

# Universities UK's evidence to the House of Lords inquiry on the work of the Office for Students

In March 2023, the Industry and Regulators Committee in the House of Lords launched an [inquiry into the work of the Office for Students \(OfS\)](#). This has been an opportunity to consider how well the OfS's regulation has been working, where things could be improved, what those improvements would look like, and how they could be achieved. This briefing sets out a summary of [our written evidence](#).

## What is the Office for Students?

[The OfS](#), created in 2018, is the lead regulator of higher education providers in England. Providers, including universities, must register with the OfS if they want to access public funding, have their students able to access student loans, sponsor international student visas, be able to call themselves a university, and to award degrees. To be registered and stay registered, they must comply with the OfS's [conditions of registration](#) which focus on:

- supporting of all backgrounds to access and benefit from higher education whatever their background
- providing students with a high quality academic experience
- enabling students to achieve positive outcomes
- ensuring students receive value for money

## The inquiry

Five years into the OfS's operation, the inquiry has considered the frameworks and processes the regulator has developed to do its job. It has also explored the OfS's relationship with government and how it remains independent, its capacity and expertise, its engagement with universities and other providers, and how it works with students and protects students' interests. It has also looked at OfS's role overseeing the financial sustainability of the sector.

The inquiry has [heard a range of oral evidence](#), including from [UUK's Vivienne Stern](#), the OfS themselves, the National Union of Students (NUS) and former OfS student panel members, university mission groups, and the Minister for Skills, Apprenticeships and Higher Education, Robert Halfon MP. The inquiry invited written evidence structured around twelve questions.

We recommend that the evidence and findings from the inquiry inform the terms of reference for an upcoming public bodies review of the OfS, scheduled for 2023-24. This review will require an independent chair, but we have also recommended the chair is supported by an expert panel. The review should look to consider the performance of the OfS as well as the relationship between the regulator, its sponsoring department, and government ministers.

## UUK's view of OfS regulation

In our evidence, we explained that we felt the duties of the OfS are clear and appropriate, and that we agree with the OfS on what its priorities should be: quality and standards, equality of opportunity, and enabling regulation. We also discussed our shared interest in ensuring higher education in England is subject to robust and effective regulation and that we are committed to working with the regulator to understand and address any outstanding challenges.

### Challenge 1: Regulatory burden

The OfS is a relatively young regulator, and it is still developing and refining its regulatory framework. This is clear in the amount of consultation being used to inform its approach; [33 formal consultations](#) in just five years. Our members are not only dealing with a new system but one that has not yet settled. This requires frequent reviews of universities' internal processes, policies, and approaches and sometimes changes, to ensure they continue to comply. While not unexpected in this

initial start-up period, this has generated a burden of activity that risks directing attention away from the activities the regulation wants to promote, including delivering a quality experience to students. One member has 10FTE supporting regulatory compliance at an approximate staff cost of £443k. Another estimates a total cost of £1.1million in 2022-23 on regulatory activities.

There are also ongoing requirements that could create significant costs and burden. For example, condition B4 now requires a five-year retention policy for all assessment. Conservative estimates of what digitising and storing work on this scale might cost suggest between £270,000 to over £1 million pa per institution. Having highlighted this challenge, we are pleased now to be working with the OfS in a task-and-finish group to find a workable solution, one that will allow the OfS to regulate but not place a costly and disproportionate expectations on universities.

Alongside this, the OfS has begun to address sector concerns. This includes reducing its use of enhanced monitoring ([between November 2019 and April 2022, a per provider average of 1.35 conditions subject to enhanced monitoring down to 0.3](#)), removing the annual accountability statement for the Prevent duty, and taking on responsibility for generating the data needed when meeting the OfS's transparency duty. However, we think more can be done.

The OfS is a data-led regulator. This his requires universities to collect and provide a large amount of data, sometimes having to submit data already submitted to another regulator. One member reported to us a total of 99 data returns being required in 2022-23, across all the regulators it works with (the OfS was only part of this). We are calling on the Department for Education (DfE) to reconvene the [Higher Education Data Reduction Taskforce](#), created in 2022, to map the data burden across all the regulatory bodies that universities engage with and identify where it can be minimised.

We have also commissioned Moorhouse Consulting to help us to better understand the burden of regulation, how much it is costing universities, and the additional activities it is generating. We hope to identify where and how the outstanding burden might be reduced.

## Challenge 2: Investigations

The OfS entering its 'active regulation' phase means an increase in regulatory investigations. [OfS board papers](#) reveal that 32 investigations into quality and standards are currently underway.

This, in theory, shows risk-based regulation working well. It is a regulator reviewing all the information it has collected, identifying providers with areas of concern, gathering further information in those cases to understand the issues, and acting if and where a provider is found to be in breach of their regulatory requirements.

Where the OfS has initiated this kind of activity, however, feedback we have received suggests several concerns, including:

- the lack of clarity for providers on what the basis for the investigation is
- limited information on what a provider needs to do to comply with an investigation
- the scope of an investigation changing during the process
- different methods being used to investigate similar issues within different providers
- the absence of an expected timescale, with short deadlines for providers to supply large amounts of information but with delays in response from OfS

In both our evidence and our engagement with the OfS, we have recommended they establish consistent terms of engagement for working with a provider under an investigation. We have developed a set of principles we hope can inform these, designed to ensure an investigation is – and is accepted as – transparent, consistent, and fair.

Prior to a formal investigation: Where concerns are identified, a provider could be invited to provide an initial response and given an opportunity to take voluntary action, especially where the risk is judged to be low. This would also be a chance to provide additional information or context that could lead to quick resolution without the need for a costly investigation. Should it suggest a formal investigation is needed, the grounds for the investigation will be clearer and the provider will be reassured that due process has been followed.

Launching investigatory action: The method of investigation will have to vary depending on the issue being investigated. However, we think providers need greater clarity at the start of the process on what this will look like in their context. The OfS should adopt a consistent approach to writing to a provider and detailing: the rationale for the investigation, the scope of the investigation, the expected timeframe, the method, the provider engagement process, the expected points at

which details will be made public, the likely decision makers, and the possible outcomes.

After an investigation: Once a decision has been reached, the provider must be made aware of how the decision has been made, how any penalty has been decided, and how they can appeal. They should also be engaged in a discussion of how any information will be made public, recognising the potential impact on students.

### Challenge 3: expansion

The coverage of OfS regulation is already wide. There are 25 conditions of registration outlined in the current regulatory framework. We are concerned about further expansion of the framework to include new conditions of registration following ministerial interventions.

This includes the recently [proposed creation of a new condition of registration on harassment](#). Tackling harassment and sexual misconduct in higher education is vital to ensuring all students can live, work and study in a safe environment, but rather than regulatory intervention we believe a continuation or evolution of the current collaborative, self-regulatory approach is more appropriate. There is already a strong legal basis for universities to tackle harassment and sexual misconduct, and universities have been making progress following UUK's work on ['Changing the culture'](#). The proposed condition of registration does not usefully add to this. Moreover, tackling harassment must go beyond the introduction of systems, policies and processes, and needs to consider the many cultural factors needed, such as leadership commitment.

We have recommended the development of a review method that can allow regulatory requirements to be updated or removed if enough sector-wide progress has been made. This could mirror the approach taken during the pandemic on the temporary [condition Z3](#) on admissions procedures, since taken up by the UUK and GuildHE [Fair Admissions Code of Practice](#).

### Challenge 4: measuring value for money

The OfS uses three [key performance measures](#) to consider value for money for students at a sector level; the proportion of undergraduate students who say university offers good value for money, the percentage of students who are positive about quality, and the proportion of students with outcomes above the minimum

expectations for continuation of study, completion of a course, and progression into professional and management roles.

While these measures are important, there are limits to what they can tell us about value for money.

The measures do not reflect all the concerns of students on the topic, with [research by the OfS in 2018](#) showing students were up to 45% more likely to say that quality of teaching was more important in shaping their view of value than the measures the OfS have focussed on.

In smaller and specialist providers, when relying on this kind of data, a small change in performance can look much larger, putting them at greater risk of being identified as not offering value for money.

A focus on career progression 15-months after graduation assumes a steep linear career path which is not as common today as in the past nor is it the standard approach in all sectors, while the coding of what a 'graduate job' looks like is outdated.

UUK has developed [a toolkit](#), based on research from government and other stakeholders, that reflects the full value of higher education. This recognises the importance of existing outcomes-led approaches, but covers other measures such as:

- the value added for certain groups, including their likely career and salary prospects had they not gone into higher education and the relative learning gain over the course of their degree
- graduate prospects that include graduate views of career progression, including how meaningful they find their work and how their current work fits with their longer-term goals
- support for economic growth (particularly at a local level to reflect substantial geographical variation in earnings and employment)
- social impact through student and graduates' contributions to public sector, culture, and the environment

Our evidence also raised the issues of the value for money *of the OfS*. The expansion of the OfS has led to increased costs. In the next academic year, [OfS fees will increase](#) by 18.5%. This represents a maximum net increase of 12%. (Part of the increase accounts for the designated quality body moving in-house and a separate fee to the

Quality Assurance Agency for Higher Education (QAA) no longer being required.) The OfS's [running costs in 2020-21](#) were £27.7 million, of which £26.3 million (95%) was funded by registration fees paid by providers. From UUK members alone the contribution is c.£16 million.

The OfS was due for a review of its fee model two years after being set up. We want this to happen as soon as possible, and to consider how the cost is borne across the sector and how this interacts with factors such as size and risk, as well as what the impact on providers is and how the fee income is used by the OfS.

### Challenge 5: provider engagement

[Research commissioned by the OfS](#) and conducted in the summer of 2022 suggested the OfS's engagement with the sector could be improved, suggesting clearer communications, dedicated contacts, and a more constructive dialogue. The [OfS responded in January 2023](#) and set out welcome plans for increased accessibility and engagement with the sector, including more institutional visits and regular online sessions to give accountable officers opportunities to ask questions. Since the pandemic the OfS has also reintroduced named contacts for each provider. This is all welcome.

One area that is outstanding, however, is in its approach to consultation and how it seeks and receives feedback from the sector.

In January 2022, with a Data Futures consultation already open, three further consultations were launched with documentation amounting to 1,158 pages and 8 weeks to respond. The OfS supported providers during this process by running information events, but the level of detail and number of proposals meant responding on every proposal in full was difficult.

Consultations also often have short deadlines. Consultation on the National Student Survey (NSS) in August 2022 (coinciding with when many staff and most students are on holiday) was open for only five weeks. This consultation also reinforced the finding of the [OfS-commissioned research](#) that providers were “suspecting them to be ‘box ticking’ exercises or too prescribed, with many decisions ‘already made’.” [In the case of the NSS](#), 90% of 250 respondents disagreed with removing a question on student satisfaction in England, but the change went ahead.

We recommend the OfS considers:

- Publishing an annual timetable of consultations to allow universities to plan their time and approach, so they can respond in a meaningful way.
- Avoiding multiple concurrent consultations (at the time of submitting our written evidence, the OfS was running three consultations).
- Adopting the recommended 12-week consultation period promoted in the [government code of practice for consultation](#).
- Engaging earlier with the sector and in advance of launching a consultation, to ensure the proposals are clear and understood and have had some initial testing.

### Challenge 6: independence

The OfS must ‘have regard to’ guidance from the Secretary of State for Education and the relevant higher education minister. They must also comply with any general directions and/or terms and conditions relating to grant funding from the Secretary of State. Between 2018 and March 2023 there were [26 pieces of published government advice and guidance](#) to the OfS. Partly a symptom of regular ministerial changes, we cannot ignore the additional pressure this puts on the OfS to adjust its priorities and approaches.

There are cases where ministerial steers have not been followed and instead the OfS has responded constructively to sector and student feedback, for example retaining the NSS as an annual sector-wide census despite a lack of support for this in government.

On other occasions, however, there is a perception of them being too easily led. In a [letter dated 31 March 2022](#), the Secretary of State twice gave strong support for a new ‘requires improvement’ TEF category. Despite three-quarters of 239 responses to the relevant consultation expressing significant concerns about the implications of this and going against recommendations of the government-commissioned independent review of TEF, the OfS implemented the government preference with no adjustment.

In the same letter, priorities for targeting quality investigations on a revised condition B3 were set out, pre-empting the condition that was still under consultation. No baselines had been established nor had the data source or assessment approach been confirmed. The ministerial priorities specified computer science and law, both of which were subsequently prioritised by the OfS for investigations in 2022. The OfS has a clear role to gather and consider the evidence and intervene in a targeted and



risk-based approach if valid concerns are identified. However, it should also explain where it considers media or political campaigns to be misguided and unjustified. Publicly announced investigatory action should not be a means to satisfy ministers that the regulator is acting robustly. The government, in return, should give the OfS the space to regulate, setting a direction of travel but minimising the number and prescription of its guidance letters.