident or circumstance;
 - e) whether the reporting individual reported the incident or circumstance to another individual, authority or regulatory body before making a report in accordance with this Policy or is under an obligation so to do;
 - f) details of any ongoing inquiries into the incident or circumstance and any actions taken to date; and
 - g) Whether any existing applicable University policies have been consulted (e.g. the Whistleblowing Policy)

5.0 ANONYMITY AND CONFIDENTIALITY

- 5.1 The University aims to promote a culture in which individuals feel confident to report an event. Consequently, anyone who reports an event is encouraged to identify him/herself. However, if an individual wishes to report an event confidentially, the University will make every effort to keep that individual's identity secret.
- 5.2 Reports which are expressed anonymously will be considered at the discretion of the University according to:
- the seriousness of the issues concerned;

- the likelihood of confirming the allegation from alternative credible sources.

5.3 In the event that it is deemed necessary to reveal the identity of the individual making the report, for example to carry out an effective investigation, this will be discussed with the individual who will be advised prior to the release of their identity.

6.0 INVESTIGATION PROCESS

7.1 Upon receipt of the report of a PNI the COO or the Registrar and Secretary will, if deemed appropriate, offer to hold a meeting with the person who submitted the report. The purpose of the meeting will be for the COO or Registrar and Secretary to obtain as much information as possible about the incident or circumstance.

6.2 If considered necessary, the COO or Registrar and Secretary, will appoint an 'Investigation Manager'. The Investigation Manager might be a senior manager at the University independent to the matter. If the subject of the report involves a member of the senior management of the University, the Investigation Manager shall be Head of Internal Audit.

6.3 Before commencing an investigation the Investigation Manager will consider whether the investigation should be carried out under an existing internal procedure, for example, the Counter Fraud Policy.

6.4 The form of the investigation will depend on the nature of the matter raised.

6.5 Any investigation under this policy will be conducted as speedily as possible. The intended timetable for the investigation will be notified to the either the COO or Registrar and Secretary (as appropriate) . The Investigation Manager will remind those participating in the investigation of the need to maintain strict confidentiality.

6.6 The findings of the investigation under this policy (which may include recommendations for change to minimise the risk of future reportable events occurring) will be reported to the COO or Registrar and Secretary who will determine what action to take including, in accordance with paragraph 3.1 or 3.2 whether the event is reportable or materially adverse

8.0 REPORTS TO AUDIT AND RISK COMMITTEE

8.1 All Reportable Events and Material Adverse Events will be reported to the Audit and Risk Committee at its next meeting by the Governance Office.

8.2 All incidents will also be recorded in the Audit and Risk Committee Annual Report to the Board of Trustees and the Office for Students.

Appendix 1: OfS Condition F3: Provision of information to the OfS

For the purpose of assisting the OfS in performing any function, or exercising any power, conferred on the OfS under any legislation, the governing body of a provider must:

- i. Provide the OfS, or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified.

This condition also applies to any information held by any subcontractors that may be providing services on the provider's behalf.

Reportable events

A reportable event is any event or circumstance that, in the judgement of the OfS, materially affects or could materially affect the provider's legal form or business model, and/or its willingness or ability to comply with its conditions of registration. Reportable events must be reported to the OfS **under condition F3(i)** and include, but are not limited to:

a. A change in the provider's circumstances, including but not limited to:

- a sale of either the provider itself, a part of it, or its parent
- a merger of the provider with another entity
- an acquisition by the provider of another entity
- a material change in the provider's business model, such as a move to focus on further instead of higher education
- a change in the provider's legal status
- other, similar structural changes, such as the establishment of joint ventures, or the separation of the provider into multiple entities
- other changes resulting in a change of ownership of the provider.

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

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

Ownership does not require beneficial ownership. A provider:

- must inform the OfS of any changes in ownership where 50 per cent or more of the ownership of the registered provider is in common ownership, and a change affects the majority ownership rights. This includes the creation of majority ownership rights for the first

time, the transfer of majority ownership rights to a new holder, the introduction of a new entity to majority ownership rights and majority ownership rights coming to an end

☐ must inform the OfS of any change in ownership that affects 15 per cent by value or voting rights of the registered provider's shares, or closest equivalent. A provider must do so whether the change is brought about in one transaction or a series of connected transactions. A provider does not need inform the OfS of entirely unconnected transactions provided none of those transactions is individually above our notification threshold

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

Some examples of changes that must be reported include:

☐ where all or any part of the majority ownership rights in the provider change:

i. Example 1: there are five shareholders, each holding 10 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One shareholder sells their shareholding to the others. This must be notified.

ii. Example 2: there are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One sells a 10 per cent shareholding to a relative who is a connected person. This must be notified.

iii. Example 3: There are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One sells their shareholding to a third party. This must be notified.

☐ where additional share capital is issued, or shares are bought back, or the voting rights that attach to existing shares are changed

☐ where a controlling proportion of a provider's shares is directly, or indirectly such as through those of its parent organisation(s), acquired by another individual(s), partnership(s) or organisation(s).

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

d. The provider becoming aware of suspected or actual fraud or financial irregularity.

e. The provider becoming aware of legal or court action.

f. The provider resolving to cease to provide higher education.

g. Regulatory investigation and/or sanction by other regulators, e.g. Charity Commission, Home Office.

h. Loss of accreditation by a Professional, Statutory or Regulatory Body (PSRB).

i. Any new partnerships, including validation or sub contractual arrangements.

j. Opening a new campus.

k. Intended campus, department, subject or provider closure.

l. Any other material events with possible financial viability or sustainability implications, including but not limited to:

- a material change in actual or forecast financial performance and/or position
- a material change in gearing
- a material change in student numbers that was not included in the provider's financial forecasts
- for a provider with a legally binding obligation of financial support underpinning its financial sustainability, a withdrawal of the obligation (including as a result of a change of control, even where the new owner will offer a similar obligation) or a material adverse change in the counterparty's financial position or other standing that could affect its suitability as counterparty
- the sale of significant assets
- significant redundancy programmes.

Appendix 2 Extract from the Office for Students Terms and Conditions of funding for higher education institutes

Material adverse events

39. The HEI's accountable officer must report any material adverse change without delay – such as a significant and immediate threat to the HEI's financial position, significant fraud (defined as fraud of £25,000), or impropriety or major accounting breakdown – to all of the following:

- the chair of the HEI's audit committee
- the chair of the HEI's governing body
- the HEI's head of internal audit
- the external auditor
- the OfS at regulation@officeforstudents.org.uk.

40. The HEI's accountable officer must also inform the OfS about any merger with another institution or organisation and about any material changes in its financial performance and position relative to its submitted forecasts.

41. The governing body must inform the OfS without delay of the removal or resignation of the external or internal auditors before the end of the term of their appointment, including the reason for the removal or resignation.