

Securing student success: risk-based regulation for teaching excellence, social mobility and informed choice in higher education - Government consultation on behalf of the Office for Students

1. Do you agree or disagree that these are the right risks for the OfS to prioritise?

All of these risks are important ones for the OfS to monitor, though we note that there is a bias towards non-educational issues (e.g. two of the four objectives relate to consumer rights and value for money). We call on the OfS to ensure that quality and social justice (i.e. access and participation) are priorities for the new regulatory body.

We note that the OfS proposes to adopt a different approach to the access and participation objective/risk, i.e. OfS will intervene at the provider level as well as sectorally. While we agree that *“competition, choice and market mechanisms are not able to deliver the outcomes needed for students and society”* in relation to access and participation (paragraph 5), it also applies to key objectives such as the diversity of subject provision, academic quality and student protection.

In our view, the current funding and regulatory model has led to several poor outcomes for students, employers and taxpayers. For example, the collapse of part-time and mature student participation - and therefore the loss of professional development opportunities for students in work - has been the biggest casualty of the £9000 fee regime.

Similarly, intense competition has led institutions to spend money on attracting students rather than on front-line delivery (e.g. through capital spending on new buildings and facilities and expensive marketing and recruitment campaigns). This is in direct opposition to the educational preferences of students, who would prefer institutions to spend less on buildings and sports facilities and more on investment in teaching.

Finally, extending the student loans system to private providers has led to poorer educational outcomes and little evidence of innovation. For example, the National Audit Office continues to report higher drop-out rates and ineligible payments at some private providers, while the latest HESA data shows that most private providers offer a limited range of courses in business and administration.

Unfortunately, the plans outlined in the regulatory framework are likely to exacerbate such risks (e.g. the proposal to remove the requirement to have a track record of delivering higher education to be able to meet the registration conditions).

2. Given all the levers at its disposal, including but not limited to access and participation plans, what else could the OfS be doing to improve access and participation and where else might it be appropriate to take a more risk-based approach?

Firstly, OfS needs to develop a strategic oversight of funding policy and the impact on access and participation (e.g. we need a comprehensive plan on part-time and mature student provision).

Similarly, the OfS's agenda on access and participation needs to recognise the inter-relationship between types of institutions and student demographics. For example, those institutions with the strongest records on widening access have tended to do less well under the current fee regime, particularly since the abolition of student number controls. OfS needs to keep a close eye on the increased 'stratification' of higher education institutions and its impact on access and participation.

Secondly, there is a need to ensure that widening participation and social justice is at the heart of higher education policy. This will require real action on the part of universities, for example in tackling degree attainment gaps between white and BME students. However, it will also require a change in government policy on financial support for disadvantaged students.

Maintenance grants are a crucial incentive for students from disadvantaged backgrounds who are already daunted by the prospect of crippling high tuition fee debt. UCU-commissioned research showed that when young people choose to go to university, those from disadvantaged backgrounds are more likely to put cost at the forefront of their decision-making, often opting for institutions close to home that offer cheaper study that can be combined with part-time work. The report found that the availability of maintenance grants would have the most impact on non-white young people in encouraging them to apply to university.

Replacing maintenance grants with loans has only increased student and national debt and cost everyone more in the long run. We need an overhaul of the financial support system. Learners should know what support they will get before they begin their courses and that is why we favour a return of maintenance grants rather than relying on institutional bursaries and scholarships.

Properly funded and consistent additional learning support (ALS) funding to support disabled learners to fully access and participate in both further and higher education is also an important part of the policy framework. Recent reductions in Disabled Students' Allowance and funding for student support workers risks putting off students who are disabled and jeopardising their progress and attainment whilst studying.

Finally, while support for students at university is crucial, we call for the OfS to look again at the admissions process. We need a fairer, more transparent system based on actual achievement rather than estimates of potential. Research undertaken for UCU by the UCL Institute of Education found that just 16% of applicants' grades were predicted correctly. It also found socioeconomic differences in predicted grades: 24% of AAB applicants from lower income backgrounds are under-predicted compared to 20% of AAB applicants from the highest income backgrounds.

UCU calls for a ban on the use of unconditional offers based on predicted grades and to explore a move to post-qualification admissions (PQA) which allows students to be selected on the basis of their results rather than predicted grades.

3. Do you agree or disagree that a new Quality Review system should focus on securing outcomes for students to an expected standard, rather than focusing on how outcomes are achieved?

Firstly, we remain unconvinced by the proposal to base the quality assurance system solely on outcomes rather than on a combination of outcomes and process (e.g. peer review). In particular, we are concerned about the increasing divergence from enhancement-based QA processes (for example, in Scotland) and continue to believe in the value of maintaining a coherent system of quality assurance and regulation across UK higher education.

In addition, we remain concerned about the specific proposal to remove the requirement to have some form of 'track record' for new providers as we believe that it will lead towards a process of levelling down rather than levelling up.

4. Would exploring alternative methods of assessment, including Grade Point Average (GPA), be something that the OfS should consider, alongside the work the sector is undertaking itself to agree sector-recognised standards?

While there remain issues around the current degree classification system, we remain unconvinced of the superiority of the GPA system. Instead, we suggest that the OfS explores more pragmatic solutions to the apparent problems of our assessment and classification procedures (for example, using student transcripts to provide greater information about course content).

5. Do you agree or disagree that a student contracts condition should apply to providers in the Approved categories, to address the lack of consistency in providers' adherence to consumer protection law?

It is important that students have accurate and timely information about the university and course, particularly in relation to total costs, and that institutions have proper complaint handling processes and practices. However, we are concerned that student consumer rights appear to apply only to students based in 'Approved category' institutions, whereas the greatest risk to students is in the lightly regulated 'Registered basic category'.

6. What more could the OfS do to ensure students receive value for money?

We are concerned that the latest HEPI/HEA survey reports a growing number of students questioning the value of their degree course (although the ultimate value of a degree can take some time to be fully realised). However, it is perhaps not a surprise that fewer students think their course is value for money now they face bigger debts and keep seeing stories in the press about how their vice-chancellors are rewarding themselves with massive pay rises and 'golden goodbyes'.

In terms of additional transparency, we call for the OfS to look at important workforce issues like insecure contracts and student: staff ratios which directly impact upon the 'student experience', but which the Higher Education Funding Council for England (HEFCE) has had a poor record in either analysing or addressing.

7. Do you agree or disagree that a registration condition on senior staff remuneration should apply to providers in the Approved categories? Are there any particular areas on which you think should the OfS should focus when highlighting good practice?

We support the idea of senior staff remuneration as a registration condition for providers in the Approved categories. However, it is clear that the proposals in the consultation document are insufficient in addressing the problem of spiralling VC pay and perks (including severance packages). There are huge problems regarding a lack of transparency in relation to VC pay– 71% of vice-chancellors sit on their own remuneration committees and 75% of universities fail to publish full minutes of those meetings. The whole governance structure needs to change and in the interests of transparency we are calling for a public register of senior pay and perks.

8. What are your views on the potential equality impacts of the proposals that are set out in this consultation? Please provide any relevant evidence if you can as this will support future policy development.

We welcome the fact that the OfS will have a specific focus on access and participation and that the so-called Transparency Duty will publish data on application, offer, acceptance and progression rates, broken down by gender, ethnicity and disadvantage.

However, the proposals fail to address the central problem with a competitive, market-based framework: namely, the disincentives for institutions to recruit students from disadvantaged backgrounds and with lower or non-traditional qualifications. For example, the strong emphasis on graduate employment outcomes and retention rates will disadvantage institutions that recruit students from the poorest neighbourhoods and from black and minority ethnic backgrounds. We, therefore, call on the OfS to monitor the equality impact of the new regulatory framework.

Part 2

9. Do you agree or disagree that participation in the TEF should be a general condition for providers in the Approved categories with 500 or more students?

No, we disagree with the proposal to make participation in the TEF a general condition for providers in the Approved categories with 500 or more students. This proposal appears to pre-empt the planned independent review of the TEF in 2019.

In addition, we believe that there are major problems with the current TEF, both in terms of its methodology and the outcomes for institutions, staff and students. Firstly, the core metrics that are used – student satisfaction via the NSS, retention rates and graduate outcomes - are flawed for the purposes of assessing teaching quality. Secondly, there is the potential for the TEF to lead to harmful ‘unintended consequences’, such as encouraging institutions to change their student intake to improve their chances of success on the core metrics.

10. Do you agree or disagree with the proposed ongoing general registration condition requiring the publication of information on student transfer arrangements? How might the OfS best facilitate, encourage or promote the provision of student transfer arrangements?

We support plans to require the publication of information on student transfer arrangements, although there may be various reasons why students do not take up the opportunity to switch. For example, with the growth in the numbers of students living at home, one of the barriers may be limited choice locally. We, therefore, call for a joined up approach to the issue of student transfers (i.e. one that also takes into consideration issues such as student finance and the geographical spread of subjects).

11. Do you agree or disagree with the proposed approach to sector level regulation in chapter 2?

We disagree with the proposed approach to sector level regulation in chapter 2.

Firstly, the approach appears to view higher education as a market-based service (akin to financial services or the privatised utilities) and that consequently market mechanisms are the best way to ensure “continuous improvement”. The collapse of part-time provision, the explosion in spending on non-educational expenditure and the lack of innovation and quality in the for-profit HE sector all highlight the weaknesses in this approach. A belief in competition and market forces also ignores the essential role played by academic and professional services staff in ensuring quality, standards and the best outcomes for students. And although there is some recognition that “higher education is a service unlike any other”, chapter 2 underestimates the extent to which HE is a ‘public good’ that leads to educational and wider cultural and civic benefits for individuals and society.

Secondly, the chapter proposes a fairly weak form of student representation in the new regulatory structure. For example, it is difficult to see how an individual representative on the Board will be able to properly represent the entire student view, particularly if the representative is there as an individual student. In relation to the Student Panel, it is also important to learn the lessons of previous experiments in this area (for example, the National Student Forum in the late 2000s), which largely failed to influence policy on student engagement.

Part 3

12. If you are a provider, can you provide an indication of which category you would apply for (under these proposals) and why?

N/A

13. The initial conditions should provide reassurance that providers will meet the general ongoing conditions without creating unnecessary barriers to entry. Given this, are the initial conditions appropriate?

While the consultation document stresses the importance of a proportional approach to risk (i.e. ‘less secure elements of provision will face greater scrutiny’, p.21), there is limited protection for students in the riskiest category of providers (i.e. ‘registered basic’). For example, there is no requirement for ‘registered basic providers’ to have a student protection plan, in the event of provider, campus or course closure. Moreover, with the exception of student access to the OIA, there are no ‘baseline initial conditions’ placed on ‘registered basic’ providers. We, therefore, are sceptical about the claim to provide a ‘high quality academic experience’ for *all* students.

It is also interesting to note that over 550 providers are expected to remain outside of the system in the first year of the OfS. All of this suggests the continuing existence of a 'shadow HE sector' outside the remit of the regulator.

Above all, it suggests that the main objective in the consultation document is on 'value for money', particularly for taxpayers, rather than 'quality for all' or even the protection of all types of 'student consumers'.

14. Do you agree or disagree with the proposed lists of public interest principles in the Guidance, and who they apply to?

Given the shift to a more marketised system of higher education, it is important to ensure that 'public interest principles' are enshrined within the new regulatory framework. For example, one of the essential features of a higher education institution is self-governance and academic freedom. However, recent research shows that UK protections for academic freedom are weaker than those in other EU nations and we are concerned that a greater influx of private, for-profit providers will further reduce protections for academic freedom. For that reason we are disappointed at the glib phrase in the guidance that academic freedom is "an important, but also *tried and tested concept*, which has formed part of the regulatory landscape for a number of years".

UCU has a particular interest in ensuring that the registration process developed by the OfS will require institutions to provide real evidence of their commitment to the principle of academic freedom. However, at the moment we have no sense in which this will be a priority for the OfS, particularly as there is no representation of higher education staff on the governing body.

Unlike academic freedom, freedom of speech is given a much higher priority in the consultation document and in the list of "public interest principles". Of course, HEIs and student unions have had a statutory duty to secure freedom of speech under the 1986 Education Act, including establishing a code of practice, and therefore the main change in the Higher Education and Research Act 2017 has been to extend this duty to 'alternative providers'.

However, we are concerned that OfS is being given powers in assessing 'compliance' with this duty, including in relation to university codes of practice. Freedom of speech on campus is an essential, complex and *politically sensitive* issue. For example, there is a tension between a university's requirement to uphold freedom of speech and the Prevent duty arising out of the Counter-Terrorism and Security Act 2015. For that reason we suggest that the OfS focuses solely on the issue of promoting 'good practice' on freedom of speech rather than assessing 'compliance'.

15. Do you agree or disagree with the proposed approach on the application of conditions for providers wishing to seek a Tier 4 licence?

We support the proposal to ensure that all providers seeking a Tier 4 licence should register with the OfS, i.e. to include providers who are not seeking public funding but are only recruiting international students.

16. Do you agree or disagree that paragraph 7 and 8 should be removed from Schedule 2 of the Education (Student Support) Regulations 2011, which lists the types of courses that allow with access to the student support system? If you disagree, are you aware of any courses dependent on these provisions to be eligible for support?

We have no specific comments on this proposal.

17. Do you agree or disagree with the proposed approach for the benefits available to providers in the different registration categories?

For providers, there is an obvious trade-off between potential benefits of the 'Approved category' (e.g. access to student loans and grant funding) and greater regulatory requirements (e.g. an access agreement or statement).

At the same time, we are struggling to understand the benefits of the ‘registered basic category’. Here our main concern is for students, who appear to have extremely limited forms of protection regarding access, quality, course closure etc.

18. Do you agree or disagree with the general ongoing registration conditions proposed for each category of provider (see the Guidance for further detail)?

As with our response to question 13, we disagree with the sweeping differentiation in registration conditions between ‘Approved categories’ and the ‘registered basic category’.

We also disagree with Condition P: “The provider must participate in the Teaching Excellence and Student Outcomes Framework” (see response to question 9).

We also seek clarification in relation to the requirement in the Guidance regarding the specific use of tuition fee income. For example, one of the ongoing conditions listed under paragraph 150 is “verification that the fee charged to the student, and the course quoted by the student in their application, are accurate and *directly relate to the student’s course of study*”. Does this mean that universities would no longer be permitted to use tuition fees to cross-subsidise more expensive subject provision?

19. Do you agree or disagree with the proposed approach to risk assessment and monitoring?

No, we reiterate our concerns about the light-touch regulation of ‘registered basic’ providers.

Moreover, we believe that the proposed approach to risk assessment and monitoring fails to recognise the key role played by ‘corporate form’ in determining levels of risk in relation to quality, financial sustainability, management and governance arrangements. The lessons from the highly critical PAC reports and journalistic exposés in the Guardian and BBC reveal the peculiarly risky nature of for-profit HE providers. If we are going to have for-profit companies in our higher education system they must be properly assessed and monitored. We need a powerful regulator that is able to deal with for-profit providers and recognises the extra risk they pose. Unfortunately, the approach outlined in Parts B and C (Part III) fails to recognise that a more robust approach is needed towards the for-profit sector.

20. Do you agree or disagree with the proposed approach on interventions (including sanctions) and do you agree or disagree with the proposed factors the OfS should take into account when considering whether to intervene and what intervention action to take?

The Higher Education and Research Act (2017) gives significant powers of intervention to the OfS, including powers of entry and search, and sanctions against providers, including revoking DAPs and University Title. We remain concerned about the extent of these statutory powers and call for the OfS to use these powers as a last resort.

21. Do you agree or disagree with the proposed approach the OfS will take to regulating providers not solely based in England?

We have already expressed concerns about the growing divergence between England and the rest of the UK higher education system. We call for proper dialogue and communication between OfS and the relevant regulatory authorities in Scotland, Wales and Northern Ireland.

Part 4

22. Do you agree or disagree with what additional information is proposed that the OfS publishes on the OfS Register?

The proposed list on the OfS register is comprehensive, although we agree that the register is unlikely to be a place for students to find user-friendly information about institutions.

23. Do you agree or disagree with the principles proposed for how the OfS will engage with other bodies?

We agree with the broad principles for engaging with other bodies. The key issue will be translating this into effective working relationships, especially as a number of similar bodies will remain in existence (e.g. OIA, CMA etc).

Above all, we believe that the OfS needs to establish an effective working relationship with UKRI, particularly given the importance of the teaching-research link in higher education. We are particularly keen to ensure joined up approach on the REF and TEF and on the crucial area of postgraduate research.

24. Do you have any comments on the proposed exercise of OfS functions in relation to validation, in particular in relation to ensuring that the validation service is underpinned by the necessary expertise and operates in a way that prevents or effectively mitigates conflicts of interest?

We remain sceptical about the necessity and desirability of the OfS acting as a separate validating body. We suggest that the OfS focuses on its core business as a regulatory body.

25. Does the information provided offer a sufficiently clear explanation of how a provider will apply for registration in the transitional period and what the consequences of registration are in this period?

Given the scale of changes to the regulatory framework, we believe the current timetable for registering and assessing applications (May to September 2018) is too tight.

Annex C

26. Do you have any comments on the above proposal of how the OfS will act as the principal regulator for exempt charities?

No.

27. Provided that the Secretary of State considers OfS regulation is sufficient for these purposes, should exempt charity status apply to a wider group of charitable higher education providers? In particular, considering that providers in the Approved categories will be subject to conditions relating to Financial Sustainability, Management and Governance, and the provision of information (as set out in the Guidance), do you have any views on whether the OfS's proposed regulation of providers in these categories would be sufficient for the purposes of it carrying out the functions of Principal Regulator?

A number of the new higher education providers on the proposed register are likely to be for-profit organisations. It is important to ensure that the benefits of charitable status apply solely to not-for-profit bodies.