

UNIVERSITIES UK RESPONSE TO ‘SECURING STUDENT SUCCESS’

21 DECEMBER 2017

ESTABLISHING AN EFFECTIVE INDEPENDENT REGULATOR

1. Universities UK (UUK) welcomes the establishment of the Office for Students (OfS) as an opportunity to develop risk-based regulation for English higher education that protects and promotes the interests of students. To deliver for students, it is essential that the OfS supports the continued success of the UK’s world-class higher education sector, while its focus on the student interest should not come at the cost of the diversity and autonomy of the sector.
2. The main priority for the OfS should be establishing itself as a mature, independent regulator that protects and supports students through good quality regulation and judgement. We believe this will be dependent on constructive engagement and dialogue with both students and institutions. We are concerned that the prominence of short-term political priorities and the confrontational tone of some sections of the consultation documents could distract from the core task of establishing the OfS and developing an effective regulatory framework.
3. The OfS must avoid viewing the sector through a lens of ‘student interest versus institutional interest’. The OfS should support institutions to enhance their relationships with students, ensuring that their interests are aligned. The OfS should also recognise that students’ relationships with their institutions are complex and multi-faceted, and include participation in decision-making, not simply receiving a service. UUK is committed to working with the OfS to deliver the complex task of establishing an effective independent regulator that supports this relationship.

EXECUTIVE SUMMARY OF KEY POINTS

4. Our response sets out UUK’s priorities for the OfS. This includes:
 - i. clarifying the short- and medium-term priorities for the OfS
 - ii. setting out guiding principles that have informed our response to the consultation questions
 - iii. updating the co-regulatory relationship with the sector

5. The response does query the interpretation of the Higher Education and Research Act (HERA) in some places. It is essential that the OfS and registered providers are clear about the scope of the OfS's remit and powers, now, and into the future.
6. In summary, UUK proposes that the OfS should:
 - a. Ensure that it protects students, and tax-payers, from poor quality, transient or negligent providers that do not place a high-quality education at the heart of their mission and operation across all categories of registration.
 - b. Deliver a smooth transition from the Higher Education Funding Council for England (HEFCE) to the register that avoids unnecessary disruption to providers and students, by clearly setting out its immediate and medium-term priorities.
 - c. Make explicit reference to the benefits of institutional diversity and autonomy to student choice and outcomes as part of its regulatory objectives, and in line with the statutory duty on the OfS.
 - d. Commit to no new general conditions of registration in the first two years, and clarify the process and steps before which new general conditions may be added, or how expectations of existing conditions are revised in the future.
 - e. Recognise the co-regulatory architecture embedded by the HERA in relation to quality and standards, and commit to the outcomes of the current review of the UK Quality Code.
 - f. Ensure that contextual judgements of institutional compliance are embedded in robust processes, including roles for the designated quality and data bodies and the student voice panel.
 - g. Ensure that it considers the findings of the independent review of the Teaching Excellence Framework (TEF) and subject level pilots before making the TEF a condition of registration. There should also be a substantive role for the sector in the TEF's future development.
 - h. Clarify its role in relation to freedom of speech. A regulatory role would be outside the OfS's statutory remit of promoting competition, choice and value for money for students, and would not be based on the HERA or the 1986 Education Act.

7. Given the significance of this reform, UUK also believes it would be appropriate for there to be an independent review of the OfS commencing in September 2022.
8. UUK recognises the importance – to students and institutions – of ensuring a smooth transition and future development of the. UUK will continue to support the reforms by:
 - a. supporting our members to ensure a smooth transition to the register and the development and implementation of the OfS itself, its strategy and priorities where appropriate
 - b. working with the OfS and the Committee of University Chairs (CUC) to ensure that the proposed condition on transparency of senior pay is effective, and ensures that the public can have confidence in the probity of institutional governance arrangements and accountability mechanisms
 - c. working with the OfS to update and support the co-regulation of quality and standards, and to embed the voluntary principles of good ethical behaviour that underpin the OfS's regulatory framework more generally
 - d. supporting the maintenance of a UK-wide approach to quality and standards through the UK Standing Committee for Quality Assessment the Quality Assurance Agency (QAA) and the devolved national sectors.
 - e. working with our members to help develop good practice on student protection, including student contracts that support local accountability and partnership between students, universities and their representatives and advisors

PRIORITIES FOR THE OFFICE FOR STUDENTS

9. **The top priority for the OfS should be to protect students from poor quality, transient or negligent providers.** The HERA intended the OfS to be a risk-based regulator that should use its powers to intervene where necessary. It is essential that the OfS focuses its resources and activities on providers where there are demonstrable risks that they do not meet the OfS core statutory duties, including where there are concerns:
 - a. that students' rights are not being protected
 - b. that expectations of academic quality and standards are not being met
 - c. that the needs of students from different backgrounds are not being served
 - d. about the integrity, transparency and sustainability of institutional governance
10. **The OfS should focus on establishing the register as a robust and proportionate baseline in its first two years of operation.** This includes registering existing HEFCE funded providers and the wider range of new providers that are expected to join the register. The OfS needs to establish its credibility as an effective and independent regulator across the sector. The current framework asks for a high degree of trust in the quality of its contextual judgements that precludes an assessment of the burden of being registered by the OfS. How the OfS intends to make use of specific and ongoing conditions of registration into the future is also unclear.
11. **The OfS should establish an effective and accountable relationship with the sector.** The OfS will be responsible for complex policy agendas, and will be regulating autonomous providers that offer a complex developmental process of support and challenge that has life-long impacts for students. The consultation says that the OfS will be accountable through the registration fee to registered providers. We estimate that UUK members will be responsible for over 50% of the OfS's subscription income. UUK recognises that the OfS stance toward the sector will be different to HEFCE. However, it is important that there is a dialogue to explore where this can, and should, evolve to support our shared and respective objectives.

12. **In the longer-term the OfS should work with the sector to support wider policy agendas.** There is a risk that a narrow focus on students will not address the wider public interest in higher education. Aspects of the OfS's role are ill-suited to the powers associated with the register or market mechanisms. For example, the OfS is expected to play a role in aspects of the industrial strategy and skills agenda. This will only be successful through engagement with institutions that are rooted in local, regional and national relationships outside of the OfS's remit and mission. It will therefore be essential for the OfS to work with the sector to understand how its own work and the policy agenda of the government can be delivered effectively. For example, there is no other agency responsible for supporting institutions' local and national economic and civic contributions.
13. As the OfS develops its role, a key challenge will be to ensure the establishment of clear and productive relationships with the wider range of bodies that are relevant to registered providers. It is essential that the relationship with UK Research and Innovation (UKRI) continues to support the UK's world-leading research base. This should include maintaining a joined-up approach to the granting of research degree awarding powers that contribute to the UK research base, ensuring that conditions of registration for postgraduate and research-focused institutes are proportionate, and ensuring that there is appropriate sharing of information on provider risks.

GUIDING PRINCIPLES OF THE UUK RESPONSE

14. Our response to the consultation questions aims to support the development of an effective and proportionate regulatory framework now and into the future. We recognize the complexity of establishing a new regulatory framework. However, aspects of the consultation raise concerns about the future development of the OfS as a proportionate and risk-based regulator that is based on the HERA. As the OfS develops its approach to the regulatory framework now and into the future, our responses aim to support an approach that:

- a. **Is grounded in the spirit and letter of the Higher Education and Research Act.** The OfS is not HEFCE; it has stronger but more defined powers that should be exercised based on the risk of individual providers. The new model should not be used as an opportunity to lower the quality of the sector to encourage new entrants and competition. Neither should the OfS simply use general interventions across the whole sector as its default approach to regulation.
- b. **Makes a positive contribution to the UK higher education sector.** The OfS will be regulating a sector that has a world-leading and justified reputation for excellence. Student satisfaction in the sector is high; 84% of respondents to the latest National Student Survey (2017) said they were satisfied with their course. UUK's own research found that 87% of students felt their university treated its students fairly, 62% think their university cares about their best interests (compared to 20% for banks and around 8% for utility companies) and 79% value the relationship they have with their university.¹
- c. **Protects the unique relationship between institutions and students.** It is important that students are supported to exercise their rights, and UUK welcomes an OfS role in this area. However, the OfS, students, or institutions, should not treat higher education as a narrow, transactional, quantitative exchange. Good quality higher education is a supported and challenging process of educational and personal development in an academic community. The OfS can support this relationship but must also recognise that it does not represent students.

¹ Education, consumer rights and maintaining trust: what students want from their university (UUK 2017)

- d. **Is supportive of the wider role and function of universities that bring benefits to students, particularly research.** Institutions compete on a global scale for students and staff. Academic research productivity is 3.6 times the world average and the 2014 Research Excellence Framework (REF) rated 76% of UK research as ‘world-leading’ or ‘internationally excellent’. It is essential that the work of the OfS does not undermine this success.
- e. **Is founded on a mature and voluntary relationship with autonomous providers.** We welcome the commitment to the development of the OfS as a mature regulator that encourages good ethical behaviour among registered providers. We welcome the OfS’s risk-based approach that is founded on strong autonomous institutional governance and arm’s length monitoring of risks. UUK will work with the OfS and our members to help establish a mature relationship and support the co-regulatory approach to quality and standards.
- f. **Is honest about the limits of market competition for delivering the OfS’s and the government’s objectives, and the benefits of a mature relationship with well governed high-quality providers.** Competition in the sector can have merits, but at the same time the HERA also recognises collaboration as an important feature. UUK welcomes the consultation’s acknowledgement that the higher education sector is not a conventional market. However, this creates risks that the regulatory burden of the OfS will increase due to the failures of its own market strategy.
- g. **Is coherent and joined up.** UUK welcomes the focus on a robust regulatory baseline and the role that tools such as the TEF can play in supporting positive student outcomes. UUK also supports an engaged role for the OfS to support the delivery of policy priorities where they align with the OfS’s core statutory objectives. However, it is essential that the OfS is also clear over how and when it will use different powers at its disposal to achieve statutory and policy objectives. This includes clarifying when the general registration conditions are appropriate and proportionate or where other avenues should be used.

CO-REGULATION

15. An updated approach to co-regulation will be key to the OfS's success as a regulator. We recognise that the transition from HEFCE to the OfS changes the nature of the relationship with institutions. A risk-based approach to regulation that is founded on effective and transparent institutional governance creates welcome opportunities for autonomous institutions. However, the Act also embeds a coregulatory relationship that will be key to the OfS's success in promoting the student interest and credibility within the sector. The OfS should:

- Engage with sector representative groups to clarify and update co-regulation to support effective regulation that is not currently well suited to the register or market mechanisms.
- Work with sector representative groups to consider the opportunities to further the student interest and enhance the higher education sector provided by wider policy agendas, including the industrial strategy. Although it is understood that the OfS will not undertake policy development in the same way as HEFCE, we urge the OfS to take responsibility as part of its duty to promote collaboration where appropriate in the student interest, to identify and coordinate sector engagement with current and emerging policy issues and agendas.
- Recognise the co-regulatory elements established by the Act and the benefits that these will bring to the OfS's mission to be an effective and proportionate regulator. This includes:
 - the voluntary principle at the heart of OfS registration
 - the role of designated quality and data bodies that are representative and have the confidence of the sector, and the requirement on the OfS to protect their independence and expertise
 - the limitations placed on the OfS in relation to academic standards and the government's stated commitment to maintaining a co-regulatory approach to quality
 - the expectation that registration fees will require the OfS to be accountable to the sector for the cost of regulation

- Recognise that providers are embedded in a wider set of regulatory and governance relationships that includes:
 - the Competition and Markets Authority (CMA) and regulation by Professional, statutory, and regulatory bodies (PSRBs) and the Department of Health
 - a range of legal duties, including equalities and public order duties
 - governance of student behaviour, including academic practice and personal conduct
- Recognise that the OfS is a regulator focused on the risks to students but that it does not represent students, nor is it equipped to fulfil this role. Individual student unions and the National Union of Students (NUS) perform this role.
- Commit to ensuring that the student voice panel is given independence over its agenda, the scope to challenge the OfS board publicly, and is supported by sufficient resources.
- Ensure that the membership of the student voice panel includes sufficient representation from individuals with experience of representing students, including appropriate representation from the NUS.

16. UUK recognises that the new system will also require the support of the higher education sector. In this respect UUK also recognises that it does not represent the whole sector or providers that are expected to join the system. Nevertheless, UUK does represent a significant part of the sector and will commit to:

- a. supporting effective OfS regulation by working with the OfS and our members that are registered with the OfS to inform key decisions and their implementation
- b. working with the designated quality and data bodies to ensure that they support the OfS's statutory responsibilities and the wider policy agenda in an efficient and effective way
- c. working with other sector representative groups to support the development of sector views that represent the diversity of the sector, including the expected entry of further education colleges and 'alternative providers'.

RESPONSE TO QUESTIONS

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

Partly agree.

UUK supports the OfS's focus on risk to students, but the OfS should recognise the positive value of autonomous and diverse providers in the framework. The OfS should:

- a. include specific reference to the benefits of institutional diversity and autonomy in support of its own regulatory objectives
- b. consider how it will ensure that regulatory conditions and market incentives avoid unintended convergence or limits on autonomous decision-making
- c. consider how it will work with providers not served by proposed conditions or indicators, such as postgraduate only institutions or institutions with unique organisational models

The OfS has a general statutory duty to protect institutional autonomy (Section 2). However, the OfS should not see this duty solely in terms of as a limitation on its remit to intervene. Quality education, student choice, institutional diversity, competition, collaboration and international competitiveness are all built on institutional autonomy. Autonomy allows institutions to develop independent strategies and educational relationships with their student body in line with their mission and pedagogical ethos.

We welcome the OfS's commitment to giving good providers with robust autonomous governance the space to pursue their own strategies. However, the OfS should also consider how it may inadvertently or indirectly undermine institutional autonomy and diversity. For example, the increased range and volume of conditions on governing bodies or incentives of the TEF may restrict the ability of institutions to pursue independent institutional strategies.

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?

We welcome the shift in focus away from simply widening access and towards student success and the wider student lifecycle, and note that the careers strategy (December 2017) states that the Department for Education (DfE) intends to ask the OfS to expect to see more being done to engage students from disadvantaged backgrounds with their careers service. The OfS should:

- a. ensure that universities are able to tailor their activities in line with what 'works' and recognise that the current evidence base is not yet robust enough to support the use of sanctions in response to a perceived lack of progress being made
- b. ensure that OfS interventions and sanctions are grounded on rigorous, evidence-based approaches to support sustainable improvements in access and student success, and its actions are supported by rigorous evaluation of progress
- c. support sustained change in access and participation by supporting collaboration between universities, schools, colleges and employers in ways that are responsive to local needs

UUK has developed a business case for a higher education Evidence and Impact Exchange, and we are pleased to see reference to this new, independent body in the social mobility action plan, *Unlocking Talent, Fulfilling Potential*. The objective of the Exchange will be to enhance the sector's efforts to improve social mobility by bolstering the development and application of high-quality and effective evidence, and recognising that the use of evidence to inform policy and decision making on social mobility initiatives across the higher education student lifecycle remains underdeveloped. The exchange can help to guide strategy, and activities of providers and the OfS.

Universities must be able to tailor their activities in line with what 'works', and evidence remains too patchy in some areas for sanctions to be an appropriate response to a perceived lack of progress being made. While it is right that there should be pressure on universities to do more where they can, impact takes time to measure and evaluate. The Evidence and Impact Exchange has a central role to play in this regard, and UUK recommends that, once

established, the Exchange's work intersects with the work of the OfS and the Director for Fair Access and Participation.

The OfS should ask providers to demonstrate how they engage with the Exchange in the pursuit of developing effective initiatives. This should help universities to target their investment in improving access and outcomes even more effectively. We also welcome the recognition in the consultation document that agreeing plans with individual providers on a bespoke basis enables innovation and progression based on local partnerships with schools and employers that respond to local needs.

Funding for widening participation represents another lever at the OfS's disposal. As far as possible, this should be concentrated on evidence of what 'works', and priority areas for widening participation and access. Universities have previously welcomed the focus on particular areas of the lifecycle as this helps to drive and direct institutional efforts.

UUK supports a continuation of targeted funding for collaborative activity between institutions, such as through the National Collaborative Outreach Programme (NCOP). The Social Mobility Advisory Group found that there is clear evidence to suggest partnership approaches to widening participation are more likely to be effective.

Through the continuation of funding for collaborative activity, the OfS can help to ensure that this partnership working is not hampered by increasing competition. Change is achieved when the education sector, the government, employers, students' unions and the charitable sector work collaboratively to provide greater coordination and coherence at a policy, regional and institutional level. A competitive environment could lead to less collaboration between institutions due to increased competition for student numbers, particularly at the local level.

The allocation of NCOP funding is an example of where the OfS will need to support collaborative activity alongside its role to encourage competition among providers. It will be important for the NCOP and other collaborative initiatives to continue to receive strong support from the OfS, and for the OfS to ensure it does not diminish the importance of these activities due to its responsibility for encouraging competition.

The OfS will also rely on data as a lever to improve access and participation and to identify risk. It will be important for the regulator to understand risk in this context, within the diversity of the system. This means taking into account the range of data sources – including TEF data on disadvantage, UCAS equalities data, and the UK Performance Indicators (UKPIs) – that exist to form a contextualised understanding of an institution's position in relation to its widening access and participation activities. Through the

benchmarks produced via these publications, individual institutions can also identify where resource needs to be focused and where their own risk lies.

The OfS should also consider how it can encourage and coordinate sector engagement with the UUK framework on mental health. Student mental health is an example of where the sector can show leadership in addressing an emergent policy issue that has a direct impact on student outcomes and is clearly in the student interest. While we do not expect the OfS to take a lead in policy development, it will have an important role to play in identifying issues in consultation with the sector and students, and coordinating and encouraging action at sector level to address these.

Mental health has a significant bearing on student outcomes, including their likelihood of dropping out, their attainment and throughout the rest of their lives. The framework is intended to act as a focus for good practice and to encourage higher education leaders to see mental health as a strategic priority, and to adopt a 'whole-university' approach, embedding it across policy, culture and practice. This would include working with the sector and government agencies including Public Health England and the Office for National Statistics to encourage better data on student and staff wellbeing in higher education including more robust reporting of student suicide.

Research by the Institute for Public Policy Research indicates that reported levels of mental health problems and demand on NHS and university-provided services are increasing among students in UK higher education. The recent green paper *Transforming children and young people's mental health provision* will designate a new national strategic partnership focused on improving the mental health of 16–25-year-olds by encouraging more coordinated action, experimentation and evaluation.

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?

Partly agree.

The Office for Students may include initial or ongoing conditions in relation to quality and standards (Section 13). In order to ensure that conditions on quality and standards operate effectively and in a way that gives the sector confidence in the OfS judgements.

The OfS should:

- a. Commit to the co-regulatory approach to defining the baseline for quality and standards that was made at the outset of the HERA and is embedded in the Act.
- b. Be accountable for how it uses the Quality Code and the Framework for Higher Education Qualifications (FHEQ). It should commit to the process and outcomes of the current review of the Quality Code that has been initiated by the UK Standing Committee for Quality Assessment at the request of HEFCE.
- c. Recognise the specific constraints around standards that were put in place by the Act to protect the diversity and autonomy of institutions and the integrity of a UK-wide sector. UUK would have significant concerns about how the OfS could reasonably implement conditions C2 and C3 without the ongoing agreement of the sector.
- d. Extend the principles of engagement set out on p. 129 to the designated quality body and recognise its role as bodies with expertise that is representative of the sector, and commands its confidence. The designated quality body should play a substantive role in the quality assessment system in the context of the relationship established by the HERA.
- e. Recognise the UK Standing Committee for Quality Assessment as the body that will recognise sector standards and the quality baseline on behalf of the UK sector and help manage divergence between national approaches to quality and standards.
- f. Recognise that the UK Standing Committee is a voluntary UK- ide committee, and that higher education is a devolved matter outside of the OfS's remit. UUK is fundamentally committed to a UK-wide approach to quality and standards as the cornerstone of a UK higher education sector.

- g. Clarify the role that the Quality Assessment Committee, as required by HERA, will play in supporting the OfS interpretation of risks and measures in relation to quality and standards.

UUK will:

- a. Work to support the UK Standing Committee as a viable UK-wide forum for coordinating national approaches to standards. This includes working to ensure that the sector fulfils its responsibilities under section 13.3 and 23.3 of the HERA in recognition of the importance of clear sector standards for the purposes of conditions C2 and C3.
- b. Work with our members to help manage collective risks around the confidence and integrity of academic standards in an increasingly diverse and competitive sector. This includes working with the UK Standing Committee to clarify degree classification boundaries and to support the OfS and the designated quality body to undertake steps to manage the drivers of grade inflation.

An increased focus on student outcomes in the quality assessment system is welcome if done appropriately. The OfS should recognise that good student outcomes are the result of a supported process of personal and academic development in a learning community. It is essential that the OfS avoids an immature and narrow focus on student outcomes to the exclusion of in-depth understanding of quality and standards. This would be a dereliction of its statutory and regulatory objective of securing value for money for students. Students do not define their own learning objectives in narrow quantitative terms. We welcome an approach that:

- Uses quantitative student outcomes, including retention, satisfaction, attainment and labour market destinations as lead indicators to support on-going contextual assessment of whether an institution is likely to meet conditions relating to quality and standards, accounting for an institution's mission, student body and location.
- Where questions arise, engages providers in meaningful dialogue focused on student outcomes, informed by an understanding of good academic practice, through the independent designated quality body that is representative of the sector and commands its confidence, alongside the provider's own view of its mission and context.

The government clearly committed to a co-regulatory approach to quality and standards and embedded this model into the Act. The technical note on quality assessment and market entry reassured parliament and the sector that the approach set out in the Act maintained:

'the existing co-regulatory approach to determining the baseline requirements for quality and standards, currently set out in the expectations of the UK Quality Code and including the sector agreed Framework for Higher Education Qualifications of UK Degree-Awarding Bodies.'

Higher Education and Research Bill: Technical note on market entry and quality assurance (DfE, 2016)

The sector has a legitimate interest in how the Office for Students intends to use the Quality Code and FHEQ in support of its statutory duties. The Quality Code and the FHEQ are important assets that have been developed by the UK sector over time. They are recognised internationally as a cornerstone of a high-quality UK higher education system and should be administratively and visibly distinct from the government and the OfS. The OfS will play a crucial role in monitoring the risk that providers do not meet these reference points. It is important that the OfS accepts the outcomes of the current review being undertaken by the UK Standing Committee for Quality Assessment for this approach to work effectively.

There is a manageable risk of divergence between the national approaches to quality assessment. In England, UUK welcomes the shift toward a mature risk-based approach that focuses on student outcomes and believes this can be reflected in a revised quality code. At the same time, UUK is also committed to a UK-wide system and it will be important to reflect the respective priorities of the different nations. This includes maintaining a single quality code, comparability between qualifications frameworks and consistency in their application in the different nations.

The co-regulatory model also includes the provision for a designated quality body that is representative of the sector, and commands its confidence. This was intended to ensure quality assessment remained distinct from the OfS. UUK's support for reform of the quality assessment system has always been predicated on an ongoing but reformed role for an independent quality assessment body.² The technical note confirmed that the Act:

² Future approaches to quality assessment in England, Wales and Northern Ireland: UUK Response to the consultation by the national funding councils (2015)

'would enable the OfS and the designated quality body to work together more collaboratively than has been possible in the current regulatory environment. This will ensure that future development of the quality assessment system is undertaken through a co-regulatory approach whilst ensuring that it continues to meet the needs of OfS as a regulator.'

Higher Education and Research Bill: Technical note on market entry and quality assurance (DfE, 2016)

UUK supports the Quality Assurance Agency's application to be the designated quality body. Schedule four of the Act allows the OfS to give the designated quality body general directions about the performance of its assessment functions while also protecting its expertise and impartiality. Given its role, the designated quality body should help the OfS to ensure that the monitoring of risks and the use of specific conditions in relation to quality and standards are coherent and effective. The QAA operates across the UK and will play an important role alongside the UK Standing Committee on Quality Assessment to help manage the risks of national divergence.

The Act also requires the OfS to set up a Quality Assessment Committee that has experience or is involved in providing higher education, to advise on its functions in relation to quality and standards (Section 24). This is not mentioned in the consultation and its role should be clarified to give the sector confidence in the OfS's approach to quality and standards and its judgements.

It is important that the sector maintains international comparability in the standards and quality of higher education qualifications. For this reason, we suggest a rewording of objective 2 to recognise the importance to students that their qualifications are internationally recognised to read *'All students, from all backgrounds, receive a high-quality academic experience, and their qualifications hold their value over time in line with internationally-recognised standards'*. The international standards might include the Standards and Guidelines for Quality Assurance in the European Higher Education Area.

We note the proposal to introduce a 5% random sampling for quality assessment. It is essential that this process remains a light touch assurance tool for the OfS to assess the alignment of its risk monitoring process with its regulatory baseline. It should not become a full cyclical quality review.

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?

No.

An OfS focus on GPA would be a distraction from its immediate priorities and the issue of securing good outcomes for students and protecting the value of qualifications. Institutions should be free to adopt the GPA if they feel that there is merit, however there is little or no evidence that students, employers or institutions would welcome the widespread introduction of GPA. It is not a single method of classification and it is not clear what problem it solves. For example, patterns of grade inflation are just as pronounced in the United States of America where GPA is used.

UUK is committed to working with sector partners and national funders and regulators, including the OfS, through the UK Standing Committee on Quality Assessment to continue to protect the high value placed on a UK degree and classification system. UUK has worked with sector partners and the UK Standing Committee to clarify practice on degree algorithms as one part of the process for calculating final awards.

UUK will continue working with the UK Standing Committee, sector partners, employers and students to clarify degree classification boundaries and assess drivers of inflation and improvement. This work will identify – where necessary – proportionate mitigating actions in the context of a distributed, diverse and autonomous UK-wide system. This will include consideration of the following questions:

- To what extent is the trend driven by improvements in student attainment, as well as inflationary assessment and classification practices?
- What is the relationship between the sector's criteria-based assessment and norm-referenced perspectives of student classification?
- How can the management of academic standards respond to, and reflect, legitimate improvements in student attainment over time?
- How can the benefits of autonomy and diversity be balanced against the management of collective risks and comparability?

This work is scheduled to report in September 2018 and we will be regularly liaise with the OfS and DfE alongside other stakeholders on progress and the expected outputs.

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?

No.

It may be more appropriate to consider specific conditions of registration where the CMA identifies concerns about provider compliance with consumer regulations. Conditions E1 and E2 already creates a general expectation that providers are compliant with their statutory duties, which includes consumer rights regulations. This could be made more explicit in the guidance.

There is a legitimate role for the OfS to play in assuring itself that registered providers protect the rights of their students. At the same time, the relationship between the CMA and the OfS was the subject of proposed amendments during the passage of the Act, and it is not entirely clear the consultation has clarified the relationship. To support the protection of students the OfS should:

- a. Ensure that the advice and interpretation of consumer rights regulations by the OfS is consistent with an independent CMA view, so that it does not undermine institutional compliance with the law or increase complexity and burden.
- b. Clarify whether the OfS will assess provider risks based on CMA advice, and the extent to which it will take independent legal advice on the compliance of registered providers.
- c. Consider emphasising compliance with consumer rights regulations as part of conditions E1 & E2, and apply specific conditions of registration where problems have been identified with provider compliance – or clarify the level of expectation and subsequent interpretation of the self-assessment of compliance for initial registration and apply this condition to all registered providers.
- d. Recognise the importance of student partnership, including student representation, to protecting and promoting student interests as part of a collaborative educational relationship.
- e. Ask for details of independent student representation and advice and guidance in initial registration. Student unions perform an essential role in supporting students in their relationship with their university.
- f. Recognise that it already requires all registered providers to subscribe to the Office of the Independent Adjudicator (OIA) as an alternative dispute resolution

model that better reflects the nature of the relationship between students and university.

- g. Ensure that any future work on student contracts is based on evidence of need and is consistent with independent CMA guidance, and focus on how contracts can be developed and embedded in local partnerships.

All registered providers have a legal obligation to be compliant with consumer rights law. Self-assessment of provider governance does not appear to be an effective use of the OfS's – or provider's – resources. For condition E4 to work more information would be needed on:

- the evidence is required or expected from providers
- the level of detail required
- how this information will be used

In its 2016 review, the CMA welcomed the efforts and progress made by the sector in updating rules, regulations and practices. We believe that 93% of UUK members have conducted reviews of their terms and conditions, complaints process, and presentation of information following publication of the CMA guidance. In addition, HEFCE, in collaboration with sector groups, published guidance in 2016 on presenting course information as part of the review of the Key Information Sets and Unistats, which was core to the CMA's material information requirements.

The OfS should take care not to conflate consumer regulation with more general debates about value for money. Consumer rights regulations set out an expectation that students have access to appropriate information about their studies to inform their choices, that the relationship is founded on fair terms and conditions, and that they have access to fair complaints processes. Material information should focus on the types of information that students use or want to assess and compare whether a programme of study is right for them.

The OfS should also take care not to unnecessarily restrict what institutions offer to students. Poor regulation by the OfS and the CMA may stifle teaching and curriculum innovation, even when there is demonstrable student need and/or support. For example, our research suggests that changes to courses that are handled effectively, including upfront information and explanation, have little effect on student satisfaction. Our report on [education and consumer rights](#) found that only 15% of students thought that a university should not be able to make changes to a course.³ Equally it is essential that students have

³ [Education, consumer rights and maintaining trust: what students want from their university](#) (UUK 2017)

access to representation and advice to help them hold their institution to account where necessary.

Condition E4 should not be used to introduce template student contracts. It is unlikely that students would ever be well served by a template contract as a general on-going condition of registration. Where problems with a provider's terms and conditions are identified by the CMA these can be addressed by specific conditions of registration where necessary.

UUK will continue to work with our members to explore good practice on student contracts. This will follow the principles that effective contracts should be clear, fair, consistent and quantifiable. This includes clearly outlining the circumstances and arrangements when courses may change. Contracts should be:

- developed and implemented locally in line with the priorities of the student body and integrated into the relationship with student representatives and advisors
- compliant with consumer rights regulations and CMA advice
- embedded in institutional and OIA dispute resolution processes
- incorporate other elements that govern the relationship between institutions and student, including:
 - student charters
 - academic and other institutional regulations
 - student loan and tier four compliance
- Incorporate other elements introduced by the OfS, including student protection plans and transfer arrangement

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

Students place a high priority on outcomes, including ‘a good degree’ and subsequent employment. However, our research has also shown that in practice student perception of value for money means much more than this. Students may value the wider experience beyond the core academic curricula, including the range of personal development opportunities. Students are not homogenous, and it is essential that institutions are free to respond to their diverse expectations and priorities. The OfS should:

- a. Protect students and the taxpayer from the cost of fraudulent, unsustainable and poor-quality provision.
 - b. Treat value for money as a strategic objective delivered by autonomous and diverse institutions that place high-quality higher education at the heart of their mission.
 - c. Not treat value for money as a narrow transaction between student and institution and recognise that students also value the benefits of studying in a broader academic community.
 - d. Recognise the different stakeholder perspectives in the notion of value for money and not use selective interpretations to justify interventions or policy objectives.
- a. Work with institutions to develop value for money statements to provide students with information about how an institution invests money received from students and other sources to support the student experience.
 - b. Not restrict the flexibility of institutions to make decisions over the use of grant and fee income, particularly in meeting the costs of provision across the range of courses offered.
 - c. Ensure that its regulatory strategy remains proportionate and risk-based and that this is reflected in the registration fees levied on providers

Ensuring that students and the public have confidence in the value of higher education is a goal that Universities UK shares and supports. It is essential that the OfS does not approach its statutory duty to secure value for money through a reductive transactional model. Debates about value for money, including the current consultation, include different perspectives, such as:

- a. A student's perspective of value for money based on their personal objectives, expectations, subsequent experience, attainment and how costs are met through the student support system.
- b. A graduate's perspective of the direct and indirect role that their experience of studying at university – and the skills and knowledge developed through their degree – has played in their subsequent personal development and labour market experiences.
- c. Taxpayers' interest in the rate of return on the student support system and the contribution to the skilled workforce, economic productivity and social mobility and personal and social benefits.

Students value a personal, collaborative and supportive relationship with their university, and four-fifths of respondents to research conducted by ComRes on behalf of UUK said that they valued their relationship with their university.⁴ Just under half viewed themselves as a customer of their university in contrast to 94% for a bank or hotel. Students who say their degree offers good value for money are more likely to say their university cares about their best interests. Similarly, 93% of those who said their course is good value for money also said their institution treats its students fairly.

Our research also showed that student perceptions rightly include their study experience – such as good facilities, high-quality academic staff and personalised feedback. In 2015–16, universities spent 56% of their income on teaching and research in academic departments, 12% on maintaining campuses and 9% on libraries, museums and IT. This aligns with what students told us were the top reasons for their course being good value for money: good facilities available for studying; directly helpful to future careers; high-quality lecturers and tutors; high-quality course content and an academically challenging course.

Employment is a key motivator when applying to university. In 2016, 87% of graduates were employed compared to 70% of non-graduates, and the rate of unemployment was 3% compared to 6% (DfE, 2017). Working age graduates (aged 16–64) were earning, on average, £9,500 more than non-graduates, and the net financial benefit over a lifetime is estimated to be £167,000 for men and £252,000 for women. 88% of graduates are very or fairly satisfied with their career, 85% of 2012–13 graduates believe their degree was required, important or helped them obtain their current job, and 76% believe that their higher education experience prepared them for or progressed their career.⁵

⁴ [Education, consumer rights and maintaining trust: what students want from their university](#) (UUK 2017)

⁵ Department for Education (2017), Graduate Labour Market Statistics 2016 25 Department for Business, Innovation and Skills (2013), The impact of university degrees on the lifecycle of earnings: some further analysis; HESA (2017), Longitudinal Destinations of Leavers from Higher Education Survey 2012-13

Universities have also responded to a more competitive environment by increasing institutional efficiency and effectiveness to invest in the student experience. In 2015 the UUK Efficiency Task Group reported that universities consistently met efficiency targets set in successive Comprehensive Spending Reviews (£1.38 billion of efficiencies were reported against a cumulative target of £1.23 billion).⁶ HEFCE reported in March 2015 that efficiencies totaling more than £1 billion were delivered in the previous three years.

More clarity is needed on what is expected from the value for money statements, including how students will use them and how the OfS expects to use them. Requiring provision of a granular breakdown showing how fee income is invested is not a simple exercise however. In addition, this should not be used to constrain the ability of institutions to invest their funds in an efficient manner across their core activities to deliver benefits for their student body. This would diminish the overall student experience and value that the sector delivers.

There is no reference to working with students to understand what students and their representatives want from such information. Work is already underway across the university sector on integrated reporting. Any new requirement should therefore build on this work and the good practice it may identify. UUK's work in this area, *University spending explained*, is an example of how this type of information can be displayed in an engaging and interesting format, and we have suggested that institutions may wish to consider how to incorporate this kind of information into their own student contracts.⁷

The OfS also has a statutory duty to be efficient, effective and proportionate. UUK supports a regulatory strategy focused on strong and transparent institutional governance with less engagement for low-risk providers. It is not immediately clear what a low-risk provider is receiving in return for an annual subscription fee of up to £120,000 per year. In the interests of transparency, the OfS should provide a breakdown of its cost base so that providers can be assured that they are receiving value for money. It would be inappropriate for low risk providers to underwrite the cost of regulating higher risk providers. It will be important for the approach to subscriptions to be reviewed after the transition year in order to move to a risk based approach.

⁶ Efficiency and effectiveness in higher education: a report by the Universities UK Efficiency and Modernisation Task Group (UUK 2015)

⁷ University spending explained (UUK 2017)

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?

Yes.

UUK recognises the importance of public confidence in the transparency and probity of institutional governance. However, the proposals as currently formulated risk capturing a large number of senior academic staff, particularly in medical and business schools. We believe the condition of registration is most properly focused on university leaders and members of executives, not on academic staff. Publication of the pay and job descriptions of these individuals risks feeding an inflationary spiral in salaries for the most sought after academic – as well as senior professional – employees currently in UK higher education. We are committed to working with the CUC to develop the remuneration code of practice and will recommend to our members that they publish annual statements of how they have complied or otherwise achieved alignment with the principles of transparency and probity in the setting of executive pay.

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.

It is essential that the OfS understands the impact of its decisions in the context of different social groups and protected characteristics. The OfS is right to challenge attainment gaps and variable retention rates, but at the same time should also take a mature and contextual approach and should not penalise institutions by virtue of the background of their students. For example, labour market experiences may be affected by gender, ethnicity, disability and other protected characteristics in ways that are outside an institution's control.

This will require the OfS to consider its own approach to equality and diversity from the top to bottom of the organisation, and its use of evidence to inform its own equalities duties. Registered providers should also be challenged on their own commitments to organisational equality and diversity to address cultural barriers to attainment for students from minority backgrounds. We recommend that the OfS and providers actively work with the new sector agency that will incorporate the work of the Equality Challenge Unit.

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?

Partly agree.

UUK has supported the development of an effective TEF that aids student decision-making and the enhancement of teaching and learning practice. UUK also recognises the current political pressure on the government in relation to the student support system, and we are committed to working with the government to develop sustainable solutions. In principle, UUK does not object to the inclusion of the TEF as a condition of registration to encourage participation but this is contingent on:

- a. a full and substantive consideration of the findings of the independent review and the results of subject level pilots
- b. a clear and substantive role for registered providers in the ongoing development of the TEF

We recommend that the OfS should:

- a. Recognise that making participation in the TEF a general and ongoing condition of registration would be a departure from the intention of the Act.
- b. Wait for the findings of the independent review of the TEF required by the Act before making it general ongoing condition of registration and the results of subject level piloting.
- c. Ensure the TEF meets further tests in relation to supporting student choice and the impact on teaching and learning practice.
- d. Commit to shared governance of the TEF with English registered and devolved sectors, in line with the stated principles of autonomous enhancement and the UK-wide co-regulatory model for quality and standards.
- e. Recognise that the support for the TEF among students, including their local and national representatives, is important for its credibility and its objectives.
- f. Allow for the fact that making TEF a condition of registration may create legitimate problems for certain types of providers depending on its design.
- g. Clarify the basis for 500 students based on sensitivity of data and whether this relates to head count, full-time equivalent or undergraduate only.

The inclusion of the TEF as a compulsory condition of registration was not the original intention of the Act. The Act permits the OfS to establish a scheme to rate the quality and standards of registered providers with financial incentives for participation and performance. The TEF was a prominent feature of the debate during the passage of the Act due to the concern about the risks of TEF to institutional diversity and autonomy and the sector's reputation for excellence. The government's concession of an independent review was a key factor in securing the passage of the Act and should be honored before departing from its original intention.

There are further tests that should also be met before TEF is made a condition of registration. The TEF is not yet considered material information by the CMA and there is no evidence that students use it for decision-making. It is not yet proven that the TEF is making a positive contribution to securing good quality outcomes for students by promoting institutional enhancement. We welcome the use of UUK's Review of the Teaching Excellence Framework Year 2 and the evidence on the impact of the TEF on institutional decision-making.⁸ However, the same study also found significant concerns about how excellence is defined and measured, and that must be addressed if the TEF is to make a positive contribution to teaching and learning for students.

A general condition of registration would require a substantive role for registered providers and the devolved sectors in the ongoing development of the TEF. The TEF should retain an emphasis on student outcomes and differentiation to support student choice. However, the principle set out in the consultation that enhancement is the responsibility of institutions should be retained. Designing a TEF that can support choice and enhancement across a diverse sector is a legitimate but complex exercise and certain types of institutions are not well served by the current design, including providers with large proportion of part-time provision. Neither is it clear if subject-level assessment will produce clear information to aid student choice or outcomes without undermining institutional diversity and autonomous strategy.

⁸ Review of the Teaching Excellence Framework Year 2 (UUK 2017)

10. Do you agree or disagree with the proposed on-going 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?

Agree.

It is right that students are made aware of the arrangements for transferring out or to an institution. Institutions should also support students if they choose to do so. However, we also welcome the OfS's recognition that academic credit cannot be treated as a universal currency and that institutions have autonomy over admissions decisions.

The OfS should not treat student transfer as a tool for promoting competition. HEFCE found that the qualifying rates for students who transfer are worse than for those who continue at the same higher education institutions. The principal focus should be on ensuring that students make suitable choices in the first instance, and supporting the needs of individual students during their studies and ensuring that they are supported if they choose to transfer. For example, a recent report by the University of Sheffield working with the White Rose Consortium of universities found that:⁹

- Students believe that student mobility can help students remain in higher education if they face changed personal circumstances rather than 'dropping-out' of higher education altogether.
- Students believe that there is a need for clearer and more transparent processes, information, advice and guidance on student mobility as part of student welfare/wellbeing provision.
- There did not appear to be significant latent demand for student mobility but that greater clarity about practice would help those students who might benefit from a transfer or choose to do so.

⁹ Should I stay or should I go: student demand for credit transfer and recommendations for policy and practice (University of Sheffield 2017)

It is important that students are better able to make informed choices about how and when to move, if the need arises, and what the likelihood is that their prior learning will be recognised. When developing plans, providers should consider the following:

- Ensure information on transfer is transparent and clearly available (for example on the institutional website) as a potential option, alongside mechanisms for providing support for students when they need it.
- Ensure that student support, welfare, advice and guidance services have information to help students identify when a transfer might be the right decision, and to support them through the transition.
- Provide information in admissions guidance and programme specifications, about when credit transfer may be suitable, including suitable disciplines and pre-requisites, and the criteria that programme and module leaders would employ when recognising prior learning in admission.

UUK will work with our members and sector partners to help disseminate good practice in this area.

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

Partly agree.

The approach to sector-level regulation should be revisited after the set-up of the register. The OfS sets out a number of high-level objectives but it is not clear from the strategy how the various measures can be used effectively and for what purposes. We recommend that the OfS should review its strategy for market regulation to ensure that it is transparent, and to ensure that it supports an agreed set of objectives around a thriving world-class higher education system. This includes clarifying:

- a. The balance between a student-centred focus on students and decision-making and the OfS and the government's own policy objectives.
- b. The relationship between the market strategy and the baseline register in supporting OfS and government policy objectives.
- c. The role of sector-level regulation in support of the OfS's role supporting the new industrial strategy.

- d. How students use a range of information to make decisions and the practical and ethical considerations of shaping their behavior.
- e. Potential impacts on institutional diversity, convergence and indirect impacts on autonomous institutional decision-making.
- f. Coherence of the information landscape, including between OfS information provision, universities, and independent data providers.

It is essential that the OfS protects students from transient, unsustainable and poor-quality providers. A provider closing is a significant event. Students themselves do not see the closure of their institution as a normal healthy event, and it is entirely inappropriate for the consultation to casually suggest otherwise. When asked by ComRes on behalf of UUK, 95% of students said they would be concerned if their university had to close, even if they were offered a place on a similar course at another university.¹⁰

A provider failure would be a failure of the OfS's approach to entry to the market and its objective of protecting student interests. This should be clearly recognised in the approach to monitoring and quality assuring providers with non-degree awarding powers. The OfS should not be waving the fees for new entrants: if the provider's business model can't support the cost of registration with the OfS, it is unlikely the provider will represent a viable proposition. Neither would it be appropriate for the costs of new entrants to be covered by other providers.

The OfS's approach to student information and decision-making will be crucial to the success of the sector. The OfS asserts that by strengthening student choice it will drive up the quality of teaching across the sector. The OfS should also recognise that its information strategy and the TEF pose risks to institutional diversity, autonomous decision-making and the quality and outcomes of the sector. While UUK has produced early evidence of impact on institutional decision-making, we do not yet have evidence of the TEF's role in student decision-making or whether it is having a positive impact on teaching practice and learning outcomes. The OfS should avoid using student choice as a directive mechanism in support of short-term government skills agendas.

¹⁰ Education, consumer rights and maintaining trust: what students want from their university (UUK 2017)

The mix of provision on offer should be demand-led. The OfS may facilitate but should not artificially engineer supply or demand to the detriment of existing models or preferences. UUK welcomes government support for accelerated degrees but this model will only be suitable for some students and some types of provision. UUK supports a sustainable student support system but not through accelerating the pace of study. Other types of models, such as the four-year degree with work placements and study abroad opportunities may have as much – if not more – merit for students and the government’s own skills agendas.

Teaching grant should be used to support policy priorities as necessary. In particular it should focus on area of market failure in relation to provision of subjects considered strategic or vulnerable. Its allocation should be based on the cost of funding provision and should not be used to incentivise other sector-level objectives.

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

NA.

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

Partly agree.

UUK welcomes an approach to initial registration that focuses on the strength of institutional governance so that providers can assure the OfS that there is a high likelihood that it will meet the ongoing conditions of registration. These conditions should represent a robust entry point onto the register. However, some clarification would be welcome on the following:

- Condition E2 should not require governing documents to make specific reference to freedom of speech and should avoid confusion about the OfS's role in this area. Providers should be expected to publish code of practice on freedom of speech in line with their obligations under the 1986 Education Act.
- Condition E4 should clarify how it intends to use a provider's self-assessment that it understands its duties under consumer rights laws and that it has taken steps to ensure that it is compliant. Providers should also submit details of independent student representation or whether students have access to independent advice and guidance. It may also be useful for the OfS to clarify whether it intends to take legal advice on institutional compliance independently of the CMA, or take a view on compliance for the purposes of registration. It is essential that the OfS's approach to this condition is aligned with the CMA.
- The requirements of objective 3 should be required of all registered providers – particularly condition D, E4 and F. Registration with the OfS will establish an expectation among students that their interests are protected and these conditions appear to be basic expectations that should be considered for all providers wishing to join the register. Consumer law applies to all providers and is equally relevant to all students regardless of whether their institution receives public funds, so it is not clear why the OfS would take a selective approach to condition E 4 for different registration categories.
- Where degree-awarding bodies validate provision they should ensure that they have appropriate arrangements in place to ensure that validated provision meets conditions B and C.

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

Partly agree.

The Act requires the OfS to establish a set of principles for registered providers to perform their functions in the public interest (Section 14 HERA). However, the current public interest governance principles and the associated condition E2 risks confusion about the OfS's role. In this respect, the OfS should:

- a. Ensure that this condition focuses on the quality and independence of institutional governance and is not used as a general clause to deliver policy objectives or take on new powers where it does not have direct or indirect responsibility.
- b. Ensure that the operation of the principles through condition E2 focuses on the general expectation that providers cooperate with the OfS, follow good governance practice and are compliant with their legal obligations.

We welcome a focus on strong autonomous institutional governance as a condition of entry onto the register. In addition, it is welcome that institutional governance meets public interest principles. However, the government stated that clause 14:

'merely seeks to ensure that the governing documents of providers subject to this condition have best governance practice embedded within them. As now, the public interest principles are not intended to prescribe in any detail how providers are to be governed.'

Viscount Younger of Leckie at Higher Education and Research Bill, Committee #1 (9 January 2017):

The list of principles may highlight freedom of speech in line with provider duties under the 1986 Education Act. This principle should be considered in the same way as the wider obligation that providers comply with their legal duties under condition E2. However, the proposal that the OfS should take on a role in relation to the regulation of freedom of speech in universities and that it would intervene to enforce the *'widest possible definition'* is clearly outside the OfS's statutory remit (page 33).

The Act makes no mention of an OfS role in relation to freedom of speech and such a role does not align with the OfS's statutory remit to promote competition, choice and value for money for students. Neither was this role proposed in the 2015 Green Paper or 2016 White Paper. The consultation and guidance on condition E2 proposes that the OfS will go beyond the 1986 Education Act in two ways:

- the requirement for providers to incorporate freedom of speech into governing documents goes beyond the 1986 Education Act
- the explicit suggestion that the OfS will take a role in relation to freedom of speech is not included in the 1986 Education Act or HERA

We recognise that schedule 11 of HERA extends the duty of the 1986 Education Act to a new set of providers through OfS registration. We also recognise that the government committed to exploring ways to underscore the importance of freedom of speech during the passage of the Act. However, the Act did not give the OfS a role in this area and the OfS should not seek to justify an active role beyond the expectation that providers are compliant with their 1986 Education Act responsibilities through publication of a code of practice.

The OfS should draw newly registered providers' attention to their obligations under the 1986 Education Act. UUK is happy to work with the Office for Students to help it understand the responsibilities placed on providers by the 1986 Education Act and other duties that are relevant to this agenda. UUK will continue to actively support our members in managing this complex area. UUK has produced extensive public resources that may be used by new entrants to the sector so that they may understand their new responsibilities under the 1986 Education Act.

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

Agree.

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?

Agree.

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

Disagree.

The reputational benefits associated with OfS registration are not justified by the current requirements for the basic category. It is liable to mislead students about what they can expect from studying at these providers. These providers should have student protection plans at the very minimum, and should also provide evidence that they are aware of their duties to comply with consumer rights law.

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

Partly agree.

The proposed set of general ongoing conditions represent a reasonable framework for regulating the sector. However, the OfS has a statutory duty to be an effective and proportionate regulator (Section 2 HERA). It must ensure that initial and ongoing conditions of registration that are applicable to an institution, are proportionate to the OfS's assessment of the regulatory risk posed by the institution (Section 7 HERA). This section allows the OfS to vary conditions between providers based on their tier of registration. At the same time it also means that the OfS should demonstrate that conditions are proportionate to the regulatory risk of an individual provider, determined by the OfS's regulatory objectives. To ensure that registration conditions remain an effective and proportionate tool the OfS should:

- a. Commit to refrain from introducing any further *general* ongoing registration conditions or substantive amendments to existing conditions in the first two years of the OfS's operation.
- b. Ensure that the regulatory strategy is clearly grounded in the spirit and letter of the Higher Education and Research Act. The Act gives the OfS more detailed and extensive powers but also establishes clear boundaries and a more detailed framework to focus its work.
- c. Implement good regulatory practice (p.40) founded on encouraging voluntary and ethical behaviour by registered providers. The OfS should focus on genuine

risks to students and not use expanded powers to become more intrusive into a provider's operations.

- d. Ensure that its strategy and approach is founded on clear and honest interpretation of evidence that ensures that the OfS – and by extension providers – is focused on areas of genuine need for students.
- e. Clarify the process of introducing or amending general initial or ongoing conditions of registration, including the process of requesting evidence of current activity from registered providers on area of concerns.
- f. Ensure that any new ongoing conditions of registration are informed by evidence that the issue requires action to protect students from risks, in line with the OfS statutory remit and regulatory objectives.
- g. Ensure that conditions of registration represent a focused regulatory baseline and clarify the extent to which the register will be used for the delivery of government policy objectives, such as the skills agenda.

We recognise that the register is the OfS's main statutory tool. However, we are concerned that the current approach suggests that the OfS will be over-reliant on general ongoing conditions of registration to achieve its statutory objectives. It is self-evident that the OfS will expect providers to follow and comply with OfS judgements in relation to compliance with new or amended conditions, notwithstanding the potential for judicial review or an arm's length regulatory relationship. In addition, once conditions are on the register they are highly unlikely to be removed. In this respect the register is a powerful regulatory tool that has long lasting implications for institutions and the sector.

More clarity will be needed on how the OfS proposes to introduce new general conditions of registration in the future or will amend existing conditions. The OfS has more detailed and extensive powers than its predecessor but should use them in line with an institution's regulatory risks. The consultation itself defines these risks in terms of student outcomes, not access to public funds. We are concerned that the consultation only considers proportionality in terms of individual interventions and does not adequately explain how it has judged the proportionality of its initial or ongoing general conditions of registration.

The OfS should also be clear about the limitations of its role. While it may apply conditions of registration, these conditions should be aligned with its core statutory duties. Furthermore, the OfS should not seek to take on a role in relation to legislation or regulations for which it does not have responsibility. Just because a provider is subject to a legal obligation does not justify the OfS taking on a regulatory role in that area. In particular the relationship between the OfS and the CMA should be clarified further to

ensure that providers are clear about the expectations and requirements of compliance with the OfS and CMA.

We welcome the OfS's commitment to encouraging independent good behaviour before intervening. The OfS should introduce a voluntary stage that includes requests for information on how registered providers are already or would address an area of concern and where necessary request voluntary action. The OfS should use this evidence to judge what further action is necessary and whether general and specific conditions are appropriate. The OfS should also be clear that evidence of controversy is not evidence that regulatory action is required or proportionate.

The OfS should also consider undertaking a separate consultation or clarifying the relationship between the regulatory baseline and the wider market strategy. There is a risk that the OfS and government become overly reliant on general conditions of registration to deliver policy objectives. This should remain focused on its role as a regulatory baseline. Where there are additional policy objectives, such as skills, these should be delivered via other means.

Specific points that would benefit from clarification are:

- Condition E2: the proposed tests of compliance in relation to freedom of speech should be removed and replaced by drawing providers' attention to the need to publish a code of practice under the 1986 Education Act.
- The inclusion of reportable events should be agreed with providers based on their assessed risks. It would seem disproportionate for low-risk providers with a student protection plan to notify the OfS of all course closures.
- The OfS should focus on ensuring that providers do not misuse student support funding through fraud, abuse of funds, financial mismanagement or irregularity. The OfS should not seek to justify intervention in legitimate institutional investment decisions that support the wider experience of its students, its long-term strategy, its charitable mission or obligations including widening participation.
- The OfS should not be seeking to intervene at a course level. It should approach this in a proportionate manner in line with its own framework for interventions and should recognise the risks of forcing providers to continually account for fluctuations in the data associated with relatively small cohorts of students. Equally if there are persistent and significant concerns about a particular course a proportionate dialogue with the institution may be appropriate.

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

Partly agree

It is important that providers and the sector have confidence in the OfS's judgement of risk. Judgements should be informed by provider context and student body. The OfS should:

- a. clarify whether it expects to intervene at a provider or course level in line with its own framework for proportionate interventions
- b. Clarify the process through which it changes indicators and monitoring for all providers, for categories of provider and for individual providers
- c. clarify how it will develop a composite lead indicator of sustainability to support contextual judgements that also take into account a provider's own risk management and plans
- d. assurance on who will be making the decisions and how they will do so if they have a more remote relationship with, and understanding of, a provider. Including protocols, training and experience will be required of those making risk assessments
- e. clarify whether providers will be informed of their risk profile on an annual or other cyclical basis and secure itself against freedom of information requests for this information

The collection and presentation of data should be efficient, build on provider practice and systems and be useful to students. The designated data body will play an important role in the development of the new system. UUK supports the Higher Education Statistics Agency as the designated data body. The Act recognises the importance that this should be representative of the sector and have the confidence of the sector. This relationship is intended to ensure that the sector can have confidence and a stake in data collection.

We are concerned about the practical implications of the intention to seek information flows in as near real time as possible (p.98). Developing lead indicators to support regulatory interventions. For a risk-based system it is not helpful to current students for the OfS to be using data that is two years out of date. However, real time, or even close to real time data is clearly unrealistic and would require significant investment by providers. Real time data, such as in-cycle admissions data, may be unhelpful for regulatory purposes.

Much of this will be delivered by the designated data body and, in particular, HESA's Data Futures project. The OfS needs to recognise that providers have an interest in high-quality data for their own academic and professional purposes. Compliance with data

requests from third parties, including the OfS, can cause significant additional burdens because of the specific requirements of the data returns. The OfS should seek good quality data that is fit for its purpose which would rarely, if ever, require the highly demanding threshold of real time.

The designated data body should play an important role in understanding what data can be collected and how it should be used.

- a. Interpreting data: as the OfS notes it will be making contextual judgements based on a variety of inputs. The designated data body will play an important role in shaping the OfS's understanding and interpretation of data.
- b. Market information: We welcome the prominent role that is proposed for the designated data body in assessing what information students will need and what is realistic.

We note the intention for there to be a random sample of 5% of providers annually. The scope and function of these reviews should be clarified. This process should remain a light touch assurance tool for OfS approach to assess the alignment of its risk monitoring process with its regulatory baseline. It should not become a full cyclical review.

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?

Partly agree

We welcome the OfS's clear commitment to proportionate interventions through the principles set out on page 117. However, while we welcome the focus on contextual judgement of risk, this has come at the cost of being able to assess the likelihood of interventions and by extension the burden and risks of registration. In a risk-based approach, the OfS's own appetite that a provider may be failing a notional baseline before intervention will have a significant bearing on the burden experienced by providers or the risk being presented to students. To help give the sector more confidence in the likely regulatory stance and burden, the OfS should clarify:

- a. its approach and appetite for risk so that institutions can assess their own risks and judgement of the likely burden on the sector, including the skills and processes through which decisions are made beyond the judgement of senior OfS staff

- b. how it will escalate potential interventions beyond the framework set out on page 117. This includes the types of proportionate monitoring and mitigating conditions it will expect in a mature relationship with ethical providers
- c. the role that the designated quality and data bodies and Quality Advisory Committee and Student Voice Panel can play in giving the sector confidence in the OfS's assessment of risk, contextual judgements, and the escalation of proportionate interventions

Sanctions, including monitoring, remedial action, or suspension should all have clear objectives and timeframes. As there is no right of appeal for suspension it should be viewed as a short-term measure in response to a specific concern.

When efficiency studies would be triggered, and for what purpose, should be clarified. The use of efficiency studies should focus on protecting the investment of students and taxpayers and should be founded on concerns across multiple registration conditions, in both student outcomes and the transparency of institutional governance.

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

Agree

It will be important to engage closely with devolved administrations and providers operating across borders. It is important that different regulatory regimes do not undermine cross border operation and collaboration or movement of students. This will include clarification of franchising arrangements and designation for student support arrangements.

It will be important for the OfS to take a considered view of the risk in relation to transnational education (TNE). TNE precludes a one-size-fits-all approach, and the OfS's approach in this area should be proportionate to the size and risks and nature of the TNE arrangements. The OfS should include TNE operations as part of the dialogue around institutional sustainability and risks in line with other types of reportable events. Providers should be asked to demonstrate that they have proportionate quality assurance arrangements for TNE with the designated quality body. This should be proportionate to the registered provider's risk profile in relation to quality and standards, in country quality assessment arrangements and arrangements with the designated quality body. Providers with non-degree awarding powers should not be allowed to operate TNE provision.

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

Yes.

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

Yes.

These principles should also be extended to national funders in the devolved administration and to the designated quality and data bodies.

The relationship with UKRI will be important and should be a priority for the OfS. It is not clear what is meant by the TEF and the REF being mutually reinforcing.

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?

The OfS should only act as a validator in exceptional circumstances and as a last resort where other avenues, including commissioning arrangements are not possible, and should be time limited. The requirement for approval by the secretary of state is essential for public confidence and should be supported by a clear and accessible public explanation. We believe that a situation where the OfS has to act as a validator would represent a failure of the OfS's own regulatory strategy and its processes for granting degree awarding powers.

The OfS should be clear about where it is cited in student protection plans for providers with non-degree awarding powers and should get secretary of state approval in advance of agreeing such a role. The OfS should also clarify the arrangements for independent quality assessment of its validated provision by the designated quality body that recognises the significant risks associated with OfS validation given the OfS does not have degree awarding powers or have any experience of delivering higher education. The cost of OfS validation must not be met through general subscription.

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?

No.

Further clarity on the information that is being requested in relation to condition E4 and how the OfS intends to use and assess it is needed.

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

We support the general proposal that the OfS should act as the Principal Regulator for any charitable higher education providers. This will help to ensure there is a common interpretation of the rules over charitable purpose within higher education.

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?

See 26.