Symposium on the Future of Higher Education Regulation in the UK

12 March 2014
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Themes and Lessons
Notes from the 12 March 2014 HEBRG Symposium on the Future of Higher Education Regulation in the UK

Prepared by Andrew M. Boggs

Background of the Symposium

The Higher Education Better Regulation Group (HEBRG) was established in early 2010 as the successor to the Higher Education Regulation Review Group (HERRG). Its purpose is to promote efficient and transparent approaches to regulation of higher education across the United Kingdom. We are supported by the sector representative organisations, Universities UK and GuildHE, and funded by the Higher Education Funding Council for England (HEFCE), the Scottish Funding Council (SFC), and the Department for Employment and Learning Northern Ireland (DELNI). HEBRG has an independent chair, Professor Sir Tim Wilson, and our membership is drawn from sector bodies, agencies and regulators from across the UK.

HEBRG’s mandate was renewed in 2012 with the appointment of a new chair. HEBRG staff, Andrew M. Boggs and Dr. Brooke Sperry, developed a two-year work plan with chair, Tim Wilson. This work plan was approved and reviewed by the HEBRG membership. The work plan culminated with a symposium on the future of higher education regulation in the UK to be held in March 2014. In consultation with the HEBRG membership, staff proposed a two part event focused on two goals:

a) Capturing recent work on the future of higher education regulation in England; and

b) A better understanding the regulatory gaps being created through increasingly divergent regulatory reforms in the home nations of England, Wales and Scotland.

On 12 March 2014 HEBRG hosted the Symposium on the Future of Higher Education Regulation in the UK. The event, held at Woburn House in Tavistock Square, London, was attended by over forty invited participants. It was divided into two sessions with the following presenters:

Session 1: Views of the future and the case for a new Higher Education Act for England
Ian Lewis, Higher Education Funding Council for England (HEFCE) and the Regulatory Partnership Group
Professor Roger King, Co-chair of the Higher Education Commission Inquiry (co-author of Regulating Higher Education, October 2013)
Graeme Wise, National Union of Students

**Session 2: Intra-national perspectives and points of divergence in a UK-wide sector**

- Prof. Sir Ian Diamond (Principal and Vice-Chancellor, University of Aberdeen) – *perspective from Scotland*
- Prof. Simon Gaskell (Principal, Queen Mary, University of London) – *perspective from England*
- Ben Arnold (Senior Policy Adviser, Higher Education Wales) – *perspective from Wales*
- Stephanie Lloyd (NUS Wales) – *student perspective*
- Andrew M. Boggs (HEBRG) – *lessons from Canada*

All participants agreed to adhere to the Chatham House rule:

> "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed." (source: http://www.chathamhouse.org/about-us/chathamhouserule)

This document is not intended as verbatim record of the event. It is an attempt to capture the themes and lessons taken away by participants in the Symposium.

Participants were provided two background papers:


These two papers are appended to this document with the permission of the authors.
Session 1: Views of the future and the case for a new *Higher Education Act* for England

**Current Challenges**

The last few years have seen monumental changes to higher education regulation in England. This includes an evolving perspective of “self-regulation” of the sector, radical reformation of higher education financing (from public grants via HEFCE to student fees underwritten by the Student Loans Company [SLC]), and the introduction of more independent “alternative” higher education providers.

Despite all of this change, the English higher education sector is still subject to the same legislative framework as before the reforms began. This legislative framework has limitations as to what it can accomplish. The Regulatory Partnership Group (RPG – see Boggs 2013) is attempting to plug emerging gaps in the regulatory architecture to ensure:

- The public and students are effectively assured as to the health of the higher education sector; and
- Higher education providers are appropriately supported to meet their respective educational missions.

**Approaches to Regulation**

Participants were urged to shift focus away from RISK-BASED regulation in favour of UNCERTAINTY-BASED regulation. It is important for higher education providers, students and the sector itself to take risks in order to innovate, grow and improve. Risk aversion, promoted by risk-based regulation, leads to hegemony. Hegemony creates the conditions for RISK INCUBATION: threats to the sector overlooked over long periods of time.

By focusing on uncertainty, rather than risk, regulation can support a RESILIENT higher education sector (versus risk averse). Resilience refers to the ability of the sector to return to full performance following externally generated, or self-created, crises. It was noted that the UK higher education system (including government, sector agencies, providers and students) historically demonstrates strong resilience.

Uncertainty may be divided into two categories:

a) Ontological (e.g. unpredictable social change)

b) Epistemological (e.g. our inability to predict the future)

The combined effect these two categories of uncertainty make risk-based regulation unworkable for anything beyond policing past action.
Regulation may address or guide higher education providers’ RISK TOLERANCE – permitting risks to be taken provided reasonable safeguards against uncertainty are put in place. However, how one defines acceptable ‘risk tolerance’ for the purposes of regulation is beyond the scope of the Symposium.

Two categories of sector regulation were observed:

a) Technological systems of regulation – including data returns and information reporting.

b) Human systems of regulation – including the development of relationships between regulatory staff and higher education providers, intelligence gathering, characterised by dialogue and discussion.

Technological systems of regulation form the basis of risk-based regulation and do not lend themselves to regulatory judgement outside of the setting of threshold points which trigger regulatory intervention.

It was noted that human systems of regulation may be forward looking, while technological systems are by definition historic. Regulation by historic information (i.e. past performance) may also lead to SPURIOUS CONFIDENCE that past successful behaviours indicate future resilience. This leads to risk incubation – the festering of small issues or problems that are not spotted until it is too late to correct them. Human systems of regulation, notably ongoing dialogue, can better support uncertainty-based regulation focused on VULNERABILITIES (rather than risks) to sector resilience. Vulnerabilities may be addressed in institutional RISK RESILIENCE plans (rather than RISK MANAGEMENT plans, because risk cannot be controlled in this way). Resilience assumes that accidents and failures are a normal part of development.

Human systems of regulation allow emphasis to be on consideration/analysis of data and putting information into context versus simply collecting and publishing data. Using REPUTATION as a barometer for success of regulation is an unruly concept because reputation is highly subjective and still requires policy decisions. For example, does one prioritise having individual ‘world-class’ and globally competitive institutions or prioritise many, roughly equal institutions? Both goals have benefits and drawbacks and both would manifest reputation in different ways.

Regulation can be of one of two types:

a) Proactive – preventative in nature, can be perceived as intrusive but can support resilience.

b) Reactive – designed to respond to crises and to correct failures.
New Legislation

Prevailing opinion agreed that new legislation is needed to ensure English higher education is properly and adequately regulated. The new regulatory architecture needs to capture (or at least acknowledge) the role played by new, independent higher education providers.

The new regulatory architecture must balance MARKET elements of the emerging sector with COORDINATION of the sector (self-managed or externally-managed). It is instructive to examine and consider how other jurisdictions have addressed their respective higher education markets (e.g. USA, Australia, Canada, Singapore, China, etc.) provided one appreciates the policy objectives of those higher education sectors.

Students assess uncertainty differently than higher education providers and policy makers. The implications of risk taking for students can be unforgiving. Any new regulatory architecture must recognise the imbalance between students and providers in the severity of repercussions for failure.

It was noted that it is not a forgone conclusion that the next Parliament will feature a new higher education bill. The sector should also be prepared to continue working with what it has and not simply wait for problems to be addresses through legislation.

Student Protection Schemes

Participants discussed the possibility of a student protection scheme for the sector. The purpose of such a scheme would be to assure students in the event of programmatic or institutional failure, cancellation or significant change. Such a scheme would be linked to building sector resilience and protecting the collective reputation of the English higher education sector.

If this is an area worth pursuing, there are a number of questions that need to be answered. These include:

- Insurance (i.e. financial reimbursement) or assurance (opportunity to complete studies or financial reimbursement)?
- What should be covered?
- Who/what carries the cost of the scheme (regulatory/government, providers, students via SLC funding, a mix, etc.)? Is it calculated on the basis of risk and does it include all higher education providers operating in England (e.g. is it a precondition of SLC designation? Does it only apply to new entrants to the sector?)
- What is tolerable risk on the part of students, and the sector?
- Who can and should manage the scheme (consumer-driven/students, providers, regulator or independent third party)?
An alternative to an assurance scheme is to develop a centralised dispute resolution scheme monitored by a sector regulator.

Participants discussed the historic assumption that the government would not allow a HEFCE-funded institution to fail and whether or not this assumption is valid for the future. Participants noted that we do not know to the degree to which programmatic and/or institutional failure affects new independent higher education providers.

**Funding and Competition**

Funding and regulation are closely related. There are two competitive approaches to funding currently at play in English higher education:

a) Market-based – operates over an extended period of time in which providers find niche areas and some providers gain advantage over others.

b) Tournament-style – providers compete for capped pots of funding, leading to winners and losers, but each funding round represents a new cycle in which providers are back on an equal footing (research funding competition was cited as an example of this already in practice).

The funding regime raises regulatory questions:

- Is a competitive approach appropriate for public funding?
- Are students being better served through the new teaching funding via student loans arrangement?
- Do these competitive approaches to funding promote excellence and innovation, or stifle innovation as funding is attracted by a handful of ‘key players’?
- Do these funding regimes create hierarchies of institutions (for good or bad)? Does hierarchy demand bifurcated regulation or can regulation be elastic enough to capture different institutional types?
Session 2: Intra-national perspectives and points of divergence in a UK-wide sector

Devolution of responsibility for higher education policy to the executives of the home nations, including Scotland, Northern Ireland and Wales, is leading to divergence in higher education regulation across the UK. Despite this change, there has been little scholarly and policy attention paid to the potential gaps emerging in the broader UK’s higher education regulatory framework. This session considered the changes taking place in Scotland, England and Wales. It concluded with discussion of higher education regulation in a country with a federal system of multiple higher regulatory regimes: Canada.

Scotland

Higher education has featured in Scotland’s economic planning, including skills development and innovation/research. The Scottish higher education student fee regime is very different from that in England. Although the sector initially had fears of inadequate funding, the Scottish government has funded Scottish universities at a level largely commensurate with the teaching income of English universities.

Scottish higher education policy development was characterised as a “something for something” agenda. Scottish universities refer to their “responsible autonomy”. Responsible autonomy has manifested itself through three instruments:

a) A new Code of Governance agreed to by all Scottish higher education institutions in 2013;

b) Individualised ‘outcome agreements’ between each higher education institution and the Scottish Funding Council (SFC); and

c) A statement from Universities Scotland defining responsible autonomy.

Scottish universities have welcomed the new outcome agreements, in part, because the agreements include a summary of the impact and benefit Scottish HEIs give to Scotland. One weakness of the outcome agreements was noted: that they don’t capture institutional partnerships because they are bilateral (versus multilateral). Another criticism is that the outcome agreements do not currently capture/measure efficiency achievements.

It was observed that student outreach schemes do not properly acknowledge Scotland’s predominantly rural geography. Deprivation indices used for widening access schemes favour students coming from urban centres. This translates into Scottish universities competing for the same, relatively small, pool of students while leaving rural populations in-need underserved.
England

The main focus of English higher education policy has been university funding change from direct operating grants from the Higher Education Funding Council for England (HEFCE) to student financing via income contingent loans. This change, coupled with the inclusion of new “alternative” or “independent” higher education providers, has led to consideration of the entire regulatory architecture of England’s higher education system.

The Department for Business, Innovation and Skills (BIS) has been working with a Regulatory Partnership Group (RPG) to find non-legislative options to overcoming emerging regulatory challenges under the existing legislative framework. The RPG includes government, regulators, agencies and sector bodies in an effort to improve communication and cooperation across stakeholders.

The RPG initiated a number of different projects. One of these has been to streamline and simplify the collection and movement of data on higher education. The Higher Education Data and Information Improvement Programme (HEDIIP) was launched in the Spring of 2013 with mission to improve and reduce data collection from higher education providers and improve the sharing of data on higher education across regulators and agencies.

It has also become clear that the binary divide between new higher education providers (also known as ‘alternative providers’) and the ‘traditional’ publicly supported higher education providers is over-simplistic and, increasingly, arbitrary.

The delay in new primary legislation to reorganise the English higher education sector has created an opportunity to get things right – to take a considered approach to regulatory reform. There is now a UUK working group tasked with examining this very issue.

It is important to correctly identify the beneficiaries of a strong, appropriately regulated higher education sector. This list includes:

a) Students, prospective students and alumni;
b) The public;
c) Employers;
d) Society (now and for the future); and
e) Higher education providers (both as individual providers and collectively).

Outstanding questions:

- If regulation is considered to be a measure of last resort, what are the correct triggers to launch regulatory intervention?
• The autonomy of UK universities is often hailed as a defining feature of the success of UK higher education. But what are the limits to that autonomy and when should that autonomy be suspended in the interest of the beneficiaries noted above?

Wales

In 2011, the Welsh government committed itself to making fee grant payment to students studying outside of Wales in support of the free movement of students across the United Kingdom. Financial responsibility for this commitment was transferred to the Higher Education Funding Council for Wales (HEFCW), meaning that support for student movement has a direct impact on the funding available for Welsh higher education institutions.

A new Welsh higher and further education bill is expected in May of this year. The bill is expected to address four key areas:

1) Funding – higher education provider access to grant support via recognition by HEFCW or by government.
2) Quality assurance – responsibility for oversight is divided between HEFCW and the government.
3) Sector planning – including widening access, promotion of higher education, and sector performance targets. There are some concerns that government powers will be expanded, raising issues of institutional autonomy and the protections for institutional planning in the 1992 Higher Education Act.

There is some concern that the Welsh higher education sector could agree to a change in regulatory regime to deal with the short-term financial situation.

The Welsh higher education sector is now working to understand the impact on Wales of England removing student enrolment number controls.

The report of the Silk Commission on Devolution in Wales signalled the need for greater coordination of higher education policy in Wales.

Canada

Education, including higher education, is a provincial responsibility as defined by the Canadian Constitution. Consequently, Canada has ten separate, independent higher education systems. While there are differences between provincial systems, higher education providers are largely publicly supported and have considerable operational autonomy. Some areas do have federal involvement, including research funding councils and a component of student financial aid. The devolved nature of higher education regulation in Canada may provide useful lessons for an increasingly federal higher education policy in the UK.
The devolved nature of higher education policy does lead to inconsistencies and challenges to higher education regulation. One of these areas is quality assurance. There is no single quality assurance process for higher education across Canada. Individual provinces have dealt with the issue of private/alternative providers and/or degree awarding powers differently. For example, Ontario created a Postsecondary Education Quality Assessment Board (PEQAB) to review applications from non-Canadian higher education providers to operate in Ontario and for non-university providers to offer degree programs.

A second area is student tuition fee policy. Quebec and Ontario are the two most populous provinces, and also have two of the largest higher education sectors. The province of Quebec has some of the lowest fees in the country. Quebec borders the province of Ontario. Ontario has some of the highest student fees in Canada. In order to discourage “fee refugees” from Ontario, Quebec policy allows for ‘in-province’ and ‘out-of-province’ fees (based on residency requirements). However, Quebec does make a special fee provision for international students coming from France. These international students pay the equivalent of the in-province fee. This policy creates a barrier for some Ontario students while advantaging some international students.

As constituent parts of a federated country, Canadian provinces adhere to certain principles that may be instructive for increasingly devolved higher education regulation in the UK. Of these, perhaps the most important are:

- The portability of needs-tested student financial assistance across the country (aided in part by a significant component of student financial assistance coming from the federal government); and
- Mutual recognition of the degree awarding powers across the country.

Discussion

Concern was raised that increasing uncertainty about higher education regulation across the home nations exacerbates the power/information imbalance between students and higher education providers. Strategic planning for the UK higher education as a whole is becoming increasingly difficult, although differential policy regimes and regulatory approaches create an opportunity for home nations to learn from one another.

Wales’ interest in sector targets as a means of encouraging institutional collaboration may benefit from a deeper understanding of the Scottish concept of ‘responsible autonomy’. It was pointed out that the Scottish ‘outcome agreements’ do not adequately capture collaborative arrangements because the agreements are bilateral (versus multilateral). However, the Scottish Funding Council has been supportive and flexible regarding activities that do not easily fit into the outcome agreements.
A reduction in student mobility across national borders was flagged, particularly for students wanting to study in England and Scotland. There are particular challenges for part-time and mature students, who are often forgotten by policy focused on full-time undergraduate education.

The definition of ‘collective student voice’ and the legal status of higher education student organisations were raised, in addition to identifying the different pathways for responding to student complaints in each of the home nations.

Regulation of private provision of higher education varies across the home nations. Compared to England, the Scottish private higher education sector is very small. It is also small in Wales, with 30 or so providers in specific academic disciplines closely tied to geographical areas. It was noted that some alternative providers operating in England are offering degrees awarded by Welsh higher education providers.

Participants observed that the relationship between the responsible level of government and its respective higher education funding body represented the key regulatory relationship in each home nation, and that the nature of these relationships is different in each home nation.

Home nations will need to work hard to maintain mobility and student access across the UK. The Higher Education Statistics Agency and the Quality Assurance Agency, as pan-UK organisations, can provide some consistency across UK higher education.

As regulatory regimes diverge, home nation higher education policy makers may wish to adopt the following three principles to maintain the strong reputation UK higher education currently enjoys:

1) Commitment to student mobility.
2) Unified research councils and promotion of research collaboration.
3) Coordinated quality assurance and mutual recognition of credentials.
APPENDIX ONE: The Future Coordination of English Higher Education Institutions

Professor Roger Brown

Presentation to the 12 March 2014 Higher Education Better Regulation Group (HEBRG)
Symposium on the Future of Higher Education Regulation in the UK

Introduction

There is general agreement that there needs to be an overhaul of the means by which English universities and colleges are regulated, but there is as yet no consensus about the form this should take. This short paper reviews the proposals that have so far appeared and identifies the issues arising. It argues that:

1. The current discussions about the future shape of regulation need to be put into the wider context of the preferred balance between market and non-market forms of coordination.
2. If we are to continue with even the present level of market competition, some strengthening of non-market coordination will be required if such competition is not to lead to serious detriments to quality, efficiency and institutional effectiveness.
3. Until we have resolved this, we should not attempt to prescribe the necessary future regulatory architecture, although we should recognise and endorse the need for judgements about quality and value for money to be independent of judgements about resourcing.

Background

There is general agreement that the present arrangements for regulating English higher education leave a good deal to be desired (for an account of the existing arrangements, see Higher Education Funding Council for England, 2013). In particular, with the substantial reduction in direct public funding for teaching, a major lever for regulating institutions (the Funding Council’s ability to attach conditions to institutional funding) is greatly weakened. There is also the need to embrace providers that have not hitherto received public funding. Some commentators also believe that increased competition, to be reinforced by the removal of limits on funded student places from 2015-16, will exacerbate existing weaknesses (Brown and Bekhradnia, 2013). In this context it may be significant that the Government’s recent announcement about lifting the numbers cap contained a warning that the controls would be reimposed if quality problems arise.

Reform proposals

To date, there have been five sets of published reform proposals:

1. The Browne Committee (October 2010).

These will now be briefly summarised. Reference should also be made to the recent report of the Regulatory Partnership which provides a useful overview of current issues (http://www.hebetterregulation.ac.uk/NewsEventsPublications/Publications/Pages/RegulatoryPartnershipGroupbackgroundandissues.aspx). Finally, we also await formal confirmation that the Office of Fair Trading or its successor will be conducting a full study of the undergraduate education market.¹

**The Browne Committee**

The Browne Committee proposed a new Higher Education Council with five core responsibilities: determining investment priorities; setting and enforcing minimum quality levels; equity of access; ensuring students get the benefit of competition; and adjudicating on unresolved disputes between students and their institution (Independent Review of Higher Education Funding and Student Finance, 2010). The Council would control the number of funded places each year by means of a common minimum tariff. The Council would be independent of the Government and of the institutions. It would make an annual report to Parliament.

**The Higher Education White Paper**

The consultation paper (Department for Business and Skills, 2011) that accompanied the June 2011 White Paper proposed that the Higher Education Funding Council for England should become the ‘independent lead regulator’ for the sector. Its new role would include ensuring the proper use of public funds for higher education, maintaining registers of providers, and promoting the interests of students, including as consumers, with a duty to take competition implications into account when making decisions on funding.

**The Institute for Public Policy Research**

In June 2013 the IPPR published a wide ranging report *A Critical Path: Securing the Future of Higher Education in England*. This proposed a new, single HE regulator, formed by expanding HEFCE to include the Quality Assurance Agency and the Office for Fair Access. The new agency would be established by Royal Charter and would report to Parliament on standards in higher education. Its functions would include acting as a champion for students, ensuring that their HE experience is of a high quality, and regulating market entry so that all providers in receipt of public funds meet certain minimum standards.
The Higher Education Commission

In October 2013 the Higher Education Commission proposed that there should be a new, overarching regulator for a number of HE regulatory entities, the Council for Higher Education. This would be formed by expanding HEFCE to include the Office for Fair Access and the Student Loans Company, together with a new Office for Competition and Institutional Diversity. The new Council would seek to exercise overarching regulatory and supervisory powers over other bodies through ‘contracted protocol’. Its responsibilities would include approving rules and assisting in standard setting and regulation; approving new entities to be regulated; approving changes to the activities covered by regulators; approving new regulators; and disciplining other regulators where necessary. It would be a Non-Departmental Public Body, making an annual report to Parliament and with some non-executive directors.

The Higher Education Policy Institute

In November 2013 HEPI published a report by Roger Brown and Bahram Bekhradnia. It proposed separating funding from regulation. The new funding agency would comprise the funding parts of HEFCE plus the Student Loans Company. It would report to the Government as now. The new regulatory agency would subsume the QAA, OFFA, and the Office of the Independent Adjudicator for Student Complaints as well as the regulatory functions of HEFCE. It would report to Parliament. Its functions would include operating a full blown system of institutional accreditation, which would cover not only academic provision but also governance, management and resource allocation and use.

Issues arising

Together these various reports raise a number of issues. These include:

1. What should happen to the existing funding and regulatory agencies?
2. To whom or what should any new agency or agencies be accountable?
3. What responsibilities and powers should it/they have?

What should happen to the existing agencies?

All of the reports acknowledge that there are currently too many regulators and propose some consolidation. But only HEPI favours the complete separation of regulation from funding. The others all see HEFCE as the core agency onto which the functions currently discharged by the other agencies would be grafted or to which they would be linked, including some residual direct funding of institutions.

To whom should the new regulator be accountable?

There appears to be a general view that the new regulator should be as independent as possible. The Government at least spoke of the new HEFCE as being ‘independent’. Browne
and HEPI see the regulator as being independent of both the Government and the sector. IPPR sees the agency as having a Royal Charter and reporting to Parliament at least on academic standards. The Commission proposes that the regulator should be a Non-Departmental Public Body required to submit an annual report to Parliament to show its independence from the Government.

**What responsibilities and powers should the new agencies have?**

One major issue here is how any new powers should sit alongside the sovereignty over quality and standards that UK universities and colleges with degree awarding powers have traditionally enjoyed. More generally, some reports cover just regulation, others cover other forms of coordination as well. In fact, one has only to consider these questions for a few minutes to see that the fundamental question is not what the new regulatory architecture should be, but what should be the future balance between the various modes of coordination of a modern higher education system? The rest of this paper develops this argument.

**Alternative modes of coordination**

Following Clark (1983) and Hood et al. (2004), it is suggested that, in principle, four means of coordinating the activities of universities and colleges can be identified:

1. **Self-regulation.** The institution essentially coordinates itself.
2. **Peer-regulation.** The institution’s activities are coordinated by or through a group of cognate entities.
3. **State regulation.** The institution’s activities are coordinated by the state or through a state agency.
4. **Market regulation.** The institution’s activities are coordinated through market competition.

In practice, matters are somewhat more complicated. The various forms of coordination tend to co-exist, rather like Martin Trow’s famous model of the stages through which a higher education system evolves. The control of academic standards is an excellent example. In law, once degree awarding powers have been granted, universities in England have full control over the conditions associated with their awards (self-regulation). These powers are then in effect shared through an interlocking system of rules, procedures and norms developed over many years (the UK Quality Code, various forms of Institutional Review, etc) that is based on peer review and operated by sector-wide agencies (QAA, OIA, etc). This system in turn is grounded in state control because institutions that repeatedly fail to meet these tests could find their state funding in jeopardy (there is also a reserve power in the 1992 Further and Higher Education Act to transfer the scrutiny of institutions’ quality arrangements to the three national funding councils acting jointly). Finally, there is market coordination: institutions are increasingly mindful of the conditions set by their competitors as well as the demands of their ‘customers’, and indeed some commentators see market competition as being inherently opposed to the various forms of ‘non-market’ (Wolf, 1993) coordination.
For present purposes, it is suggested that the underlying issue is the relationship between market and non-market forms of coordination, the key question being:

**What combination of market and non-market coordination is most likely to create an effective, efficient and equitable higher education system?**

The Government plainly believes that increased market competition is the key to improving quality, efficiency and institutional effectiveness. This is on the theory that, as in any other market, institutions as service providers will either work to improve the quality of what they offer, and the efficiency with which they provide it, or risk losing customers and income. This explains the introduction of a voucher system for funding teaching, the partial (and eventually complete) removal of limits on the number of students institutions can recruit, and the liberalisation of market entry rules to encourage a wider range of providers. It also accounts for the efforts the Government is making to expand the information available to students, including eventually the labour market outcomes and debt levels associated with similar courses at different institutions (Morgan, 2013).

However, a number of those who have actually studied the application of market theory to the provision of higher education doubt if this is realistic. They point out that markets in higher education rarely behave like conventional consumer markets, and that increases in competition can actually lead to problems with quality or standards, especially if accompanied by pressures on resources and parallel moves to introduce greater competition and choice into other sectors of education (the main problems are the absence of a single principal and the difficulty of finding any common, robust and accessible measures of educational quality: see Brown, 2012). They argue that in a complex professional service area like undergraduate education, the best route to quality improvement lies in local quality enhancement embedded in collegial governance processes (cf., Smith and Reeves, 2007). Yet these are the activities most at risk from increased competition if it leads institutions to prioritise the appearance rather than the reality of improved quality, for instance, by putting effort into ‘improving’ their scores in national league tables and student surveys at the expense of raising quality through educational research and staff development.³

Clearly, if you accept the Government’s view that market competition is the key to creating a more effective and efficient university system, then you will accord the main coordinating role to such competition, with a very limited role for non-market coordination; indeed, you will wish to see the remaining controls on places and fees lifted as soon as possible. But if you take the view that even the present level of competition and competitive behaviour ⁴ is likely to present severe challenges to the quality, efficiency and integrity of what has hitherto been a relatively successful system, then you might prefer a larger and continuing role for the various forms of non-market coordination and intervention.
What kind of coordination?

If a limited view is taken of the need for non-market coordination, then the following might be seen as the maximum system-wide functions in respect of student education:

1. Ensuring that public moneys are used for the purposes intended (this is essentially an audit function).
2. Ensuring that every provider consistently meets minimum levels of quality.
3. Collecting and publishing basic information about providers and their offerings.
4. Dealing with unresolved student complaints.
5. Promoting wider participation and ‘fair access’.5

This assumes that competition between providers will be the main means of sector-wide coordination, with non-market coordination confined to quite basic forms of market failure.6 But not even the present Government believes that there should be such a limited role for non-market coordination in student education, hence the continuing support for ‘strategic and vulnerable subjects’. In any case, even the present degree of competition and competitive behaviour by institutions suggests a wider role for state intervention to anticipate or redress market failure in the provision of education, in addition to the minimum list just given:

1. Reporting on the value being obtained from public and private investment in higher education. This might involve monitoring how institutions are using that investment to improve the quality of teaching and learning, and investigating risks to quality either at individual providers or across the sector.7
2. Reporting on the quality of the information provided by institutions, including the accuracy and truthfulness of claims made. This might extend to improving the quality and transparency of such information through a sector-wide information strategy.
3. Determining the need for, and implementing controls on, fees, student support and undergraduate places.
4. Identifying providers or activities in need of subsidy or support because of their contribution to the wider benefits of higher education.8
5. Promoting and facilitating institutional collaboration not only as a means of dealing with or preventing institutional failure but as a means of reducing or controlling costs and extending educational opportunities, including through a renewed, sector-wide commitment to credit accumulation and transfer schemes (Watson, 2013).
6. Promoting innovation and good practice in teaching and learning; enquiring into and advising on the implications for quality and standards of new means of delivering educational programmes and awards.
7. Keeping under review the effectiveness and efficiency of different forms of institutional ownership, governance and management.
The allocation of these functions to specific agencies should logically follow the decision on the functions, but at the very least the monitoring of the impact of increased competition on quality or ‘value’ should be completely independent of both the Government and the sector.

Conclusion

Since the Government’s various market-based reforms are now being implemented, there is an urgent need to settle future regulatory arrangements for the sector. Even more pressing, however, is the need for a discussion about how much competition for undergraduate students and income is desirable, and on what aspects of institutional activity, as well as how and by whom we wish the benefits, costs and detriments of such competition to be identified and handled. So far from competition being seen as inherently beneficial, and even a form of (or substitute for) regulation, even a cursory knowledge of the impact of competition in higher education markets indicates quite clearly that a stronger non-market response will be needed if there is to be any possibility of retrieving or preserving the wider public benefits from our higher education system. Such a response should aim in particular to strengthen the conditions for local quality enhancement as the best, as well as the most efficient, means of improving the quality of student learning and academic achievement (Brown, in preparation).

Notes

1 There has also been a further report by HEPI (Hillman, 2014) which helpfully identifies some of the ‘pinch points’ that any new regulatory regime will need to resolve or take into account. These are: access to tuition fee loans; any future fee cap; access to research funding; renewal of degree awarding powers; the working rights of international students; VAT exemptions for private providers; regulation of external degrees; and the coverage of the OIA.

2 Marks (2007, p. 173) argues that market competition and academic control of standards are incompatible: judgements about resource allocation shift from being ‘authority-based (merit being judged by “the authorities”) to being market-based. See also, Brown, 2009 and 2013..

3 A recent account of the introduction of market-based policies in UK higher education since the early 1980s (Brown with Carasso, 2013) identifies a number of detriments to quality associated with increased competition and reduced resources. The main ones are reduced study time, what the Americans call ‘time on task’; increased term-time employment; pressure on pass rates and grade inflation; students less prepared for university-level study; increasing levels of plagiarism and other forms of cheating; declining levels of trust between students and lecturers; students adopting a more ‘instrumental’ approach to their studies; and a growing tendency for higher education to be valued for its ‘exchange’ value, especially in the labour market, at the expense of its ‘use’ value to the student (‘commodification’). The book also reports on a number of cases where institutional managements have overruled academic decisions in the interests of revenue and/or reputation: we do not know if these are just isolated cases or the tip of an iceberg (almost certainly, somewhere in between). Finally,
the book notes increased expenditure on things like student residences, cafeteria and athletics facilities, as well as marketing and branding, that are believed to attract students but which have only a remote relationship with educational quality. Such a tendency to focus on observable and measurable (rather than unobservable and immeasurable) quality indicators is found in other public markets where quality is hard to measure and provider competition has been introduced or increased (Propper et al., 2008). Such a diversification of effort into essentially promotional activities (Wernick, 1991 and 2006) reduces efficiency as a decreasing proportion of institutional revenue is actually devoted to student learning.

4 Many years ago, the US economist William Baumol (1982) showed how it is not necessary to have competitive markets in order to have competitive behaviour.

5 This is on the basis that not even market zealots argue that markets promote distributional equity: the allocation of resources and opportunities in accordance with socially accepted standards of fairness (see Brown, 2011, p. 11, for a discussion).

6 Of course, even the existence of subsidised loans and grants is a recognition of market failure: in an ideal world (or a BIS Chief Economist’s fantasy market), no subsidies would be needed for teaching or student living costs (or academic research).

7 This is not an endorsement of ‘risk-based’ quality assurance, the dangers of which have been well set out by Roger King (2011).

8 In the past, specialist institutions have received additional funding. Such funding could in future be envisaged for universities or colleges that fulfil a valuable local or access role but that are at risk from economic or positional competition from better funded and more prestigious institutions.
References


Introduction

The United Kingdom is in the midst of historic change to its higher education sector. There are three developments driving these changes. The first is devolution of policy responsibility for higher education to the administrations of Wales, Scotland and Northern Ireland. The second is the change in university funding in England triggered by the government’s 2011 higher education White Paper, *Students at the Heart of the System*[^1]. The third is the desire to create a more competitive market of higher education provision in England by encouraging the entry of new providers.

The second development, the change in the English higher education funding regime, has led to a protracted negotiation among the current regulators of English higher education to develop an appropriate regulatory architecture. To facilitate their discussions and provide advice to government, the principal higher education regulators for England created the Regulatory Partnership Group (RPG). This paper will provide a brief history of the RPG, comment on the RPG’s work to date, and identify emerging issues that require monitoring.

Background

In 2012 there was a dramatic change in teaching funding for England’s publicly funded universities (which will be referred to as the ‘traditional’ higher education sector for the purposes of this paper). Previously funded by grants from the Higher Education Funding Council for England (HEFCE), the traditional higher education sector will now receive most of its teaching funding through student fees of up to £9000 per year. Many traditional sector

[^1]: BIS. *Higher Education: Students at the Heart of the System*, June 2011
institutions continue to receive special purpose grants from HEFCE to help meet extraordinary costs, including subsidies for high cost subjects. However, the core teaching grants will be replaced by student fee revenue. The new English student fees are underwritten by publicly-subsidised student loans administered by the government-owned Student Loans Company (SLC).

The movement of most teaching funding from a grant of a government agency to a student fee has created a tension in the existing regulatory architecture of the traditional higher education sector in England: HEFCE will no longer be the primary source of funding for English universities while remaining the lead regulator of the traditional higher education sector. Typically such a dramatic change in funding flow would be accompanied by new legislation defining a complementary regulatory regime. The introduction of new legislation has not occurred. Due to the level of political and public interest in the issue of higher education student fees a new act is unlikely to appear before the next general election, scheduled for May 2015.

The SLC and HEFCE responded by creating the Interim Regulatory Partnership Group (IRPG), a forum to discuss regulatory challenges arising from the change in funding. HEFCE and SLC invited other organisations to join their discussions, including regulators and one coordinating sector body. These include the Quality Assurance Agency (QAA), the Office for Fair Access (OFFA), the Office of the Independent Adjudicator (OIA), and the Higher Education Statistics Agency (HESA). A group of sector representative bodies, the Department for Business, Innovation and Skills (BIS) and the Universities and Colleges and Admission Service (UCAS) were also invited to join IRPG as observers. The IRPG received the support of the government in a 13 June 2012 letter from the Secretary of State for Business, Innovation and Skills (BIS) and the Minister for Universities and Science addressed to the chairs of the SLC and HEFCE. The letter confirmed the government’s desire for the IRPG to have an ongoing role in examining and making recommendations on the

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2 Universities UK, the National Union of Students and GuildHE.
3 IRPG’s membership and terms of reference (current as of 1 October 2013) may be found here: http://www.hefce.ac.uk/about/intro/wip/rpg/membershipandtermsofreference/.
reform of England’s regulatory system. The Secretary of State and the Minister’s support for
the IRPG precipitated a name change from the IRPG to the RPG⁴.

Work streams

The RPG proposed and has undertaken a series of work streams representing pressing issues
relating to realigning England’s higher education regulatory architecture to reflect the change
in the flow and nature of teaching funding. These work streams include:

1) the operating framework;
2) the data and information landscape; and
3) new corporate forms and structures

These work streams have drawn on working groups, comprised of individuals and experts
from sector-based organisations and institutions. All of the work streams report to the central
RPG body which, in turn, communicates advice to BIS and Universities and Science Minister
David Willetts via letters and face to face meetings.

Briefly, the status of each of the work streams:

1) Operating framework
The RPG has published a document describing how the current higher education funding and
regulatory arrangements relate to the changing broader English higher education sector,
including both the traditional and emerging higher education providers. This document was
published in July 2013 and is publicly available through HEFCE⁵. According to the document
its purpose is to:

- provide confidence to students, staff and the public that England’s higher education
  providers are appropriately regulated within the constraints of existing legislation;

⁴ Letter from Rt. Hon Vince Cable and Rt. Hon David Willetts to Ed Smith and Tim Melville-Ross, 13 June
2012
⁵ See
http://www.hefce.ac.uk/media/hefce/content/about/introduction/workinginpartnership/rpg/operatingframework/o
perating_framework_for_HE_11072013_2.pdf. A short guide to the Operating Framework document was
published in October 2013 and may be found at
https://www.hefce.ac.uk/media/hefce/content/about/introduction/workinginpartnership/rpg/operatingframework/
Short%20guide%20to%20Operating%20Framework.pdf.

Higher Education Better Regulation Group
Symposium on the Future of Higher Education Regulation in the UK
12 March 2014, Woburn House, London WC1H 9HQ
• protect the reputation of the sector and confirm that the public interest and investment in English higher education is effectively safeguarded.\(^6\)

The operating framework document is the first time England’s higher education regulators have collectively produced a coherent, integrated explanation how the roles of various organisations fit together to form the fabric of higher education regulation in England. It is intended to be a work in progress and RPG assumes that it will require regular updating.

This diagram summarises the operating framework document:

Source: HEFCE [http://www.hefce.ac.uk/about/intro/wip/rpg/of/](http://www.hefce.ac.uk/about/intro/wip/rpg/of/)

2) Data and Information Landscape

There is a desire throughout the sector to streamline the collection of data, enable data sharing and improve the dissemination of information about the higher education system.

\(^6\) RPG. Operating framework for higher education in England, July 2013. Paragraph 23, p6. [https://www.hefce.ac.uk/media/hefce/content/about/introduction/workinginpartnership/rpg/operatingframework/operating_framework_for_HE_11072013_2.pdf](https://www.hefce.ac.uk/media/hefce/content/about/introduction/workinginpartnership/rpg/operatingframework/operating_framework_for_HE_11072013_2.pdf).
Although predating RPG’s existence, this work was incorporated into the group’s agenda because it complements regulatory reform.

Data management and improvement were referred to the RPG’s data and information landscape work group. The working group recommended the creation of the Higher Education Data and Information Improvement Programme (HEDIIP), a semi-permanent secretariat, to carry the data improvement agenda forward. HEDIIP is housed within the HESA, a UK-wide sector-based organisation, but has an independent chair. HEDIIP aims to produce a lexicon of data terminology to facilitate the sharing of data between organisations and regulators to reduce the data request burden on higher education providers, a Rosetta Stone of data terminology. HEDIIP recently produced an inventory of higher education data collections, now available online\(^7\), which found that universities have up to 508 individual lines of data reporting\(^8\).

It is currently unclear if HEDIIP will eventually take on responsibility for new data requests of institutions, perhaps acting as a switchboard (referring new data demands to existing collections) and/or a gatekeeper (to recommend acceptance or rejection of new data demands and burden).

4) New corporate forms and structures
An important aspect of the new English higher education sector is the emergence of new provider types, including private and for-profit providers and new collaborative arrangements between traditional and new higher education providers. This work stream was tasked with understanding where there are growth areas of new organisational types, defining these new organisational types, and identifying how they intersect with existing higher education regulation. This work group’s activity is ongoing. It includes developing a typology of new corporate types and forms, identifying lessons to be learned from other jurisdictions, and developing standards for the regulation of the emerging English higher education sector.

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\(^7\) See the HEDIIP website: [http://www.hediip.ac.uk/inventory-of-he-data-collections/](http://www.hediip.ac.uk/inventory-of-he-data-collections/)

The new corporate forms and structures working group’s priorities include:

- considering appropriate student protection measures;
- safeguarding the public interest, including public financial support of students and the higher education sector; and
- ensuring the reputation of the UK’s higher education sector remains high.

Issues

As one may imagine there are key issues that universities and other higher education stakeholders should monitor as the RPG’s work matures. I suggest there are four keys areas of interest:

1) **Data ownership**
   Increasing sharing of data amongst higher education organisations and regulators should reduce the data request burden on universities. However, it also may also decrease the control institutions have over how their data is used and by whom. While HESA and HEDIIP are acutely aware of and sensitive to these potential issues, universities and other providers may wish to monitor developments.

2) **Impact on new arrangements and collaborations**
   The RPG new corporate forms and structures work stream has identified many innovative developments in collaborative provision involving traditional higher education providers, including universities, and private sector interests. There is no interest in discouraging new initiatives providing students more choice and increasing the variety of higher education provision. However, given limits to predicting new directions in higher education provision, it is possible that the developing regulatory structure could have an unintended dampening effect on new collaborative arrangements. Again, institutions should remain aware of the emerging regulatory architecture to identify and report new regulatory challenges to collaborative arrangements.

3) **Impact of devolution**
   England’s regulatory system is not changing in a vacuum. The United Kingdom now has at least three distinct higher education systems, each with its own regulatory goals and structures: the Welsh, English and Scottish. Furthermore, ongoing changes in Wales and Scotland make it challenging to assess the impact of England’s reforms on the other UK
home nations and vice versa. Issues around student mobility already exist with respect to fees and student funding and one may expect a growing concern over accountability for public finance flowing across borders (for example, Wales’s policy of funding Welsh domiciled students studying in England to offset the fee differential between the two nations\(^9\)). One may also expect issues arising from a growing presence of new higher education providers in England and their impact on Wales and Scotland. Organisations with a UK-wide remit, such as HESA and the QAA, will be in a position to highlight widening gulfs between the three home nations’ regulatory approaches but to date little work has been done to grapple with the potential consequences.

4) **Impact of other reforms**

The RPG is not the only organisation considering the changing demands on English higher education regulation. Some have concentrated on what should be contained in a future Higher Education Act. There have been three recent papers, sponsored by different organisations, identifying weaknesses with the emerging regulatory framework and making recommendations on regulatory reform\(^10\). These papers focus on legislative reform, however, and acknowledge the RPG is forced to operate within the existing legislative framework.

There is one organisation examining the strength of regulation within the existing legislative framework from a consumer and market perspective. On 22 October 2013 the UK’s consumer and competition authority, the Office of Fair Trading (OFT), announced a ‘call for information’ on undergraduate higher education provision in England\(^11\).

Although the OFT is not focussing on the regulation of English higher education per se, its call for evidence on the English market must include regulatory issues. As a non-ministerial government department, whatever conclusions the OFT takes from its information gathering exercise will impact the relations between higher education

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9 On 19 November 2013, the Welsh Minister for Education and Skills, Huw Lewis, announced a review of Welsh higher education financing to be chaired by Professor Sir Ian Diamond. The review is intended to report to the Welsh National Assembly in 2016. For more information please see [http://wales.gov.uk/newsroom/educationandskills/2013/131119wideningaccess/?lang=en](http://wales.gov.uk/newsroom/educationandskills/2013/131119wideningaccess/?lang=en).


providers and their regulators, and among the regulations themselves, irrespective of the RPG’s work. The OFT call for information is likely to focus on three issues: competitive behaviour within the sector; provisions acknowledging the consumer rights of students; and issues around entry to the market for new undergraduate education providers\(^\text{12}\). The OFT is expected to report publicly in March 2014. Higher education providers and regulators should carefully consider any material the OFT produces resulting from the call for information.

**Conclusion**

It is likely that there will be a new Higher Education Act for England sometime after the next general election. However, the general election will not be until 2015 and any new legislation will take months to enact and possibly years to implement. Consequently, the regulatory systems put in place for English higher education now will likely remain until 2018 if not longer. It is imperative that institutional leaders and administrators in the traditional and emerging higher education sectors understand the implications of these changes, participate in the process, and identify issues before they become entrenched.

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