



## Audit & Risk Committee

January 2022

The following was approved by Audit and Risk Committee at its meeting on 17 January, effective from 1 January 2022.

### OFFICE for STUDENTS REPORTABLE AND MATERIAL ADVERSE EVENTS

#### 1. Change to Regulatory Advice.

- 1.1 The Reportable and Material Adverse Events policy was approved by Audit and Risk Committee on 14 October 2019, and ARC have received regular reports of events submitted to the Office for Students.
- 1.2 Following consultation on revisions to their reporting requirements, the OFS are had made amendments, with effect from 1 January 2022, to the [Regulatory Framework](#), including a revised definition of a reportable event (para. 494). This has been supplemented by a revised [Regulatory Advice 16](#) (previously published October 2019) to support institutions in their reporting.
- 1.3 The change reflects a much shorter definition than previously employed, and removes specific examples from the framework itself, and provides these as part of the regulatory advice. The definition reflects the OfS's approach as a principles-based, rather than a rules-based, regulator, recognising that specifying an exhaustive list of events to be reported and the circumstances in which they are reported, or not, risks tick-box compliance on the part of providers. The revised definition is set out in Appendix One.

#### 2. Changes to Policy

- 2.1 There are minor changes required to meet the change in regulation and guidance as set out in track changes below. More importantly will be the dissemination of the information to colleagues across the University to encourage and enable the reporting of Potentially Notifiable Incidents (PNIs). The Governance Team will work with the Secretary's Office to provide guidance and support in communicating this policy.
- 2.2 Appendix Two sets out a non-exhaustive list of reportable events, and colleagues responsible for their identification. In many cases this will be delegated to members of their teams.

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### 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 (January 2022)" (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, in the reasonable judgement of the OfS, negatively affects or could negatively affect:

- a. The provider's eligibility for registration with the OfS.
- b. The provider's ability to comply with its conditions of registration.
- c. The provider's eligibility for degree awarding powers, or its ability to comply with the criteria for degree awarding powers
- d. The provider's eligibility for university title

## **2.0 NOTIFICATION OF A REPORTABLE EVENT TO THE OfS**

- 2.1 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' in liaison with the Vice-Chancellor as the Accountable Officer'.
- 2.2 The Registrar and University 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.
- 2.3 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 University Secretary.
- 2.4 Whether or not 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 the Board of Trustees, the Treasurer or UEB need to be informed as to the submission of a report.
- 2.5 For each Potentially Notifiable 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.

## **3.0 PROCEDURE FOR NOTIFYING THE RESPONSIBLE OFFICERS OF A REPORTABLE EVENT OR MATERIAL ADVERSE EVENT**

- 3.1 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 have been met and therefore whether a report to OfS is required.
- 3.2 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.

- 3.3 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.
- 3.4 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)

#### **4.0 ANONYMITY AND CONFIDENTIALITY**

- 4.1 The University aims to promote a culture in which individuals feel confident to report an event. However, if an individual wishes to report an event confidentially, they should use the University's Whistleblowing Policy instead.

#### **5.0 INVESTIGATION PROCESS**

- 5.1 Upon receipt of the report of a PNI the COO or the Registrar and University 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.
- 5.2 If considered necessary, the COO or Registrar and University 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.
- 5.3 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.
- 5.4 The form of the investigation will depend on the nature of the matter raised.
- 5.5 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 University Secretary (as appropriate). The Investigation Manager will

remind those participating in the investigation of the need to maintain strict confidentiality.

- 5.6 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 University 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

## **6.0 REPORTS TO AUDIT AND RISK COMMITTEE**

- 6.1 All incidents both non reportable and Reportable Events will continue to be reported to the Audit and Risk Committee at its next meeting by the Governance Office.
- 6.2 All Reportable Events will also continue to 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 matter that, in the reasonable judgement of the OfS, negatively affects or could negatively affect:

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

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

The OfS will set out in separate guidance from time to time further information about how it will apply this definition of a reportable event, including illustrative factors to assist a provider in reaching decisions about reporting. The OfS may also provide further clarification about reportable events in the drafting of Notices issued to providers under condition of registration F3.

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

Type of event or matter	Always reportable?	Report to	Responsible
a. Matters relating to a provider's ownership, legal form or corporate structure, including but not			
i. The legal entity that is registered ceasing to exist. This might be as a result of: <ul style="list-style-type: none"> <li>The acquisition by another legal entity of the business operated by a provider</li> <li>A merger of the provider with another registered or unregistered higher education provider.</li> </ul>	Yes	Registrar & University Secretary	Head of Governance
ii. A merger of the provider with another registered or unregistered higher education provider.	Yes	Registrar & University Secretary	Head of Governance
iii. A change of ownership, including through a sale, of the provider (see Definitions below). <sup>10</sup>	Yes	Registrar & University Secretary	Head of Governance
iv. A change in the provider's legal form.	Yes	Registrar & University Secretary	Head of Governance
v. Amendments to the provider's governing documents. <sup>11</sup> Factors in favour of reporting may include: <ul style="list-style-type: none"> <li>Amendments which affect the provider's ability to uphold and deliver in practice the public interest governance principles that apply to the provider</li> <li>Amendments which relate to the treatment of the provider's charitable assets on dissolution of the provider.</li> </ul> Factors against reporting may include: <ul style="list-style-type: none"> <li>Administrative amendments which do not affect the operative provisions of the governing document(s).</li> </ul>	No	Registrar & University Secretary	Head of Governance
vi. An acquisition by the provider of another entity.	No	COO	CFSO, Executive Director RED
vii. A sale of a part of the provider or its parent.	No	COO	CFSO, Executive Director Education & the Student Experience & Exec Director RED
b. Matters related to the delivery of higher education in England, including but not limited to:			

i. The provider resolving to cease carrying on its business principally in England.	Yes	COO	Director Strategy & Planning
ii. The provider resolving to fully or substantially cease providing higher education, whether or not this results in the closure of the provider.	Yes	COO	Director Strategy & Planning
<b>Type of event or matter</b>	<b>Always reportable?</b>	<b>Report to</b>	<b>Responsible</b>
iii. A change in the provider's business model, such as a move to focus on further instead of higher education.	No	Registrar & University Secretary	Executive Director for Education & the Student Experience
iv. Loss, including suspension, of the provider's student sponsor licence.	Yes		
<b>c. Matters relating to the quality and standards of a provider's higher education courses, including but not limited to:</b>			
i. A notification to the provider of an investigation by an awarding organisation or awarding body or by a professional, regulatory or statutory body.	Yes	Registrar & University Secretary	Executive Director for Education & the Student Experience
ii. A notification to the provider that its awarding organisation or awarding body is to withdraw from the arrangement, where this is not a routine consequence of a planned contract review.	Yes		
<b>d. Matters relating to student and consumer protection, including but not limited to:</b>			
i. The provider receiving a complaint that it has charged or advertised fees that exceed a statutory fee limit or a fee limit imposed as a result of an approved access and participation plan.	Yes	Registrar & University Secretary	Executive Director for Education & the Student Experience
ii. A new campus, whether in the UK or internationally.	Yes	Registrar & University Secretary	Executive Director for Education & the Student Experience & Executive Director of External Relations
iii. Closure of a campus, department, or subject area, whether or not this is in the provider's approved student protection plan.	Yes		
iv. Termination of a partnership arrangement, whether in the UK or internationally, where this results in a contract change for students.	Yes		
v. Complaints from students that are upheld in full or in part by the provider, or by the OIA, and that result in redress for a student (including a full or partial fee refund) or changes within the provider.	No	Registrar & University Secretary	Director of Legal Services

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

i. Changes to the identity of the individual a provider wishes to nominate to the OfS as its accountable officer.	Yes	Registrar & University Secretary	Head of Governance
ii. Changes to the identity of the chair of a provider's governing body.	Yes		
iii. A change of control of the provider (see Definitions below). <sup>14</sup>	Yes		
iv. A matter relating to the provider's compliance with the Prevent duty as set out in the OfS's monitoring guidance	Yes	Registrar & University Secretary	Executive Director for Education and the Student Experience
v. The initiation of a governance review where this is not a routine part of a provider's planned arrangements. Factors in favour of reporting may include: <ul style="list-style-type: none"> <li>The review is initiated in response to whistleblowing, or other complaints</li> <li>The review is initiated in response to welfare or safeguarding concerns about students or staff.</li> </ul>	No	Registrar & University Secretary	Head of Governance
<b>Type of event or matter</b>	<b>Always reportable?</b>	<b>Report to</b>	<b>Responsible</b>
vi. The following events or matters relating to fraud or financial irregularity: <p>(a) The provider receives a complaint or allegation that it may have committed fraud</p> <p>(b) The provider initiates an investigation into a possible fraud or financial irregularity involving the provider</p> <p>(c) The provider is notified that a third-party is investigating the provider in relation to a possible fraud or financial irregularity</p> <p>(d) A third-party makes a finding that the provider has committed fraud.</p> <p><u>Factors in favour of reporting may include:</u></p> <ul style="list-style-type: none"> <li>Involvement of any member of the governing body, the accountable officer, or any other senior officer</li> <li>The fraud exposes a systemic weakness in the provider's internal control arrangements that suggest other, as yet unidentified, cases could be taking place</li> <li>The fraud involves public funding</li> <li>The fraud is one of a repeating pattern of even small-scale frauds.</li> </ul> <p><u>Factors against reporting may include:</u></p> <ul style="list-style-type: none"> <li>The monetary scale of the fraud is below £25,000 or two</li> </ul>	No	COO	CFSO

per cent of the provider's total income (whichever is smaller).			
<p>vii. Legal or court action.</p> <p>Factors in favour of reporting may include:</p> <ul style="list-style-type: none"> <li>• Involvement of any member of the governing body, the accountable officer or any other senior officer where this relates to their duties for the provider</li> <li>• An individual case, or a pattern of cases, exposes a systemic weakness in the provider's management and governance arrangements</li> <li>• Findings of a coroner where these relate to a student death and expose a systemic weakness in the provider's management and governance arrangements.</li> </ul> <p>Factors against reporting may include:</p> <ul style="list-style-type: none"> <li>• Isolated employment tribunal cases</li> <li>• The issue is a commercial dispute relating to business activities where the monetary scale of any adverse outcome is likely to be below £25,000 or two per cent of the provider's total income (whichever is smaller).</li> </ul>	No	Registrar & University Secretary	Director of Legal Services
<p>viii. Regulatory investigation and/or sanction by other regulators or funding bodies, for example the Education and Skills Funding Agency, Ofsted, the Charity Commission,<sup>16</sup> the Equality and Human Rights Commission or the Arts Council.</p> <p>Factors against reporting may include:</p> <ul style="list-style-type: none"> <li>• The action is a routine inspection that is undertaken as part of a regulator's planned oversight activities.</li> </ul>	No	Registrar & University Secretary	Executive Director of Education & the Student Experience, Head of Governance, CFO, Chief Property Officer, Director of Health and Safety
<b>Type of Event or Matter</b>	<b>Always reportable?</b>	<b>Accountable</b>	<b>Responsible</b>
g. Matters relating to information provision, including but not limited to:			
i. Any matter which affects the accuracy of the information contained in the provider's entry in the OfS Register. <sup>17</sup>	Yes	Registrar & University Secretary	Head of Governance

<p>iii. Inaccuracies or omissions in the information finally submitted by a provider to the OfS or the designated data body, including where this may have an impact on the OfS's use of the data including in determining compliance with another condition of registration, the provider's funding allocation, or statistics published by the designated data body.</p> <p>Factors in favour of reporting may include:</p> <ul style="list-style-type: none"> <li>• Inaccuracies or omissions mean that students or other activities are not included in returns when they should be or vice versa.</li> </ul> <p>Factors against reporting may include:</p> <ul style="list-style-type: none"> <li>• Minor or administrative errors which have been resolved through a validation process following initial submission of the data</li> <li>• Inaccuracies or omissions are restricted to a small number of students</li> </ul>	<p>No</p>	<p>Registrar &amp; University Secretary</p>	<p>CFSO, Exec Director of RED. Exec Director of External relations, Executive Director for Education and Student Experience and Academic Registrar</p>
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