

Regulating student outcomes – decision on policy approach to publication of information about student outcomes

Introduction

1. In January 2022 we published a consultation on regulating student outcomes¹ ('student outcomes consultation') which included proposals about the publication of information. In the consultation, we proposed to publish information about individual providers' student outcomes and performance in relation to our numerical thresholds, as well as sector-wide data, on our website. We also proposed to publish specific ongoing conditions of registration in the form of 'improvement notices'.
2. Alongside our student outcomes consultation, in January 2022, we also launched a consultation on constructing student outcome and experience indicators for use in OfS regulation ('the data indicators consultation').² That consultation explained the format we intended to use in presenting and publishing the information about individual providers' student outcomes and performance in relation to our numerical thresholds. In the analysis of responses and decision document for the regulating student outcomes consultation ('student outcomes response document') and the analysis and decision document for the data indicators consultation ('data indicators response document'), we explained that we did not intend to make final decisions about publication-related matters until we had considered responses to our separate consultation on the publication of information about higher education providers.³ We then set out a series of decisions that we were minded to make subject to our consideration of responses to the publication of information consultation.
3. We have now published our response to the consultation on publication of information ('publication of information response document') and this is available on our website.⁴ The outcome of the consultation is that we have adopted a general policy on the publication of information about providers and this is also available on our website as regulatory advice 21.
4. In light of these developments, we have now had an opportunity to consider responses to the publication of information consultation and the outcomes from that consultation.

¹ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

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

³ See www.officeforstudents.org.uk/publications/consultation-on-publication-of-information-about-higher-education-providers/.

⁴ See www.officeforstudents.org.uk/publications/consultation-on-publication-of-information-about-higher-education-providers-analysis-of-responses-and-decision/.

5. This paper explains where our policy approach to publishing information about student outcomes is covered by the general policy set out in regulatory advice 21. It also sets out our final decisions about our approach to the publication of information relating to regulating student outcomes which is not covered by our general policy as set out in regulatory advice 21. This includes how we have considered relevant points arising in the publication of information consultation. We will implement our decisions by amending regulatory advice 20 and 21. Amendments to regulatory advice 20 are set out at Annex A.

Consultations on student outcomes and data indicators

6. In January 2022, we published a consultation seeking views on our proposals to revise our approach to regulating student outcomes, to achieve our regulatory objectives more effectively. We sought views on these proposals between 20 January and 17 March 2022.

7. In the consultation, we proposed to publish information about student outcomes. We proposed to publish:

- a. 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.
- b. Sector-wide data showing providers' student outcomes and performance in relation to our numerical thresholds.
- c. Information about an individual provider's compliance with ongoing condition B3. This would show:
 - i. Whether the OfS had assessed a provider in relation to ongoing condition B3, and be clear that, where the OfS had not made an assessment, no assumptions should be made about the provider's compliance with the condition.
 - ii. Where the OfS had conducted a compliance assessment but found no breach, we proposed that we would publish information about this decision.
 - iii. Where the OfS found a breach or increased risk of a breach of condition B3, we proposed that we would publish information about that finding and any regulatory action taken to address a provider's performance.

8. We also proposed that wherever we identify a breach of ongoing condition B3, we would normally expect to impose a specific ongoing condition of registration in the form of an 'improvement notice' and that we would publish these on our website.

9. Alongside our student outcomes consultation, in January 2022, we also launched the data indicators consultation. This set out proposals for the construction, presentation and interpretation of data for use in our proposed approach to regulating student outcomes (as well as in other areas of OfS regulation). We also sought views on these proposals between 20 January and 17 March 2022.
10. In the data indicators consultation, we explained the format we intended to use in presenting and publishing the student outcomes data. We explained that we intended to publish the data annually as official statistics. We also proposed including information about the size and shape of a provider's provision alongside the published student outcomes data. We issued exemplar dashboards and workbooks to individual providers to illustrate the data we proposed to publish and how we would present it.
11. On 26 July 2022, we published our analysis of responses to both consultations, and our decisions. This is set out in the student outcomes response document and the data indicators response document. In those documents, we noted that the OfS was separately consulting on our general approach to the publication of information about higher education providers. We explained that, given the relevance of the publication of information consultation, we did not intend to make any final decisions on the publication proposals in the student outcomes consultation or the data indicators consultation until we had considered responses to our publication of information consultation.⁵
12. Nevertheless, we considered responses related to our publication proposals and set out that we were minded to proceed with the proposals with some amendments. In relation to the proposals to publish individual provider dashboards and workbooks showing information about student outcomes, we proposed the following amendments:
 - a. Introduce measures into the published dashboards which aim to improve users' understanding, which may include:
 - i. Clear statements about the appropriate interpretation of data, including whether a provider has been subject to OfS assessment. For example, making prominent statements on each dashboard that performance below a numerical threshold should not be interpreted as a provider being in breach of condition B3.
 - ii. Tooltips which would give users more detailed explanations of what each element of the dashboard shows.
 - iii. Improved user guidance and a navigational aid that would make selection of appropriate filters easier.
 - iv. Increased layering in the presentation of the dashboards to enable users to focus on the key data that best meets their needs.
 - v. A filter that allows users to make their own choices about whether to filter performance below thresholds and to vary the levels of statistical certainty used to highlight data points.

⁵ See paragraphs 15-16, proposal 4, and page 134 of the student outcomes response document, and paragraphs 11-16 of the data indicators response document.

13. This was in response to comments from respondents suggesting we publish supporting information to make the data more understandable and accessible (including to non-expert audiences) and to avoid misinterpretation of the published data.
14. We also said that we were minded not to publish the partnerships view of a provider's student population within our data dashboards in the first year of operation of the new approach to regulating student outcomes. This is due to current data limitations, as explained in paragraph 191 of the data indicators response document.
15. We were minded to implement without changes our proposals to publish information about providers' compliance with condition B3 and specific conditions issued in relation to condition B3 in the form of improvement notices.
16. Our reasons for these 'minded to' decisions, including analysis of the points made by respondents to the student outcomes consultation and the data indicators consultation, and the OfS's response to these, can be found at pages 95-102, and page 134, of the student outcomes response document and paragraphs 119-133 and 205-209 of the data indicators response document.⁶
17. Since publishing the student outcomes and the data indicators response documents, we have considered the above proposals and our views against consultees' comments in the publication of information consultation and the outcome of that consultation. For the reasons explained below, we intend to adopt our proposals broadly as set out in the student outcomes response document and the data indicators analysis document. However, because of our general policy on the publication of information (in regulatory advice 21), we have refined our approach to publishing information about student outcomes. Our policy will set out the information that we would normally expect to publish and the factors we will consider when making publication decisions.

Publication of information consultation

18. In December 2020, the OfS published an initial consultation seeking views on our proposed approach to the publication of information about particular providers and particular individuals connected with them. This set out proposals for certain types of information we would normally expect to publish, other types of information that we would not normally expect to publish, and factors we would normally expect to consider in making publication decisions. We then published a supplementary consultation in May 2022. This contained some amended proposals, including proposing that the publication of information relating to investigations should fall within 'information we would normally expect to publish' rather than 'information we would not normally expect to publish'.
19. We have since published the publication of information response and decision document,⁷ which discusses responses received to the May and December consultation documents, and explains our decisions. We decided to implement the proposals in broadly the same form as we consulted on in the December 2020 consultation, as updated and revised in the

⁶ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

⁷ See www.officeforstudents.org.uk/publications/consultation-on-publication-of-information-about-higher-education-providers-analysis-of-responses-and-decision/.

subsequent supplementary consultation of May 2022, and with some specific amendments to the factors we will consider when making decisions regarding publication of information. We amended the factors we will consider to more explicitly reflect the legal requirements on the OfS, in particular under Section 67A of HERA.

OfS general policy on publication of information

20. The general policy we have adopted following the consultation on the publication of information is set out in regulatory advice 21.⁸ Table 1 of this document sets out the categories of information we would normally expect to publish. Particularly relevant to the proposals we made in the regulating student outcomes consultation are part 5 and 7 of Table 1 as follows:

Table 1: Information the OfS would expect to publish

	Main subject matter	Main content in respect of that subject matter	Any related or ancillary material
[...]	[...]	[...]	[...]
5	A report of any assessment of potential regulatory concerns, including an assessment of quality or standards undertaken for a provider, regardless of whether that report has been produced as part of an investigation or results in an investigation being opened	An assessment report and the reasons that assessment was conducted	The OfS's detailed assessment of the relevant issues, including the underlying evidence considered in that assessment
7	Information about a provider's compliance with its conditions of registration and any action the OfS has taken in response to actual or likely non-compliance: A breach of a condition of registration Imposition of a specific condition of registration, whether or not there has been a breach of a condition Imposition of a monetary penalty Suspension of registration Deregistration	The decision that there is or has been a breach of a condition of registration and the reasons for that decision The content of any specific condition and the reasons it has been imposed The decision to impose a monetary penalty, the amount of that penalty (and how it was calculated), and the reasons for those decisions ⁹ The information about suspension of registration listed in section 16 of HERA and the reasons for that suspension The information about deregistration listed in section 18 of HERA and the reasons for that deregistration, and the reasons for the imposition of	The OfS's detailed assessment of a provider's compliance with the relevant condition(s) of registration, including the underlying evidence considered in that assessment The report of any assessment of quality and standards undertaken for the provider where that is relevant to the main subject matter

⁸ See www.officeforstudents.org.uk/publications/regulatory-advice-21-publication-of-information/.

⁹ See www.officeforstudents.org.uk/publications/consultation-on-ofs-approach-to-monetary-penalties/.

		any transitional or saving provision	
[...]	[...]	[...]	[...]

21. Regulatory advice 21 states that:

‘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.

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.

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.’

22. Regulatory advice 21 lists these factors as follows:

- 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.
- 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.

23. In regulatory advice 21 we set out non-exhaustive examples of considerations that may weigh in favour or against publication for each of the factors.

24. Some of the information we proposed to publish about compliance with condition B3 (see paragraph 7.c.ii, 7.c.iii and 8 above) is now covered by our general policy regarding publication, as set out above and in regulatory advice 21. In our student outcomes consultation we proposed that:

- a. Where the OfS had assessed a provider's compliance against ongoing condition B3 but found no breach, we would publish information about this decision. Our general policy regarding publication now states that we will normally publish this information (see part 5 of table 1 of regulatory advice 21).
 - b. Where the OfS found a breach or increased breach of condition B3 we would publish information about that finding and any regulatory action taken to address a provider's performance. Our view is that regulatory action would be likely to take the form of a specific condition.¹⁰ Our general policy regarding publication now states that we will normally publish this information (see part 7 of table 1 of regulatory advice 21).
 - c. We would publish 'improvement notices' issued in respect of ongoing condition B3 on our website. These would be issued in the form of specific ongoing conditions. Our general policy regarding publication now states that we will normally publish this information (see part 7 of table in regulatory advice 21).
25. Part 7 of Table 1 covers the publication of specific conditions imposed for any reason, whether there has been a breach of a condition or not, and therefore our proposal to publish improvement notices via the use of specific conditions is consistent with the scope of that general policy approach.
26. We considered comments made in response to the regulating student outcomes consultation about publishing information about a provider's compliance with condition B3. In particular, paragraph 621 of the student outcomes response document set out views from respondents on the potential impact on the reputation of a provider that the publication of improvement notices could have. We responded to those comments at paragraphs 622 to 625 of the student outcomes response document. We continue to take the views expressed there.
27. Accordingly, we would therefore normally expect to publish this information in line with our general policy. Following our general policy, we will consider the factors set out in paragraph 22 in the manner we consider appropriate before making publication decisions about the publication of information about individual providers. The reasoning for adopting the general policy is set out in the document 'Consultation on the publication of information about higher education providers analysis of consultation responses and decision'.
28. There is some information in our proposals that is not explicitly included in our general policy on the publication of information. This includes our proposals to publish:
- a. Information to show whether the OfS had assessed a provider in relation to ongoing condition B3 as part of the provider data dashboards and workbooks and be clear that, where the OfS had not made an assessment, no assumptions should be made about a provider's compliance with the condition.
 - b. Data relating to student outcomes (see paragraphs 7.a and 7.b above).

¹⁰ Regulatory advice 20 (paragraph 57) states that '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.'

29. We have therefore considered these proposals further below.

Responses to the publication of information consultation

30. We note that there were a number of general points made by respondents which have relevance to our proposals about the publication of dashboards and workbooks in the student outcomes consultation.
31. The publication of information consultation did not ask specific questions about the publication of information about student outcomes or condition B3. A very small number of respondents did, however, specifically refer to it. One response suggested that publishing student outcomes data without contextual information may create a misleading impression of performance. This respondent said they had also submitted this point in response to the student outcomes consultation.
32. We also considered points made in responses to the publication of information consultation that do not specifically comment on our proposals to publish information about student outcomes not already covered by the general policy on publication of information, but that nevertheless have relevance for those proposals. We consider the points in the following paragraphs from the publication of information outcomes document are particularly relevant.
33. Paragraph 31 sets out that some respondents questioned students' ability to interpret regulatory information. Although the comments were about negative compliance judgements, we consider they have relevance to the publication of data that will inform an assessment of compliance against condition B3. Some respondents questioned how information about compliance with conditions of registration would inform students' decision-making. Some also suggested that some of our policy objectives, including visibility of regulatory action, sector learning and incentivising compliance, could be met through the publication of anonymised data, summary information and/or sector-wide information instead.
34. A common theme in responses (for example in paragraphs 47 and 117-118) was the potential reputational damage to providers. These comments related to the publication of information about a provider's compliance with conditions of registration. We will use the dashboards, however, in our assessment for condition B3. So, we consider that the comments are relevant in this context. Similar comments also suggested that publishing information could damage the commercial interests of a provider.
35. Paragraph 109 and 110 set out themes about whether publication of information is in the student interest. Some respondents agreed that it could help students to make more informed choices about what and where to study. Others questioned whether students could appropriately interpret regulatory information without further context and guidance.
36. Paragraph 111 sets out that respondents agreed that the provider interest should be considered when making publication decisions. In particular, respondents agreed that the OfS should consider whether information could damage a provider's legitimate commercial interest or create a competitive advantage for other providers.
37. Paragraph 113 sets out that many respondents agreed that, in principle, publication of information may be in the public interest, with some commenting that it would help to increase

transparency and maintain public confidence in the OfS's regulatory approach and the English higher education sector.

38. Paragraph 116 sets out that some respondents suggested that the OfS should reframe its consideration of the public interest so that information is published only where there is 'genuine', 'strong' or 'legitimate' public interest. They also suggested that the OfS should set out in more detail the factors that it would use to determine whether that test is met, such as contextual information about a provider, its student population and local economy.
39. Paragraph 148 sets out that many respondents thought that validating information to ensure its accuracy was important, prior to the publication of any information. Some respondents linked this to the need for a consultation or representations process with individual providers in relation to publication decisions.
40. Paragraph 176 set out some respondents noted that it was important for students with protected characteristics to be able to identify where a provider may have a poor track record in providing good outcomes for underrepresented groups of students or those with protected characteristics. It was also suggested that information published by the OfS should be appropriately contextualised to enable students with protected characteristics to make informed choices.

OfS response

41. Regarding comments from the publication of information consultation specifically referring to student outcomes or condition B3, we note that views that contextual information should be published alongside data about a provider's performance were considered as part of our response to the consultation on student outcomes. We proposed that we would include some contextual information through data that shows the size and shape of provision: including student number counts in respect of a provider's size, the types of courses it offers and its mix of subjects, and the characteristics of its students. We also proposed we would publish statements about the interpretation of the data as set out in paragraph 7.c.i and to publish benchmark values for providers which provide further contextual information about a provider's performance.
42. We consider that this information provides appropriate contextual information to help users interpret the data. Responses to the publication of information consultation have not changed this position because no further arguments were raised to those that had been considered through the student outcomes consultation.
43. We note that some respondents to the publication of information consultation questioned students' ability to interpret regulatory information without further contextual information or guidance. In our provisional decisions about the publication of dashboards we said we were minded to publish improved user guidance and a navigational aid that would make selection of appropriate filters easier and increase the layering in the presentation of the dashboards to make them easier to use. We consider that these measures will support students' use of the data.
44. In relation to views that publishing information will not inform student decision-making – we consider that information about student outcomes is something that students would be interested in. We also consider that access to a wide range of information and data is

important to inform choice. We note that progression to employment is something frequently used in the marketing materials of providers and therefore data that supports such information must be relevant to student choice.

45. We have considered whether we could publish anonymised dashboards, either at sector or provider level. We set out in the response to the publication of information consultation our view that in many instances, it is the naming of a provider that will maximise the deterrent effect of regulatory action, inform student choice, and will likely create a strong incentive to encourage compliance across the sector. That reasoning holds for publication of dashboards in relation to condition B3. Anonymised provider-level dashboards would be of very little value to users and would not provide any useful information for students to help inform choice. While it would be more feasible to anonymise sector dashboards, we consider that students, providers and the public are likely to find it helpful to compare the performance of different providers. Part of the reason for publication of dashboards is to ensure transparency about the performance of providers and incentivise compliance without the need for more formal regulatory intervention by the OfS. We consider that this incentive would be considerably weaker if dashboards were not published or were only published anonymously.
46. We have considered the issue of potential reputational or commercial damage for a provider and consequential effects on its staff and students. We note that the factors set out in section 67A(5) of HERA mean that we will consider the interests of providers and students as well as the risk of information seriously and prejudicially affecting the interests of the provider in decisions about publication.
47. We acknowledge that providers with performance below a numerical threshold could face negative publicity. For example, if a provider's data shows that it is performing below a numerical threshold, there may be a risk that readers will equate this with low quality provision or a breach of condition B3, in the absence of an OfS decision on these matters (and in circumstances where its performance might be explained by contextual factors). This could potentially lead to negative consequences for a provider; for example, students may be dissuaded from applying to the provider based on perceptions of poor performance.
48. There is also a possibility that third parties could use the data we publish and present it in a way that is misleading to readers, for example by creating league tables based on student outcomes data. This could possibly have a damaging effect on a provider's reputation; for example, a league table could be read by students and used to inform a decision not to choose a provider. If the reputation of a provider is damaged, this could mean that the qualifications held by past students could be undermined.
49. However, we note that there was support throughout the student outcomes and data indicators consultations for publication of the dashboards. We consider that there is considerable public, provider and student interest in publication of dashboards showing performance in student outcomes measures. Students are likely to benefit from the publication of data as it will help them compare providers and make more informed choices about what and where they study.
50. We note that the sector-wide data demonstrates the performance of the English higher education sector in relation to student outcomes and shows generally high performance. Publishing the thresholds shows widespread performance above the OfS numerical thresholds and this will give students and the public confidence about the outcomes delivered by the

English higher education sector as a whole and protect the reputation of the sector. Many providers are likely to benefit from the publication of data which shows they meet regulatory expectations.

51. We have considered whether the reputational risk for providers with performance below a numerical threshold is sufficiently great to warrant excluding those providers from publication. We consider that absence from the data could also result in reputational damage and would provide a distorted view of sector performance that would be unhelpful for students and other users of the data.
52. We will include contextual information and statements that make it clear where the OfS has not made an assessment about compliance. We consider that the contextual information we will provide will mitigate against reputational risk. We also consider that some performance that is below a threshold is likely to warrant negative attention and this acts as a strong incentive for improvement.
53. We therefore consider that, on balance, the benefits to students, providers and the public in publishing data that provides transparency regarding the performance of providers and the sector as a whole outweighs the risks that might exist for individual providers in the publication of this information.
54. In relation to points that information should be published only where there is a 'strong' public interest, we set out in our response to the publication of information consultation that we do not agree with this view. We consider it inappropriate to qualify, or quantify degrees of, public interest; our general policy refers simply to 'public interest'. We note that there was strong support for the annual publication of dashboards in responses made to the data indicators consultation.
55. We have considered comments about enabling providers to check the accuracy of information before it is published. Respondents to the regulating student outcomes consultation made similar points about the validation of data to confirm its accuracy before it is published. We responded to those points in paragraphs 469-472 of the consultation outcomes document. In summary our view is that the existing mechanisms to check and verify the accuracy of data are sufficient, without the need to introduce an additional validation or representations process for the indicators generated from this data. If we were to introduce such a process, this would create a significant additional burden for both the OfS and providers, as well as causing delays to publication.

Decision

56. Having considered the responses to the publication of information consultation and our general policy on the publication of information published in regulatory advice 21, we have decided to adopt a general policy that we would normally expect to publish:
 - a. Information to show whether the OfS had assessed a provider in relation to ongoing condition B3 as part of the data dashboards for individual provider and be clear that, where the OfS had not made an assessment, no assumptions should be made about a provider's compliance with the condition.

- b. Information where the OfS found a risk of a breach of condition B3, including information about that finding and any regulatory action taken to address a provider's performance.
- c. 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

57. The dashboards will be published 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.¹¹

58. 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.

59. 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.

60. 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.

¹¹ 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/.

- 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.
 - 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.
61. We will amend regulatory advice 21 to incorporate the information that we normally expect to publish in relation to student outcomes. We have also amended regulatory advice 20 to set out our general policy. We have provided the additional text that has been added to regulatory advice 20 at Annex A.
62. We have decided to amend regulatory advice 20 to provide clear advice for providers on our general approach to publication of information relevant to our regulation of student outcomes. The amendments are detailed in Annex A.

General duties

63. In relation to this decision, we consider of particular relevance are general duties (b), (c), (d), (e) and (g); which relate to quality, choice and opportunities for students; competition where this is in the interests of students; equality of opportunity in connection with access to and participation in higher education; and to best regulatory practice. The principles of best regulatory practice include, in particular, considerations of transparency, accountability and proportionality.
64. Our approach to regulating student outcomes is designed to contribute to delivery of our regulatory objectives. These objectives reflect the things that are of significant importance to all students: high quality courses, positive outcomes, and the ongoing value of their qualifications.
65. In deciding to adopt a general policy about the publication of information about student outcomes, we have had regard to the need to promote quality and greater choice and opportunities for students. Given that the adoption of our general policy approach is expected to lead to information being published, in having regard to the general duties, we have considered matters related to the consequences of information being published. In general, we consider that the publication of information will support students to make choices about what and where to study and provides confidence that the regulatory system is ensuring that they can choose from a range of providers and courses that meet minimum regulatory standards. Where published information shows providers that may have weaker performance this is also important to inform student choice.

66. We have considered whether publishing data that shows a provider's performance against our numerical threshold, and where that performance is below a numerical threshold but where the OfS has not made an assessment of performance creates a reputational risk for those providers that means that we should only publish anonymised data or not publish data at all – the general duties relating to quality, choice and competition all weigh in favour of publication. We have had regard to comments about the potential for misinterpretation of the data and will mitigate against this by providing clear statements about how the data should be interpreted, including statements in the dashboards that are clear where the OfS has not assessed compliance.
67. Publication of data also supports equality of opportunity, because if data is published it will highlight the differences in performance that may exist within and between providers in relation to students with different characteristics through the inclusion of split indicators which show the performance of students with different characteristics.
68. We have considered the principles of best regulatory practice and, in particular, considerations of transparency, accountability and proportionality. Our decisions are designed to ensure that the OfS's general regulatory approach and the way this is applied to individual providers is transparent and accountable. Publishing data acts as an incentive for providers to improve in any areas of weak performance and this is a lower burden regulatory intervention for providers than assessment and formal intervention by the OfS and therefore, along with the principle of transparency about regulatory standards, is consistent with best regulatory practice.

The Public Sector Equality Duty

69. We have had regard to the Public Sector Equality Duty set out in section 149 of the Equality Act 2010. This requires the OfS to have due regard to eliminating unlawful discrimination, foster good relations between different groups and take steps to advance equality of opportunity.
70. Protecting and promoting quality and equality of opportunity are at the heart of our work. When a student embarks on a higher education course it has the potential to be a life-transforming event – an enriching academic experience that paves the way for rewarding options in the labour market and a fulfilling life. Students pay a significant price for these opportunities, through their time and effort, as well as in financial terms. This is why the OfS is focused on ensuring through our regulation of quality and standards that all students, whatever their background and characteristics, can have confidence that they will receive a high quality higher education and positive outcomes. At the same time, we are taking steps through our regulation of access and participation to reduce the gaps in equality of opportunity between students from underrepresented groups and other students, before, during and beyond their time in higher education.
71. A policy that sets an expectation for the publication of sector-wide and provider-level data supports equality of opportunity because if the data is published it will highlight the difference in performance between students with different characteristics, some of which are protected characteristics. Identifying such differences is the first step to providers being able to take steps to address them. Transparency about differences in performance through publication of the data provides an incentive for providers to improve where there are differences in performance between student groups with protected characteristics.

Other matters to which we have had regard when making these decisions

72. In making decisions on the adoption of our policy approach to the publication of information in relation to student outcomes the OfS had particular regard to:
- a. Guidance from the Secretary of State.
 - b. The Regulators' Code.
 - c. The Code of Practice for Statistics.

Guidance from the Secretary of State

73. We have had regard to guidance from the Secretary of State received in March 2022¹² which welcomed 'the OfS's recent consultation on quality and the proposals to set stringent minimum numerical thresholds for student outcomes on continuation and completion rates and progression to professional employment or further study'.
74. While not explicitly providing guidance on the matter of publication of dashboards, the letter set out strong support for our proposals which included publication matters and we consider that this weighs in favour of publication of the data dashboards.

The Regulators' Code

75. We have had regard to the Regulators' Code. Though we have had regard to the entirety of the code, the sections that in our view are particularly relevant to our decisions are:
- a. Section 1 which discusses the need for regulators to carry out their activities in a way that supports those they regulate to comply and grow. In particular section 1.1 which emphasises the importance of regulators avoiding unnecessary regulatory burdens through their regulatory activities and choosing proportionate approaches to those they regulate and 1.2 which asks regulators to consider how they can encourage and promote compliance. Publication of information about regulatory activity helps to incentivise compliance from all providers more generally, which in turn should reduce the need for more intrusive regulatory action.
 - b. Section 5, which discusses the need for regulators to ensure clear information, guidance and advice is available to help those they regulate to meet their responsibilities to comply. Our amendment to regulatory advice 20 and publication of regulatory advice 21 will ensure providers understand the OfS's approach to publication matters.
 - c. Section 6 which discusses the need for regulators to ensure that their approach to their regulatory activities is transparent. Our decisions about our approach to the publication of information, will increase the amount of information in the public domain about our regulatory activities and so aid transparency. We have published regulatory advice 21, which sets out in detail our general approach to the publication of information and what providers can expect in this regard, thus increasing the transparency of our approach.

¹² See www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/.

Code of Practice for Statistics

76. We have taken account of this code in deciding to adopt our general policy about the publication of information in relation to data about student outcomes.

77. We have committed to compliance with the code through:

- a. Trustworthiness – We have set out our approach to producing statistics that describe student outcomes. We have had regard to the need to explain what judgements we have made about the data, methods, and their strengths and limitations. We have described our approach and made available our underpinning calculations to enable users to understand our proposed approach.
- b. Quality – Our approach is transparent about the methods and data sources we are using and the reasons for their selection.
- c. Value – We are seeking to communicate clear information about student outcomes to support our approach to regulation. We have adopted an approach that will ensure the public can understand our approach and access the data we are using. We have considered consultation responses regarding the clarity of the dashboards we will publish and have made improvements to assist users.

Annex A: amendment to regulatory advice 20

1. This annex sets out the substantive additional text which will be added to regulatory advice 20. Our general policy in relation to publication of information about student outcomes will be included as a new annex to that document. There will be a small number of subsequent text changes, for example clarifying that the advice now includes detail about deciding which information to publish about student outcomes, that are minor and not included here. The full revised regulatory advice 20 is published on our website.

New annex to regulatory advice 20

2. The following text will appear as the new annex.

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

3. We have published our general policy on the publication of information in regulatory advice 21.¹³ 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

4. 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.
5. 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.

¹³ See www.officeforstudents.org.uk/publications/regulatory-advice-21-publication-of-information/.

- 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
6. 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.¹⁴
 7. 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.
 8. We expect to publish data dashboards at the same time each year.
 9. 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

10. 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.
11. 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.
12. 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.

¹⁴ 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/.

- 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.
- 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.