



Y Comisiwn Addysg Drydyddol ac Ymchwil
Commission for Tertiary Education and Research

Condition: Financial Sustainability

A provider registered with or funded by Medr **must**:

- satisfy Medr as to their financial sustainability

Condition Category

This is an initial and ongoing condition of registration. This is a condition of funding.

Legal Basis

Under Sections 27 and 31 of the **Tertiary Education and Research (Wales) Act 2022** (the Act), Medr is required to develop a condition in relation to the: “financial sustainability of the provider.”

Under Section 108, Medr is also able to develop terms and conditions of funding in relation to the financial sustainability of the provider.

Under Section 80, Medr is required to monitor the financial sustainability of:

- (a) registered providers;
- (b) tertiary education providers in Wales that –
 - (i) are institutions within the further education sector,
 - (ii) are funded by the Commission under section 97, and
 - (iii) are not registered providers;
- (c) other tertiary education providers of a kind specified in regulations made by the Welsh Ministers.

Compliance Requirements

1. ‘Financially sustainable’ means that Medr judges that the plans and projections of the provider (including any subsidiaries or entities over which it exercises control or significant influence) show that it has sufficient financial resources to continue in

operation as a going concern and implement strategies for the long term which are based on reasonable assumptions.

2. The provider **must** have credible plans to ensure that it **will**:

- remain financially viable in the short term of one to two years, with no reason to suppose the provider is at material risk of insolvency¹ within this period
- remain financially sustainable over the medium term of three to five years – recognising that provider strategies will include deliverables over a period exceeding five years in order to ensure long term financial sustainability, high-quality learning experience and, where applicable, high-quality research and innovation. Medr will not specifically monitor such longer term deliverables, but will have due regard to these in the context of understanding financial sustainability strategies
- maintain sufficient financial sustainability to honour the commitments it has made to provide and fully deliver the tertiary courses as it has committed to deliver
- monitor compliance with any covenant requirements attached to financial liabilities and notify Medr on a timely basis where such covenants are forecast to be breached
- monitor operational cash generation, working capital levels and use of overdrafts or facilities

3. The provider **must** request a review of governance by Medr in advance of entering a new financial commitment² where Medr has already issued the provider with a [financial commitments threshold](#) and:

- where any multiple and/or monetary financial commitments threshold calculated and issued by Medr based on submitted information is expected to be exceeded as a result of the new commitment;
- where Medr have already issued the provider with a financial commitments threshold and have informed the provider that they are in “increased engagement”

The review of governance enables Medr to assess the adequacy and completeness of governance arrangements and approvals process at the provider. There is no requirement to seek a review of governance where Medr have not issued such a threshold or where the new total commitments do not exceed the issued threshold.

4. The provider **will** notify Medr where adverse performance indicates increased pressure on financial sustainability. These indicators **may** include but not be restricted to:

- monthly cash forecasts indicating a decline in operational working capital to 30 days or below over a sustained period
- sustained and/or increasing use of bank facilities

¹ ‘Insolvency’ means a provider being unable to pay its debts as they fall due. Being unable to pay debts as they fall due has the meaning given by Section 123 of the Insolvency Act 1986, substituting ‘Medr’ for ‘the court’ in Section 123(2).

² Financial commitments, or borrowings, are aligned to the definition within UK generally accepted accounting practices.

- loss or reduction of significant income streams or other material unforecast adverse events
5. The provider **will** notify Medr well before any difficulties in meeting liabilities.
 6. Medr recognises there could be strategic circumstances that result in the institution making a planned deficit over a short period of time; for example, strategic investment for growth, where the return on investment is not realised immediately, or to facilitate strategic and managed restructuring. We would expect, as part of our normal monitoring engagement with providers to be given sufficient insight to understand providers plans for returning to financial sustainability where forecasts contain deficits or low or negative operating cash generation (adjusted EBITDA).

Initial Monitoring

During the initial registration process, Medr will carry out a comprehensive assessment of the provider's financial performance and position, to inform Medr's risk judgement under Section 27 of the Act. This will enable Medr to identify any pressure points and areas of risk and to ensure that the ongoing conditions of registration and associated ongoing monitoring arrangements that are applied to the provider on registration are proportionate to regulatory risk.

Providers demonstrate compliance with the initial Condition on Financial Sustainability by submitting satisfactory evidence of their past and current financial performance (where the provider has operated previously), as well as forecasts. The evidence³ that Medr would normally require is:

- full audited financial statements^{4 5} for the last three years, where the provider has been in operation and providing tertiary education for this period. Where the provider has been in operation for less than three years, for the period in which the provider has been in operation and providing tertiary education. These **must** be prepared under generally accepted accounting practice (UK or international). The external audit **must** be independent of the provider, and of the preparer of the financial statements, and be listed on the Register of Statutory Auditors
- financial forecast tables approved by the provider's governing body (including the current year budget and four-year forecasts for financial and student number data, as well as underlying details of any growth or divestment plans). Where relevant and requested by Medr these **will** include details of downside and sensitivity modelling undertaken in preparation of financial forecasts. These forecasts **will** be assumed as information provided in confidence, unless otherwise indicated, to ensure that they provide the information necessary to assess the risks relating to their delivery, and
- commentary to support the financial forecast tables to ensure that Medr understands the provider's context and the assumptions underpinning its forecasts

³ Medr will respect commercial confidentiality, within the bounds of the requirements of the Freedom of Information Act 2000.

⁴ Abridged small company financial statements are not accepted.

⁵ Medr may accept financial statements unaudited or independently examined. Medr's decision on this will be on a case-by-case basis in line with our consideration of proportionality

Where relevant, Medr will also seek information about:

- providers business plans (in particular where the provider is financially weak or new to the market, with no or only a short track record of operations and/or delivery of higher education), including robust and well evidenced forecasts and assumptions
- details of any borrowings, whether from third party or related party sources
- legally binding parental financial guarantees or other legally binding obligations of financial support from third parties, including evidence that the guarantor can fulfil the deed (if the provider is relying on such a guarantee to meet the condition) – this **may** include audited financial statements where the guarantor is a company or similar entity and proof of the guarantor's identity and funding sources, and
- any other relevant supporting evidence, such as endorsement by the validating body for any student numbers forecasts, access to bank and or equity finance, and any restrictions on funds (for example, by charitable trusts)

For the avoidance of doubt where the provider is part of a group structure the following principles will apply in relation to the submission of annual returns as detailed above:

- where a provider is the parent of a group, the returns **must** include all activities within group structures for which that provider is responsible. Dependent on the group size, these **may** be presented as a consolidated position or as separate returns
- where a group structure is complex and includes both registered providers **and** providers subject to the condition of funding we will consider reporting requirements on a case-by-case basis. Providers **should** contact Medr to discuss requirements.
- where a provider is part of a group, and the rest of the group financial information is not already submitted to Medr, returns **must** be submitted to enable Medr to assess the financial sustainability of the group as a whole
- specific returns **may** be requested to allow for comparisons between like-for-like providers or bespoke analysis as required

Any assessment of underlying sustainability **will** include consideration of the ongoing requirements for [financial management](#), included within the Governance and Management Condition.

Ongoing Monitoring

In order to monitor compliance with the ongoing Condition on Financial Sustainability, and to assess the financial position and outlook of individual providers and the Welsh sector as a whole, Medr will take a risk-based approach, whilst setting minimum requirements for engagement and data collection in order to discharge its duties.

Medr will use data metrics, trends and key financial indicators as a basis for identification of risk, but will seek to supplement these by contextual understanding of the individual provider, based on discussion and engagement.

Medr will require providers to submit returns on an annual basis in order to report the minimum level of necessary information. These **will** include:

- full, audited financial statements^{6 7} prepared under generally accepted accounting practice (UK or international)
 - where applicable the Further and Higher Education Statement of Recognised Practice (FE/HE SORP) or other relevant SORP **must** be adopted
 - where in scope providers **must** prepare their financial statements in accordance with the relevant accounts direction published by Medr
- financial forecasts approved by the provider's governing body. These forecasts **will** be submitted on the appropriate Medr template, reflecting the diversity within the tertiary sector. The forecasts **will** be treated as information provided in confidence, unless otherwise indicated, to ensure that they provide the information necessary to assess the risks relating to their delivery
- other returns **may** be required based on provider type and assessed risk level

For the avoidance of doubt where the provider is part of a group structure the same principles **will** apply (in relation to the submission of annual returns as detailed above) as set out in the initial monitoring section.

In judging whether the provider is financially sustainable, other information that Medr may consider includes:

- the credibility of the provider's financial strategy
- other information concerning the provider's financial situation;
- the provider's current obligations
- obligations that it is reasonable to assume the provider intends to undertake within the next three to five years
- information derived from regulatory concerns, student or staff complaints, any stakeholders or sources that we assess as relevant, indicating any issues which **may** have a bearing on financial resources⁸. Issues **may** include, but not be restricted to, reputational or quality matters, and
- any other data, information or sector knowledge that Medr deems of relevance

Medr will have regard to any dependencies on financial facilities or support from third parties, whether legally binding or expressions, on a case-by-case basis. This will include consideration of the terms, including the repayment and expiry terms and the nature and financial strength of the third party. Providers **must** ensure that Medr is fully informed as to its financial facilities and support. Where the required information for Medr to discharge its statutory function is not otherwise available, Medr will expect the provider to facilitate direct enquiry of any third parties.

Medr will engage with provider finance directors/teams at regular intervals as determined by Medr.

⁶ Abridged small company financial statements are not accepted.

⁷ Medr may accept financial statements unaudited or independently examined. Medr's decision on this will be on a case-by-case basis in line with our consideration of proportionality

⁸ For the avoidance of doubt, this does not oblige a provider to continue to offer a course or part of a course that it judges to be no longer financially viable, provided in doing so it honours any obligations already entered into.

Medr may request other financially based information as required to discharge its duties but undertake that this information will only be collected as necessary for a clear purpose and where the request is proportionate.

If any indicators, or any other information available to Medr, trigger concerns that the provider's risk profile in this area has changed, Medr may increase engagement and/or request further information.

Any assessment of underlying sustainability will include consideration of the ongoing requirements for [financial management](#), included within the Governance and Management Condition.

Any assessment of underlying sustainability concerns will depend upon the context and the specific details of the provider. Medr will make an assessment where it believes there are reasonable grounds for uncertainty over the process for ensuring sustainability, informed as necessary by dialogue with the provider.

Providers with a prior record of non-compliance, deteriorating trends in data or identified as at risk of future non-compliance may be subject to increased scrutiny. Failure to comply with monitoring requirements will prompt further investigation and possible interventions.

Review and Amendment

Medr will regularly review this condition to ensure that it aligns with evolving sector needs, policy changes, and feedback from stakeholders.



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Supplementary Detail: Financial Commitments - Monitoring of Governance Process

Applies to: Financial Sustainability Condition; Governance and Management (Including Financial Management) Condition

Scope

1. Applicable to providers primarily in higher education and further education to whom Medr has issued a financial commitments threshold.
2. Where certain financial commitments are provided via the Welsh Government and subject to due diligence by the Welsh Government, these are specifically excluded from this requirement in order to avoid duplication. Such financial commitments will be included within the calculation of the total financial commitments threshold should a provider be considering entering into other financial commitments.
3. Where such financial commitment arrangements are agreed with the Welsh Government, Medr would automatically issue a recalculated financial commitments threshold.

Rationale

4. Financial commitments are those liabilities meeting the definition within generally accepted UK accounting practice ('UK GAAP').
5. The primary responsibility for assessing the affordability of, and risks around, financial commitments rests with the provider's governing body.
6. Robust governance over entering into new financial commitments is a key area for financial sustainability. Medr's financial commitments threshold provides a mechanism by which Medr can monitor provider governance over this process where a provider holds, or is proposing to hold, higher levels of financial commitments and/or a provider is assessed by Medr as being subject to 'increased engagement'.

7. This threshold is based on the ratio of a provider's earnings before interest, taxation, depreciation and amortisation (EBITDA) (as adjusted for non-operational items) to its drawn and undrawn financial commitments and is expressed both as a multiple of adjusted EBITDA and as a monetary threshold.
8. Providers that Medr has already issued a financial commitments threshold to and which are not assessed as under increased engagement by Medr are able to make financial commitments up to their issued threshold without triggering further engagement.
9. The threshold is not designed to deter providers from increasing their financial commitments where appropriate. The provider's governing body **must** determine a level of financial commitments that is both affordable and consistent with its financial strategy.
10. Medr's role is to review the financial information provided to the governing body and assess whether any financial commitments proposed to be entered into by the provider present challenges to the provider's sustainability or indicate issues in the organisation and management of its financial affairs.
11. The purpose of Medr's review is to determine that the proposed financial commitments have been afforded appropriate scrutiny by the governing body. Medr will approach each application on an individual basis, having due regard to the financial strength of the provider and the risk profile of existing and proposed financial commitments.
12. Medr does not have a role in other aspects of the financial commitments, such as setting conditions or restricting the use of funds.
13. In line with Medr's value of partnership working with the sector, we would expect to be made aware of the requirement for funding in advance of any formal request to Medr, and would encourage providers to engage with us at an early stage where thresholds may be exceeded.
14. In the event that the provider chooses to proceed with borrowing where Medr is not satisfied with the robustness of their governance arrangements, this will inform Medr's overall risk judgement for that provider and may impact Medr's risk judgement within finance, governance and strategic direction. It is possible, depending upon the circumstances, that Medr will determine that there are poor financial planning processes in place which ultimately may mean that the provider is not sustainable.
15. All financial commitment thresholds will be subject to periodic review and revision as relevant to ensure that these remain appropriate.

Conditions Indicating the Requirement for a Review of the Governance Process for New Financial Commitments

16. Where providers who have been issued with a financial commitments threshold by Medr anticipate entering into new commitments, they **must** formally inform Medr in advance in order that Medr can undertake a review of the governance processes around the proposed financial commitment where any of the below are relevant:

- the provider has been notified that they have been assessed by Medr as in “increased engagement”
- the new financial commitment would result in the provider breaching its issued monetary threshold
- the latest assessed financial position of the provider indicates that the new financial commitment would lead it to exceed its issued financial commitments multiple

Conditions Requiring Notification

17. Where a provider does not renew a financial commitment Medr must be notified and may reduce the provider’s issued threshold to reflect this.
18. Where a re-financing takes place of financial commitments that have previously required a review and change of threshold, providers **must** notify Medr where the terms are more onerous than those originally agreed.
19. Where the provider exceeds its existing financial commitments multiple threshold because of a decline in its forecast cash-flow, it need not apply for a higher threshold, but the governing body **must** notify Medr of this fact. Whilst an application for a higher threshold will not be required, the decline in cash-flow is likely to lead to engagement with the provider about its ability to service its financial commitments. Such a scenario, taken in isolation, will not be considered to represent a failure to meet the requirements of the condition of financial management within governance management, and Medr will take the context as a whole into account.

Process for Review of Governance Process Over New Financial Commitments

20. Medr takes a risk-based approach to each provider’s application for an increase to its financial commitments threshold. This includes assessment of the existing risk profile of the provider, the risk profile of existing debt and the risk profile of the proposed financial commitment under consideration. This approach will determine the method of considering the application.
21. Providers are advised to discuss their plans informally with Medr at an early stage.
22. Requests **must** allow Medr a reasonable time frame (usually at least 6 working weeks) to examine the request and provide an opinion. More complex or high risk financing options will be assumed to require more time in order to permit time for external advice to be obtained where required.
23. In response to notification by providers wishing to enter new financial commitments that exceed the current issued Medr thresholds for review of the governance process, Medr will base any reviews on agreed financial data, but take a pragmatic and proportional risk based approach.
24. The provider’s accountable officer (copied to the provider Chair of governing body) **must** submit a formal request to the Chief Executive of Medr.
25. The calculation (as set out below) **should** be based on the most recent forecasts approved by the institution’s governing body and submitted to Medr. Where the governing body have subsequently approved revised forecasts it is likely that these

will be used as the basis of calculation. Where circumstances indicate that use of other subsequent information would be more appropriate, this may be used at Medr's discretion.

26. The request **must** address a consideration of the following points, covering the areas listed as applicable and any other salient points required for a full understanding of the rationale for the request.

(a) *There is a reasonable case for the new investment being funded by the additional finance (where applicable)*

- a brief description of the new investment
- an explanation of how it broadly fits with the provider's mission and strategic priorities
- confirmation that the provider has considered appropriate guidance on appraising investment decisions
- a description of how the learner interest will be taken into account

(b) *The new financial commitment or refinancing arrangement (where this will result in an increase to the financial commitments threshold) is consistent with the provider's financial strategy and represent good value for money*

- an explanation of why additional finance or refinancing is necessary and how this fits with the provider's financial strategy
- the forms of finance considered and the selection process and criteria
- the net present value for each financing option, and a brief explanation of why the chosen method was selected, to include value for money considerations

(c) *Details of the new financial commitment*

- details of the chosen option, including name of lender, value of new financial commitment, repayment period, basis of repayment and financial covenants
- terms and conditions of the financing (such as a copy of the offer letter) and an evaluation of the risks and uncertainties

(d) *The financial commitment and any new investment **must** be affordable*

- an update of the latest financial forecasts, to include the impact of the new financial commitment on total financial commitments and the impact of investments driving the new financial commitment, and demonstration that they are affordable. This update **must** include any other material changes in the provider's financial prospects, including guarantees to third parties
- details of risks and downside modelling undertaken to inform considerations of affordability, including the retention of sufficient liquid cash and equivalents to service working capital requirements as well as a prudent level of liquid reserve to be called upon in the case of un-forecast downside events

(e) The provider's governing body **must** have made an informed decision about the new financial commitment and any related investment

- details of when the governing body approved the new investment and financial commitments, and a minute of the decision reached
- a summary of the information the governing body received in reaching its decision confirmation that:
 - no key information or opinions relating to the proposed commitment or financial circumstances have been withheld from the governing body and the governing body has been supplied with all necessary information required to allow reasonable individuals to come to a reasonable, balanced conclusion
 - following receipt of this information, the governing body has approved the borrowing, at least in principle as presented to Medr. It is recognised that final agreement of the robustness of the governance process is likely to be given at a later date, and
 - the proposal provided to Medr is the same as the proposal provided to the governing body

(f) Details of the new threshold

- details of existing financial commitments (including the lender, terms, interest rate and financial covenants) and of the new financial commitments
- a calculation of the new threshold required based on the most recent forecasts approved by the governing body. In some circumstances, where it may be considered inappropriate to use these forecasts, other documentation may be agreed with Medr on a case-by-case basis

27. Medr recognise that the timeline for provision of the documentation required may be interdependent. As a pragmatic approach, once sufficient assurance has been obtained, Medr may issue its confirmation of the provider governance review process conditional on the receipt of final documentation.

28. Where an application for a higher financial commitments threshold is agreed, Medr will write to the provider setting out the revised threshold, including the calculation. The confirmation of the provider governance review process may include additional conditions which **must** be adhered to.

Template Calculation for Financial Commitments Threshold

	Actual Y1 £'000	Actual Y2 £'000	Estimate Y3 £'000	Forecast Y4 £'000	Forecast Y5 £'000	Forecast Y6 £'000	6 year average £'000
Adjusted earnings before interest, taxation, depreciation and amortisation (adjusted EBITDA) ⁹							
a) Operating surplus / (deficit)	15,000	(100)	10,000	11,000	12,000	13,000	
b) Add: depreciation and amortisation	1,200	1,200	1,000	1,000	950	950	
c) Add: interest payable	600	600	650	650	650	700	
d) Add: restructuring costs	500	800	-	-	-	-	
e) Add: non cash pension debits / (credits)	850	(520)	240	-	-	-	
f) Add: exceptional debits / (credits) ¹⁰	(5,000)	3,000					
g) Deduct: capital grants receivable (performance and accruals)	(2,000)	(6,000)	(1,900)	(1,950)	(2,000)	(2,050)	
h) Deduct: New endowments receivable	(100)	-	(130)	(100)	(100)	(100)	
i) Add / deduct: other sector specific items as required	-	-	-	-	-	-	
j) Adjusted EBITDA	11,050	(1,020)	9,860	10,600	11,500	12,500	9,082
k) Adjusted for deficits	11,050	1	9,860	10,600	11,500	12,500	9,252
l) Financial commitments							
i) Loans			50,000				
ii) Service concessions and finance leases			30,000				
iii) Undrawn commitments			5,000				
iv) Proposed commitments			-				
v) Total financial commitments requirement			85,000				
m) Multiple ¹¹			9.19				
n) Monetary threshold (rounded)¹²			86,000				

⁹ Adjustments to EBITDA will be based on items identifiable within the finance record based on the financial statements and the confidential forecasts as submitted to Medr. Provider internal adjusted EBITDA may differ.

¹⁰ Exceptional items (as defined by UK generally accepted accounting practice) that either do not form part of recurrent operations, or represent non-cash technical adjustments. These include only items separately disclosed as exceptional in the financial statements and / or the finance record and financial forecasts.

¹¹ Calculated as total financial commitments requirement (l) v) divided by 6 years average EBITDA adjusted for deficits (k).

¹² Medr will build rounding into the monetary threshold issued to permit arrangement of small operational borrowing.

Flowchart of Timeline for Medr’s Review of Provider Governance Process for New Financial Commitments Within the Provider Internal Process of Financial Commitment Approval

