

Office for Students consumer and student protection consultation response

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Introduction

1. MillionPlus, the Association for Modern Universities, welcomes the opportunity to provide a response to the Office for Students' consultation on consumer and student protection. This response has been informed by discussions with members of MillionPlus' Teaching and Learning network.

Overarching comments

2. MillionPlus fully supports the principle underlying this consultation of ensuring that students are treated fairly. However, we are concerned that the proposed new condition – Condition C6 - goes beyond existing consumer protection law, and also question whether the new condition would successfully strike the right balance between protecting students and creating proportionate regulatory requirements.
3. The proposed duty to 'treat students fairly' is extremely broad and is therefore open to interpretation. Providers will need much greater clarity about what constitutes fair treatment in practice before they can be confident that they are complying.
4. Expecting the new fairness duty to apply immediately following the consultation outcome, and allowing only a short period to implement the publication requirements, risks placing an unreasonable burden on providers before there is sufficient time to understand and operationalise the new framework.
5. Publishing a comprehensive suite of student-facing documents will be a substantial undertaking for universities, and this is especially true for those providers, such as many modern universities, who deliver a diverse mix of courses and programmes, sometimes in partnership with other providers, and potentially encompassing aspects such as transnational education.
6. Implementing the proposals will be a substantial and cross-cutting exercise for providers. It will require input from a wide range of departments and services, including governance, admissions, student services, legal services and compliance. The extent to which the proposals will impact providers is therefore substantial.

Sections of the consultation

Proposal 1: Introduce a new ongoing condition requiring providers to treat students fairly

Proposal 2: Establish principles and requirements that are consistent with treating students fairly

7. MillionPlus agrees that providers should clearly articulate their duties towards students, and that this should be done in a clear, coherent, and joined-up fashion. However, the consultation does not provide a clear justification of precisely what aspects of this are not already adequately covered by consumer law –

a clearer rationale for the proposals is required. It is also essential that the outcomes are defined clearly, with regards to the consequences if students are deemed to not have been treated fairly.

8. Fairness is a concept that has many dimensions, potential interpretations, and can be a site of contestation. What feels fair to one person may not feel fair to another. Understandings and interpretations of fairness will vary from person to person, and this will be informed by aspects such as an individual's background, culture, and personal characteristics. In order for providers to be confident that they are treating students fairly in line with OfS requirements, the concept of fairness requires more detail and explanation than is set out at present. This is essential if providers are to have clarity of what is being asked of them.
9. There will be questions for providers to consider in relation to how fairness should interact with probabilities, and the burden of proof, and to the extent fairness means giving a student the benefit of the doubt in a particular instance, for example. Additionally, it is important to note that applying the principle of fairness will not always mean that the outcome will be the one desired by a student in a particular situation. Ease of navigating and fairness of outcomes in student complaints processes is rightly cited in the C6 proposals as a key element of fairness to students. The Office of the Independent Adjudicator for Higher Education's live consultation on changes to its scheme rules to be more understandable for students to interpret, is likely to tally at headline level with the C6 proposals. However, there may be details in the outcomes of the OIAHE consultation which may not marry with the wider fairness principles set out in the C6 proposals. It is important that C6 does not create a false expectation to students of a 'customer is always right' mentality, or a default to giving students the benefit of the doubt which would fall far below the standard of proof norms which apply to complaints. This would be particularly critical when providers are dealing with complex and increasingly serious misconduct and fitness to practise cases where student conduct and behaviour on campus, online and in a placement setting, may pose a serious risk to public safety and the credibility and standing of providers, and the professions students enter into once graduating from university. Ultimately, this would also not be fair to students and their own professional development, learning and recognition.

Proposal 3: Include all students, higher education and ancillary services in scope of the condition

10. While MillionPlus supports in principle the inclusion of all students in the scope of this condition, it is important to highlight that there are a number of complexities, such as instances where the categories of student and staff overlap, which can take many forms. Staff members at a university may study for a Masters, PhD or a short course, at the provider at which they are employed. As an example, one MillionPlus member noted that their university has a contractual requirement for all new teaching staff who do not already hold a recognised teaching qualification to complete a postgraduate certificate in academic practice.
11. Other areas of complexity include university staff focused on clinical education who are employed by NHS partners, and apprentices who are employed contractually by an employer and study at a provider as part of their apprenticeship. Additionally, students may be employed on a sessional basis by their university.
12. Some MillionPlus members have significant transnational education (TNE) partnerships. It will be vital that there is clarity regarding how the proposals will impact, and interact with, the contracts and relationships that are in place in relation to TNE. Providers will require clarity on the precise

responsibilities of each partner under OfS' proposals. Members highlighted that there could be unintended consequences of the proposals for students who feel that their principal relationship is with the institution in their country of residence, rather than with the UK provider/the awarding body.

13. The plan for prospective students to be covered by the proposals from the point of receiving an offer from a provider, and so which would involve the proposals applying to individuals who have yet to start their programme of study, is an area that requires very careful consideration. Extending coverage to potential students, who have yet to begin a course of study, is a significant step, and we would question whether it is a proportionate one. MillionPlus believes OfS need to be clearer in the broadness of the drafting for this proposal, which risks encompassing individuals more widely before they become students. Additionally, the plan for former students to similarly be covered by the proposals raises questions of how far-reaching, both in terms of timescales and scope, this would be in practice.
14. The proposal for students to be able to access clear coherent information on what they can expect from ancillary services at their provider is sound, however there is a need for further clarity relating to this proposal. There is also a need to balance implementation of this proposal with the avoidance of unfair expectations on providers. Providers need clarity on exactly which ancillary services will be in scope, and so require a comprehensive and thorough list (not just indicative) of which services would be covered. Some small providers contract out some ancillary services e.g. IT, student counselling. Additionally, services at some locations, such as placement locations on health courses, will be outside providers' control.
15. There are also some potential operational risks. For example, members have concerns that the proposed ban on non-refundable international tuition deposits would undermine an institution's mandatory UKVI compliance checks for verifying genuine student intent, exposing providers to immigration fraud and potential Home Office sanctions.

Proposal 4: Require publication of specified documents and information

16. MillionPlus broadly supports the principle of this proposal, and supports OfS' stated aim of providing this information in a way that improves accessibility and supports students to understand and uphold their rights. Some members noted that, prior to this consultation, they have already been considering ways to improve how documents and information are provided to students to ensure accessibility and clarity. Imposing a broad 'one size fits all' approach risks the possibility of creating confusion and a lesser understanding by students, not a greater understanding.
17. However, there are several concerns as to how this proposal would work in practice. Implementation will be extremely complex, and this is particularly so for providers - such as many modern universities - who educate students on many different types of courses, with many different types of arrangement in place. It's not a 'one size fits all' situation. Providers may have students on courses and programmes across a range of partnership types, with a range of partners, with different partnership arrangements in place. A further complication is the possibility that the proposals mean there are different sets of regulations for different cohorts. The feasibility of creating a single webpage, that contains links to all the required information, and is navigable for students in terms of locating and accessing the documents which are relevant to them, is uncertain. OfS note that they will prescribe a consistent format for the content of the single source of information. This could potentially work if it is a baseline, however it must be flexible enough to accommodate necessary differences in the scale and reach of terms and conditions and ancillary service agreements which will operate across diverse student populations.

18. The scale of the task required for providers to fully comply with this proposal is immense. MillionPlus believes that, ahead of any implementation, more guidance is needed as to which documents and information are in scope. MillionPlus believes the guiding principle should be that of student need i.e. prioritising the essential documents that prospective, current or former students need to access. Once these are in place on a single webpage, there would then be scope for providers to expand this page with further information. Otherwise, there is a danger that providers create webpages that meet the ask of the proposal in terms of creating webpages that have links to all required documents, but that are too dense and unwieldy for students to use effectively. More information does not necessarily equate to better information if users cannot successfully find what they need.
19. MillionPlus welcomes the guidance confirming that publication requirements should not require providers to disclose commercially sensitive or proprietary information. However, the proposal to publish details of any offshore recruitment agencies used by providers requires further consideration. While MillionPlus recognises the need for appropriate regulatory oversight of overseas recruitment activity, it is not clear that publishing this information to the wider student body is necessary or proportionate. Additionally, the C6 proposal does not deal with the possibility of present contractual arrangements with agents that might restrict publication in this way.

Proposal 5: Remove requirements relating to student protection plans

20. The removal of student protection plans appears intended to streamline the regulatory framework, but it is unclear whether this would be achieved in practice. There is a risk that removing standalone Student Protection Plans could mean that relevant information becomes more difficult for students (and prospective or former students) to locate, and so results in a situation where there is more complexity, and therefore less clarity, for students.

Proposal 6: Take a phased approach to implementation

21. If the consultation process takes full account of the responses received to the consultation, the final published outcomes could differ significantly from the proposals as set out in the consultation document. The proposal for the requirement to treat students fairly to come into force immediately upon publication of the consultation outcomes is therefore highly problematic. Upon publication of the outcomes, providers will need sufficient time to digest and understand the outcomes (e.g. on exactly how to interpret 'treating students fairly'). Each provider will need time to determine exactly what the outcomes mean in practice for their institution, and to then make suitable plans for their implementation.
22. It is essential that providers have a suitable period of time so that they can ensure full compliance. The proposed three months allotted to prepare for the publication of the specified documents and information is extremely tight. This preparation time would also fall at a very busy time of year for universities. It would be better to get things right, rather than rush to complete the process in three months. It is also important to note that the level of complexity involved in publication of the specified documents and information will vary significantly between universities, depending on their operating models.