

Terms and Conditions of Funding

The Office for Students published its Terms and Conditions of Funding for Higher Education Institutions on 29 March 2018 as part of its regulatory framework for the transition period up to 31 July 2019. It is published at <https://www.officeforstudents.org.uk/publications/terms-and-conditions-of-funding-for-higher-education-institutions/> The sections on governing bodies, the accountable officer and financial sustainability are reproduced below.

Governing bodies

22. Members of governing bodies of HEIs have a set of legal responsibilities and other duties. Taken together, the responsibilities of members of a governing body and of the governing body as a whole are considerable, and must be met. The governing body of an HEI is collectively responsible and has ultimate responsibility that cannot be delegated for overseeing the HEI's activities, to determine its future direction, and to foster an environment in which the HEI's mission is achieved. In accordance with the HEI's own statutes and constitution, there should be effective arrangements for providing assurance to the governing body that the HEI:

- a. Has a robust and comprehensive system of risk management, control and corporate governance. This should include the prevention and detection of corruption, fraud, bribery and irregularities.
- b. Has regular, reliable, timely and adequate information to monitor performance and track the use of public funds.
- c. Plans and manages its activities to remain sustainable and financially viable.
- d. Informs us of any material change in its circumstances, including any significant developments that could impact on the mutual interests of the HEI and the OfS.
- e. Uses public funds for proper purposes and seeks to achieve value for money from public funds.
- f. Complies with the mandatory requirements relating to audit and financial reporting, set out in our Audit Code of Practice and in our annual accounts direction.
- g. Sends us:
 - i. The annual accountability return.
 - ii. Other information we may reasonably request.
 - iii. Any data requested on our or Research England's behalf by the Higher Education Statistics Agency (HESA).
- h. Has adequate and effective arrangements for the management and quality assurance of data submitted to HESA, the Student Loans Company, the OfS and other funding or regulatory bodies. The OfS reserves the right to use and publish its own estimates of data, where we are not satisfied that the HEI's data are fit for purpose. The OfS also reserves the right not to publish data. Responsibility for the quality of data used for internal decision-making and external reporting, which must be fit for purpose, rests with the HEI itself. Data submitted for funding and student number control purposes must comply with directions published by HEFCE (previously) and the OfS; if in doubt an HEI should ask the OfS to provide an authoritative, written ruling.

- i. Has an effective framework – overseen by its senate, academic board or equivalent – to manage the quality of learning and teaching and to maintain academic standards.
- j. Considers and acts on our assessment of its risk specifically in relation to these funding purposes.

Accountable officer

23. The head of an HEI is first and foremost responsible for leadership of the academic affairs and executive management of the HEI. The appointment (or dismissal) of the head of an HEI is governed by employment law, and this is clearly the responsibility of the governing body. The OfS has no role, rights or responsibilities in relation to the appointment (or dismissal) of the head of an HEI. We presume that in a case where a head of an HEI does not discharge their duties or acts improperly the governing body will take appropriate action.

24. Under these terms and conditions, the governing body is responsible for the use of public funds. To assist and enable it to discharge this responsibility and to provide clear accountability, the governing body will designate a senior officer, normally the head of the HEI, as the 'accountable officer': that is, the officer who reports to the OfS on behalf of the HEI.

25. The accountable officer is personally responsible to the governing body for ensuring compliance with the terms and conditions of funding and for providing the OfS with clear assurances to this effect.

26. The accountable officer is also required to report to the OfS on behalf of the HEI in relation to the requirements in relation to accountability for funding and the quality of data. In exceptional circumstances the OfS may take the view that the accountable officer is failing to meet these responsibilities.

27. If, in the judgement of the OfS's chief executive, there is evidence of serious failure in relation to the oversight and management of public funds, they will raise this as appropriate with the accountable officer concerned, the chair of the governing body or both; provide the relevant evidence; and seek and consider a response.

28. In extremis, and after all due process has been exhausted, the OfS's chief executive may conclude that the accountable officer is unable or unwilling to meet their responsibilities under these terms and conditions. The OfS may then ask the governing body to appoint someone else to report to the OfS and Research England on behalf of the HEI. In taking this action the OfS will not seek to influence the employment relationship between the governing body and the head of the HEI. The governing body is clearly entitled to maintain the head of the HEI in post. However, the governing body would then have to designate another senior officer as the accountable officer, and adjust the roles and responsibilities of the head of the HEI accordingly.

29. The HEI's accountable officer, the chair of the governing body or both may be required to appear before the Public Accounts Committee alongside the chief executive of the OfS in their role as accounting officer, on matters relating to grants to the HEI.

30. In the event of a prolonged absence from work or a sudden departure by the accountable officer, the governing body must ensure that the OfS is made aware immediately of the identity of the interim accountable officer.

Financial sustainability

31. HEIs should have a financial strategy that reflects their overall strategic plan, sets appropriate benchmarks and performance indicators, shows how resources are to be used, and shows how activities and infrastructure will be financed. This should include how the HEI assesses and reviews its own sustainability, including the use of sustainability assessments.

32. To remain sustainable and financially viable HEIs should also assess, take and manage risks in a balanced way that does not overly constrain freedom of action in the future. We will assess the financial sustainability of HEIs on the basis of information submitted in the annual accountability return.

33. We normally expect that an HEI will make a surplus in line with its financial strategy for sustainability, and thus that its unrestricted reserves will grow over time, all other things being equal. A series of deficits, even if covered by unrestricted reserves, might cause us concern, as could low levels of liquidity or increased financial commitments. Where we identify significant risks to an HEI's financial sustainability, we will engage with the senior management of the HEI to understand how it is managing and mitigating the risks.

34. As part of ensuring its long-term sustainability, an HEI should know the full cost of its activities and use this information in making decisions. If it does not seek to recover the full cost, this should be the result of a clear policy set by the governing body and included in the financial strategy, and should not put the HEI in financial difficulty. We do not expect public funds to subsidise non-public activities.

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