

Russell Group response to the OfS consultation on monetary penalties and the publication of information

1. Summary

- 1.1 We welcome the opportunity to respond to the OfS' proposals surrounding the application of monetary penalties and its approach to publishing information. We urge the OfS to consider each of the following issues as it finalises its approach in this area:
- ◁ We are concerned about the implication of the proposed 'adjustment for deterrence'. This represents a departure from a fair and proportionate approach, and we urge the OfS to remove this from the process.
 - ◁ The OfS should provide more clarity on how and when it will engage with institutions in instances where a monetary penalty is being considered.
 - ◁ We encourage the regulator to define what constitutes a serious or material breach of registration conditions and to ensure where penalties are used that this is both proportionate and risk-based.
 - ◁ In deciding whether to levy a penalty and/or whether information surrounding breaches should be published, the OfS must consider the impact this is likely to have on students, as well as the significant reputational damage this could cause the institution and the wider sector.

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- 2.1 It is problematic that there remains a lack of clarity around how the OfS would decide what constitutes a "serious" breach of a registration condition. While we recognise the latest guidance letter from the Secretary of State encourages the OfS to "*use the full range of its powers and sanctions ... [and] move immediately to more robust measures, including monetary penalties*" we propose that such interventions should only be considered for the most serious breaches where imposing alternative conditions on registration are deemed unlikely to mitigate the problems identified. For example, this could be where a breach might have a material and significantly detrimental impact on a provider's and/or the sector's reputation and past experience suggests the provider is otherwise unwilling to act.

3. Application of penalties

- 3.1 It is not clear how the OfS intends to apply penalties where "other mechanisms for improving provider compliance have been insufficient". It will be important for the OfS to communicate with an institution where it considers other mechanisms have not worked and seeks a resolution before escalating to the use of a monetary penalty.
- 3.2 The OfS should also provide clarity on how it will seek to engage with those it is investigating for the purpose of levying a penalty more broadly. We urge the OfS to ensure this occurs much earlier than the formal representation phase. We would also welcome further detail from the OfS on how monetary penalties will intersect with other regulatory interventions. Early engagement with providers suspected of a breach will support the regulator to minimise the cost associated with investigating and obtaining expert advice.

