



UUK response to OfS consultation on regulating quality and standards in higher education (OfS 2020.50)

Universities UK is the collective voice of 140 universities in England, Scotland, Wales, and Northern Ireland. Its mission is to create the conditions for UK universities to be the best in the world, maximising their positive impact locally, nationally, and globally. Universities UK acts on behalf of universities, represented by their heads of institution.

General remarks

Universities in the UK have a strong track record in delivering high-quality courses that support students to meet their aspirations and succeed in their chosen fields. While this is evident across the overwhelming majority of provision, we also acknowledge the concerns raised by the regulator in the consultation – and more widely, from government, taxpayers, and students – about outlier courses which might be deemed ‘low quality’. Students need to feel reassured and confident that wherever and whatever they study, their education will be of a high quality and academic standards upheld.

A shared understanding of the issues is essential to ensure we are all working towards the same goal in addressing this challenge. We welcome the opportunity of the consultation to shape this, drawing on work that Universities UK (UUK) has been leading over many years. Most recently, this has included [launching the development of a charter in England for enhancing portfolio review processes to tackle low value and low quality courses](#) and

[ongoing work to tackle concerns about grade inflation](#) with actions on maintaining academic standards in degree classification.

The stated intention of the proposals to clarify the definitions, indicators, and approaches used to regulate quality and standards is one we support. Where this is informed by meaningful engagement with students and providers, to ensure relevance and feasibility, this clarity will play an important role in increasing regulatory effectiveness and reducing administrative burden. We also welcome commitments to a principles-based approach supported by risk-based regulatory monitoring and intervention. In a diverse sector, autonomous institutions are best placed to develop provision and approaches to meet their students' needs.

However, we have significant concerns about the proposals as they are currently positioned. We have also identified further unintended consequences that we think could be at tension with other policy agendas and/or have a detrimental impact on the sector. These require much greater consideration and further development before UUK can support their adoption.

- Notwithstanding the different regulatory and quality assurance approaches across the UK's four nations, the sector values and benefits from those areas where a UK-wide approach can be maintained. For example, the UK Quality Code for Higher Education. Frameworks that support UK-wide coherence are important for facilitating collaboration and sharing of good practice across borders. They also help in promoting the UK HE brand internationally, which supports transnational education partnerships and international staff and student recruitment. While we recognise that as the regulator in England the focus of the consultation is English HE, we are calling on the OfS to work proactively with the devolved administrations to ensure the overall coherence of a UK-wide system is maintained alongside any reform to the regulatory framework.

- Following the Prime Minister’s announcements in September 2020 on the expansion of post-18 education and training, including a Lifetime Skills Guarantee and National Skills Fund, the sector will be playing a key role in evolving existing provision and developing new approaches and partnerships. Part-time and more flexible learning has the potential to create significant benefits for the economy and society, and to create opportunities for more individuals to access HE courses. It is vital that the new regulatory approach is future-proofed and flexible enough to work with these changes. We are calling on the OfS to work closely with providers to understand this provision, how it is evolving, and what it means for the approach they are taking (for example, data availability and relevant definitions), as well as piloting different approaches and methodologies where necessary.
- We strongly support improved clarity on what is meant by ‘low quality’ but question the proposed definition that pays disproportionate attention to student outcomes. The focus should be the academic experience and how well courses are designed and delivered. This should include measures of student satisfaction, outcomes from external reviews, and an understanding of the support and facilities provided to students while they study. Outcomes are undoubtedly important but impacted on by more than just the quality of provision – for example by student characteristics, behaviours, and wider social and economic environment. It is also important that we do not conflate quality with value. The latter involves subjective judgements that vary from person to person, made relative to costs and inputs, and reflecting on wider social and economic impacts. We recommend that future iterations of the proposals are much more tightly focused on quality over which a provider can exert full control.
- There is a tension between the proposals and other elements of the regulatory framework focused on access and participation. Institutions are currently engaged in ambitious five-year access and participation plans (APPs). Given the pandemic, many of these plans have had to

evolve to adapt to the new environment and needs of students. The proposals for absolute baselines have the potential to create further disruption to this agenda and jeopardise ongoing work. Both agendas are central to the regulator's and institutions' missions but there needs to be stronger coordination so neither one is undermined.

It should also be noted that this consultation comes at a time when the NSS (an important metric in any assessment of quality and standards) is under review, new experimental metrics are being explored (formerly 'start to success'), and the independent review of TEF and government response is still to be published. A further three OfS consultations were launched on 15 December. The uncertainty this creates makes reflecting fully on the consultation questions more of a challenge. Simultaneously, there are areas where it is unclear as to whether the data and methods being proposed are available at a sufficiently robust and granular level.

We are grateful for the chance to comment on the proposals at this stage, ahead of the more detailed second stage. In future, however, we would call on the OfS to work with the sector even earlier and more closely through UUK and other sector representative groups to give greater thought to scheduling and the information needed to enable meaningful engagement.

Questions relating to Proposal 1 – Define 'quality' and 'standards' more clearly for the purpose of setting the minimum baseline requirements for all providers.

Question 1a: Do you agree or disagree with the proposed definitions of 'quality' and 'standards' set out in Table 1 of Annex A and that this should be used to express minimum baseline requirements for quality and standards in revised B conditions?

Disagree

Quality definitions

It is important that there is clarity on what ‘quality’ and ‘standards’ mean and we welcome the intention to reduce confusion. Part of this should also include establishing a clear distinction between quality (that which is within a provider’s control and delivered directly to students) and value (a more subjective and relative measure that corresponds to a wide range of potential benefits for students and society).

Table 1 in Annex A covers a broadly appropriate range of areas for consideration. Within this, the focus should be on the columns ‘*course content, structure and delivery*’, ‘*resources and academic support*’, and ‘*secure standards*’. These are the fundamentals of what a provider offers and are in their control. The proposed principles-based approach here is useful to reflect the diversity of the sector and protect institutional autonomy. However, the operationalisation of the definitions – what they might mean in practice within different modes of study, types of provider, and courses – needs further elaboration. The definitions also need to be tighter on what they do and do not cover, and how they will be judged.

For example, what reflects ‘effective delivery’ of a course, how far will (and can) a provider be expected to meet all individual student needs, and what is meant by students being ‘engaged in the quality of their educational experience’? We recommend the development of the definitions involves in-depth discussions with both students and providers and focuses on those aspects that a provider can control. The definitions should then be published in accompanying guidance and include good practice examples of their application across different types of provision.

We are concerned about the disproportionate emphasis on student and graduate outcomes, however, by the OfS attaching a rules-based quantitative approach to these baselines. For the following reasons we do not believe that

student outcomes, especially on employment, should be prioritised within the proposed definition.

- Student outcomes are not within the power of a provider to guarantee. The focus on employment outcomes, in particular, is underpinned by an assumed *direct* correlation between quality and outcomes. While a course's quality may be a contributing factor it is not the only one. We would expect a high-quality academic experience to help students reach their aspirations with well-designed and well-delivered courses and student support services. Many universities have developed good relationships with graduate employers and the expansion of courses with work placement components and investment in careers services further supports this. Notwithstanding this outcome data requires contextualising to reflect the challenges and achievements of students from all backgrounds. However, students will have different aspirations that will shape their preferences for what they do upon graduation and what a 'successful outcome' is for them. If this does not align with the OfS definition, it is not indicative of poor quality but a misunderstanding of different student interests.
- The proposed approach neglects the role of student agency, behaviour and preferences, the influence of their socio-economic and demographic characteristics on life chances, and the wider social and economic context (national and local) in which students are living and graduating. Without sufficient attention paid to contextual factors, the prioritisation of outcomes risks unfairly penalising providers for things outwith their control while simultaneously ignoring unequivocal issues of academic quality.
- The positioning of 'success' as being defined by employment outcomes reinforces a problematic narrative that students who do not secure the stated level of employment have experienced 'failure'. The impact on student mental health should not be overlooked, both from the perspective of those who may feel they have failed or those who are

feeling the pressure of meeting these narrowly defined outcomes. It also means little attention is paid to other benefits such as learning gain and improved wellbeing that many graduates report.

- It is unclear at this stage how ‘managerial and professional employment (or employment appropriate to the qualification level’ is to be defined. Similarly, in the last iteration of the TEF subject pilot, it was recognised that for a graduate with a foundation degree (Other UG) further study for a first degree is a natural progression and therefore a positive outcome – and yet this element is not recognised in the proposed methodology which only classes PGT and PGR as positive outcomes. We recommend close engagement with students so that the definitions are empowering and better reflect the range of aspirations they have.
- We are more supportive of consideration of continuation and completion outcomes within a definition of quality since this is where providers can exert more influence through their admissions decision-making, course design, facilities, and student support services. This should not be led by strict rules-based targets, however, but by sharing best practice and sector-led guiding principles developed to drive improvements. For example, responsible admissions practices, as promoted in UUK’s recent [Fair Admissions Review](#) (November 2020), ensure the likelihood that a prospective student will be able to continue, complete and benefit from HE is considered at the earliest stage. For on-course students, UUK guidance on [mental health](#) and [ethnicity attainment gaps](#), for example, also demonstrates how providers can maximise students’ continuation and completion potential without the need for blunt instruments. It is also worth noting that [recent research from HEPI has shown the UK performs relatively strongly on continuation and completion](#). The OfS’ proposed focus and approach are, therefore, disproportionate.
- The definitions for continuation and completion will also need to be more sensitive to students exiting with level 4 and 5 qualifications,

embarking on more flexible and modular learning, or at other levels of study. For example, the definition must be explicit in how ‘continue from their first to second year’ will be interpreted for flexible learners or postgraduate students. Continuation should also be defined so that repeating students are classed as continuing students and students who complete with a different award are not treated unfavourably.

Standards definitions

UUK, with GuildHE and QAA under the aegis of UKSCQA contributed to the development of degree classification descriptors. They provide an important UK-wide sector reference point, aid consistency between providers, offer students and employers a good indication of what a classification means, and will support the work of external examiners. Research by UUK and GuildHE on progress across the UKSCQA’s degree classification programme of work already suggests 76% of providers have or intend to engage with the descriptors. We consider them a useful addition to the quality and standards architecture in England.

It is important, however, that these are not lifted directly into provider-level classification descriptors and marking schemes. The sector is diverse both within and between providers and while we believe these should be used as a reference point, there needs to be flexibility in how they are used and incorporated to account for the diversity of provision and enable innovation. Alongside institutional autonomy this reflects a sector taking responsibility for academic standards by engaging with the reference points to adapt them appropriately for their provision. Therefore, while we support their inclusion in the definition, further information is needed on how the OfS will regulate on these within the proposed rules-based approach with reassurance that flexibility will be retained.

Role of the UK Quality Code

The UK Quality Code is an important signal internationally of how the UK assures quality. It clearly articulates core practices for assuring quality and standards and is supported by advice and guidance that has developed in conjunction with the sector and students, as recently as 2018. It therefore meets some of the challenges the proposed definitions in Table 1 of Annex 1 face in needing further development.

Removing references to the UK Quality Code risks confusion for international audiences, which might impact on recruitment of international students, weaken transnational education partnerships, and undermine the brand of UK higher education. It will also create challenges for providers with validation and franchise arrangements operating across the UK's borders. There is a further issue that we do not feel assured that this will enable UK higher education to meet the European Standards and Guidelines (ESG) on quality, which is a Ministerial commitment in the European Higher Education Area, which both the UK and, separately, Scotland are members of. We would strongly encourage the OfS to retain a connection to the UK Quality Code within the regulatory framework. We also recommend revisiting the role and secretariat of the UKSCQA which brings together students, sector representatives and funders and regulators from across the UK and could provide a good forum for promoting UK-wide coherence and collaboration.

Question 1b: Do you have any comments about how the proposed definitions of quality and standards set out in Table 1 of Annex A should be assessed for individual providers?

We support the OfS position that, where possible, the assessment of quality and standards for individual providers should be non-prescriptive. Institutional autonomy is a cornerstone of higher education in England (and the UK) that has enabled innovation and enhancement across the sector, benefitting students in the range of provision they can choose and access.

However, as a sector we are committed to ensuring that where there are concerns about low quality, that these are investigated and addressed. UUK's work developing a charter for enhancing portfolio reviews is one way in which the sector is acting on this issue.

Within this, definitions and consistency in practice are vital. In a similar way, the definitions in Table 1 of Annex A need to be further developed to establish shared understanding of what individual providers should be striving towards and how they will be expected to demonstrate meeting regulatory requirements. As above, the UK Quality Code and accompanying advice and guidance provides a useful starting point, as will the work UUK is currently undertaking.

For their assessment, we recommend attention is paid to feedback from students, PSRBs, and external examiners on the extent to which the quality and standards of provision meet their needs and expectations. There needs to be more consideration given to how proposed feedback from employers will be collected – for example, to determine whether graduates have the relevant skills and knowledge, and how the OfS would determine whether employer expectations were reasonable.

The definitions should also be assessed with reference to contextual information about the type of provision on offer and the students enrolled, utilising both quantitative and qualitative data. This could include more consideration of value added for students, measured not only in academic performance and outcomes but also their experience and engagement. Wider issues of value, for example the contribution to local economies and skills needs, all need to be referenced if a course is at risk of closing.

The consultation notes that its approach and definitions for quality and standards will cover all types of provision, including higher technical education and apprenticeships. With the move to OFSTED inspections for apprenticeships, it is unclear how OFSTED's judgement of quality and standards will relate to the OfS' regulatory role. The role of IFATE in

approving higher technical qualifications requires similar consideration. Greater attention is needed to fully recognise the diverse provision individual providers have and how different regulatory requirements interact. The same will be true for some PSRBs.

Question 1c: Do you agree or disagree with the proposal in paragraphs 41 to 43 to express initial requirements differently from the equivalent ongoing requirement for providers seeking registration?

Agree

Where possible, there should be consistency in the ways in which initial and ongoing conditions of registration are defined and monitored. However, it is sensible that for new providers applying to the register, there is some allowance made for the absence of information and/or data that is unavailable due to their 'new provider' status. Rather than stating wholly different requirements, we recommend that the OfS maps out how each ongoing requirement might be demonstrated in the case of a provider not having sufficient history. This could also be incorporated into the existing Quality and Standards Review process, currently managed by the QAA as the designated quality body. This would reflect the fact new providers will be in different positions so more bespoke reviews may be required.

Questions relating to Proposal 2 – Set numerical baselines for student outcomes and assess a provider's absolute performance in relation to these.

Question 2a: Do you agree or disagree with the proposed approach to assessing student outcomes set out in Annex B?

Disagree

Providers should be held to account on the quality of their provision and be challenged on their performance where it falls short. We agree that while most

provision is of a high quality there may be pockets of low quality, for example at a subject or course level, that need addressing. Ensuring students are appropriately recruited and supported to continue with and complete their studies is something a provider should be taking responsibility for. However, the proposed approach based on absolute performance for student outcomes with no benchmarked adjustment is inappropriate.

It fails to reflect points raised earlier that outcomes – particularly in respect of employment but also continuation and completion, albeit to a lesser extent – are impacted on by a wide range of factors. Not all of these can be quantitatively measured, for example, student/graduate preferences and behaviours. For those which can – notably students' socio-economic and demographic characteristics, the type of provision and location of a provider – benchmarking must be applied. We agree that all students should have equal access to high quality provision, irrespective of their background or the nature of their programme and mode of learning.

The OfS, however, should not ignore wider societal challenges some students may face both during their studies and upon graduation that cannot be overcome through higher education alone. Nor should the OfS overlook variation between providers in their student populations and programmes, which impacts on the extent to which their students might experience additional disadvantage. For employment outcomes specifically, geography can also play a significant role in the availability of professional jobs and likely salary. As the OfS guidance on TEF itself attests, benchmarking 'enables more meaningful interpretation of a provider's actual performance, and ensures that factors which may have an effect on student outcomes which are outside of the control of a provider are taken into consideration for assessment purposes' ([OfS 2018, p.40](#)). If and where the OfS is concerned that benchmarking is being used to justify poor quality and low expectations, it must evidence this and consider it alongside providers' performance on their APP.

A potential unintended consequence is that providers are deterred from recruiting students who might be considered more at risk of not continuing, completing, or progressing to the stated level of employment. It might also disincentivise development of lifelong learning and credit transfer models of delivery. The consultation acknowledges this risk in annex B, paragraph 59, and yet does not address how this would be mitigated beyond some initial consideration at the stage of setting the baselines (paragraph 54). Instead of setting an absolute baseline, the OfS would do better to work with the sector to develop and share good practice within the context of APPs. This would improve outcomes without negatively impacting on widening access in recruitment.

Within subject disciplines, there can be considerable variation between courses and programmes while between subject disciplines students' outcome patterns – particularly in employment – will also vary. Adopting a single numerical baseline across a sector with over 400 providers and a vast array of courses and programmes threatens the encouragement of diversity, innovation, and choice that the regulatory framework is designed to support. Similarly, if providers are to support the government's levelling up agenda, this requires them to develop local employer partnerships and support graduate retention within their regions. However, with vacancies and salaries varying across the country it risks perverse incentives to work with employers outside of a region if the potential salary return is greater elsewhere.

There is also a lack of detail on how more granular analysis and intervention will happen where the coverage and quality of data will not yet allow this. For example, there needs to be more consideration of how the focus on student outcomes will interact with students studying through lifelong learning and credit accumulation over an extended period.

Question 2b: Are there any other quantitative measures of student outcomes that we should consider in addition to continuation, completion and progression (see Annex B paragraph 18)?

As referenced in answer to question 2a we believe quantitative measures of student outcomes should be contextualised to reflect the partial control providers have. Students are an important voice when considering judgements of quality and standards, and how they perceive their experience and outcomes. Other quantitative measures should refer to historic and rich data from student feedback, such as the NSS, UKES and PTES. The NSS has a strong track record of playing an important role in driving improvements across universities' provision. The ongoing review of the NSS presents a timely opportunity to consider the important role of student feedback in assessing quality. We see a renewed and refreshed NSS as a crucial source of quantitative information about quality and standards in the future with the student voice central in that conversation.

The consultation explores the use of the (formerly named) 'start to success' measure.

The introduction of an additional measure still at experimental stage and that would be presented alongside the indicators of which it is comprised would add unnecessary complexity. The reduction of two non-contextualised metrics into a further non-contextualised metric makes this measure particularly susceptible to misinterpretation. The measure conflates foundation and undergraduate programme data masking the social mobility benefits of foundation programmes the continuation measure risks penalising providers if students transfer to other institutions. Any additional quantitative measures must also be appropriate for future developments in flexible learning beyond the traditional three-year undergraduate degree. We must also avoid assuming the distinct outcomes for continuation and employment to hold a causal relationship. Nor would this measure overcome the issues with the proposed outcomes indicators we have raised in 1a and 2a. Instead, we

recognise the importance of the measure for student information so would recommend the OfS focusing its attention on how it can increase its robustness and presentation to best meet students' needs.

If and where the OfS is committed to measuring outcomes, they also need to consider the value added to the individual through measures such as learning gain. Further quantitative measures should seek to enrich information relating to student choice alongside any outcomes data. This may include integrating questions related to graduate voice as developed by HESA. Here questions related to outcomes would be benchmarked 'in relation to their own goals and motivations', having the benefit of giving greater agency to individuals meeting the consultation commitment in Annex B paragraph 40 'never to lose sight of the individuality of each student'.

While we maintain that the OfS should focus on quality rather than value, *if* the focus on outcomes is retained there are other indicators that would need to be considered. Work by UUK on value has previously argued the need to consider the impact of a university degree on an individual's future life satisfaction, mental health and wellbeing, healthy behaviours, political engagement, community engagement, and inter-generational social mobility, for example.

Question 2c: Do you agree or disagree with the proposals for the levels of study at which indicators should be constructed? Should any additional indicators be considered (see Annex B paragraph 25)?

Neither agree nor disagree

We believe that the proposed disaggregated levels of study are broadly right. However, we would support consideration of an indicator for apprenticeships due to the distinctive characteristics of this provision and for first degree provision that includes an integrated foundation year. There will also need to be more consideration of how to account for lifelong learning patterns which we expect to become more prevalent in the future. This should be conditional

on access to appropriate and reliable data. We recommend that the OfS publish a comprehensive mapping of available data and the respective level of granularity that can be obtained without compromising its robustness in advance of the next stage of the consultation. This will enable consideration of indicators based on what is feasible currently and what data developments are needed to extend this. For example, how the proposed methodology can be used to regulate across postgraduate taught and research programmes.

Any extension to the levels of study, however, needs to be mindful of the burden associated with generating multiple data points and metrics. This could end up requiring complex reporting and tracking approaches to cover different types and sizes of providers. We would welcome the opportunity to work with the OfS to consider in more depth how this could be operationalised and what indicators are most appropriate for different levels and types of study. This should include working with providers to understand the likely areas of expansion in the sector and the student groups expected to be driving this.

Question 2d: Do you have any comments about an appropriate balance between the volume and complexity of indicators and a method that allows us to identify ‘pockets’ of performance that are below a numerical baseline (see Annex B paragraph 32)?

The balance of regulatory burden between identifying pockets of low performance must be weighed against the overwhelmingly high quality and good outcomes students receive. It must also recognise the internal quality assurance processes that already operate. Intervention by the regulator must therefore be a last resort following internal action by the provider to improve identified areas. As above, we do not consider it appropriate to be led by absolute numerical baselines on student outcomes.

The consultation suggests baselines will not be set at subject level there is a need for greater transparency as to how this data will identify ‘pockets’ of low quality. If the regulatory and political concern is ‘low quality courses’, even

subject-level numerical data may not be able to identify issues. Instead, a more holistic and nuanced process will be better suited in addressing this issue, such as that which is being developed as part of UUK's work on enhancing portfolio reviews which will build on the diversity of university structures and processes in identifying and acting on 'low value' or 'low quality' courses.

Cross-UK and international partnerships play an important role in the international and civic mission of providers. This provision often reaches and serves different communities with protected characteristics and plays an important role in the skills eco-system through meeting labour market needs and addressing educational accessibility locally and internationally. This context is important when considering the proposal in Annex B, paragraph 29 to aggregate data. All partners work to achieve the best possible outcomes for their students, and it is precisely the mission of meeting the needs of students that propels these partnerships into existence. There is a danger that the aggregation of metrics without consideration of different student populations may disincentivise providers to engage with partnerships.

The inclusion and attention given to transnational education (TNE) is welcome as it recognises the wide range of provision UK institutions are engaged in. The volume, variety, and complexity of TNE will need significant consideration to ensure that the data is accurately and appropriately used in judgements of quality. The limitations of individualised data from the HESA Aggregate Offshore Record needs to be recognised when assessing TNE outcomes. Furthermore, transnational partnerships can be subject to significantly different regulatory frameworks and expectations, meeting requirements from both the UK as well as the partner country. In this context comparing outcomes of students in the UK to those in other countries is not directly compatible or possible due to difficulties accessing employment data for students on TNE programmes.

Question 2e: Do you agree or disagree with the demographic characteristics we propose to use (see Annex B paragraph 36)? Are there further demographic characteristics which we should consider including in the list of ‘split indicators’?

Agree

We support the proposed demographic characteristics for inclusion as ‘split indicators’. However, we would extend this to include data on care leaver status, free school meal eligibility, and English as a second language. These characteristics relate specifically to individual students, as opposed to the area-based measures of POLAR and English IMD. Where statistically relevant we believe that intersectional analysis provides the most sophisticated understanding of demographic characteristics and should be used to this effect.

Question 2f: Do you agree or disagree that the longitudinal educational outcomes dataset should be used to provide further indicators in relation to graduate outcomes (see Annex B paragraph 46)?

Disagree

As above, we are concerned with the preoccupation with employment outcomes as a measure of quality. The use of employment data reduces the multifaceted value of higher education to a salary and job title without considering the broad benefits to society and the individual. In particular, the LEO dataset does not represent the full range of outcomes as it only provides data on individuals who work and pay tax in the UK and excludes the self-employed. Therefore, we would not consider it appropriate for the LEO dataset to be used as an additional lead or rules-based indicator.

Due to the economic context brought on by the pandemic, this year graduates are also likely to find access to the labour market more difficult than previous cohorts, irrespective of the quality of education received. Therefore, any use of

LEO would need to acknowledge that historic data will not reflect the current labour market.

Question 2g: Do you have any comments about how the range of sector-level performance should be taken into account in setting numerical baselines (see Annex B paragraph 57)?

To set a baseline the consultation suggests that arbitrary levels (such as using quartiles or the bottom 10-20% of sector performance) could be used to derive an absolute baseline. This initial process risks poorly targeting areas of concern which may block students from entering higher education who would otherwise succeed. The process of setting any numerical baseline should be grounded in evidence, developed in consultation with the sector and students, and through transparent processes. This should include approval by the OfS board.

It is unclear from the consultation whether the baselines would in future be reviewed and updated, and how. There may be good reason to adjust a baseline – for example, in the context of a recession which will impact on the labour market and availability of jobs. However, we must also be mindful of adjusting in such a way as to create an increasing floor that implies there will always be ‘low quality’ provision (e.g., if set relative to the bottom 10-20%). Given these challenges, we are calling on the OfS to set out not only how any initial numerical baselines would be set, and outliers identified, but also the process by which these will be reviewed.

A further concern related to the setting of numerical baselines is that in Annex B, paragraph 49, no mention is made to consulting with the sector to inform these. At the same time, in paragraph 51, it states: ‘...we think it is important to set numerical baselines at a level that would appear to a student, a parent, a reasonable lay person, or the taxpayer, to represent a high quality baseline and so a minimum acceptable level of performance.’ While public engagement and support are crucial and providers should be held to high standards,

decisions on these baselines need to be informed first and foremost by experts who understand the nuance and complexity of the issues and indicators.

Question 2h: Do you have any comments about the other contextual factors that should be taken into account and the weight that should be placed on them (see Annex B paragraph 68)?

The proposal notes that while condition B3 will heavily rely on absolute performance, the context a provider operates in should also consider ‘external factors outside of the provider’s control that might affect performance’. As commented previously in this response we believe such considerations should be extended to barriers outside of an individual learner’s control, for example local and national labour market conditions. There should also be consideration of a provider’s strategic mission, priorities, student population, history, and location, and the content of their APPs.

We would also argue that issues of wider value – for example, the contribution to society and the economy (locally and nationally) – are considered. Within the current government’s ‘levelling up’ agenda, attention needs to be paid to how providers are working with local employers and supporting their local populations to develop skills. The availability and accessibility of similar courses in a geographic region will also therefore be important.

The OfS should also consider the performance of English providers from a comparative perspective internationally. UK universities perform strongly on continuation and completion and the approach OfS adopts should not penalise providers who may be out-performing international counterparts on these indicators and so limit opportunities for attracting international students.

Questions relating to proposal 3 – Clarify the indicators and approach used for risk-based monitoring of quality and standards.

Question 3: Do you agree or disagree with the proposals in Annex C for monitoring ongoing compliance with regulatory requirements for quality and standards?

Neither agree nor disagree

We agree that the OfS should focus on using and constructing indicators from data and intelligence already available, to minimise additional burden. Of the indicators proposed under paragraph 4 in annex C, we have the following views:

- Student voice should be accessed primarily through the NSS or an equivalently robust national survey that permits within-institution time-series comparisons. Ad hoc student polling should be reserved for the OfS understanding sector-wide issues and not regulatory monitoring of individual providers. We recommend that consideration is given within the current review of NSS to how the survey can better inform an assessment of quality and standards and what happens at providers or within subjects where the sample size is not adequate.
- The suggestion to use complaints data and OIA cases as lead indicators requires further specification as both providers and the OIA handle complaints for non-academic matters (for example, accommodation), thereby with no relevance to quality and standards. Reference to outcomes of OIA complaints rather than inputs into the system might be more helpful.
- The OfS must set out a clear and transparent process by which it will assess patterns within student complaints.
- Admissions indicators need to be considered alongside monitoring of APPs and avoid potential tension or contradiction.

While the outcomes of the TEF review are pending we recognise the benefits of a common language across regulatory areas. If – as suggested in the proposal – the B conditions purpose is to set minimum standards and for the TEF to incentivise excellence above this then it is unclear why a ‘low’ TEF rating would constitute the need for any compliance requirements. If a bronze level TEF meets rigorous national quality requirements, the proposed approach contradicts the grounds of awarding the TEF. All TEF ratings are awards for high teaching and outcomes standards. To mitigate confusion, decisions related to minimum baselines should only be made through the B conditions and the TEF, if retained, used for enhancement.

We note that a consultation on reportable events was launched on 15 December which means there is some uncertainty when reflecting on the proposed approach here. For example, we do not know how the OfS will analyse responses to this consultation (e.g., the examples in paragraph 12 of annex C) if they are different to those received in the reportable events consultation (OfS 2020.62). We also do not know at this stage what the reportable events process will look like to be able to comment on its appropriateness.

In any scenario, however, guidance on reportable events will need to be clear. For example, in paragraph 9 of Annex C it is noted that a reportable event may include the ‘initiation of an investigation by a PSRB’. However, contact between PSRBs and providers is frequent, and investigations can vary considerably in scope. Many of these communications are positioned around sharing information and clarifications (rather than concerns about quality and standards). The term investigation encompasses a wide range of activities some minor and some extensive. Further information is needed about which types of investigations from a PSRB would be deemed reportable.

Opportunities to reduce burden on the sector are welcome but we are unclear on how disapplying a registration condition will work in practice. For example, which conditions are eligible for disapplication, on what basis will

this decision be made and what is the duration of a disapplication. There must be a process for review built into this to avoid the risk of developing a two-tier regulatory system. Unnecessary burden should be kept to a minimum, but this should not be at the expense of student protection. Relying on absolute baselines and reducing monitoring of those above a given level may prevent changes in performance or pockets of poor performance being picked up potentially too late.

Questions relating to proposal 4 – Clarify our approach to intervention and our approach to gathering further information about concerns about quality and standards.

Question 4: Do you agree or disagree with the proposals in paragraphs 86 to 101 for our approach to intervention and gathering further information about concerns about quality and standards?

Neither agree nor disagree

The proposal to focus intervention and gathering further information on the most high-risk providers has some merit in ensuring the regulatory burden for providers who are low risk and delivering high quality provision is proportionate. The decision to rely less on enhanced monitoring, for example, is welcome. However, the way in which quality and therefore risk is assessed to inform this approach – as per the above proposals, and particularly in the rules-based B3 proposal – needs to be better developed.

On B3/student outcomes, while appreciating the efficiency argument of not initiating additional data or evidence collection we maintain there is benefit in gathering additional qualitative information – for example, via the DQB. A provider will have the opportunity to make their own representations, which is good, but there are limitations to relying on a single numerical metric as the primary indicator on which to determine an intervention. For instance, the proposed indicators in table 1 of annex A for B3/student outcomes includes

‘Students have the right skills from their course once in employment and employers are satisfied with the graduates they employ’ without discussion of how information on this will be gathered. There are also other measures, for example how students themselves feel about their outcomes, that could provide valuable insights.

It is understandable that further investigation should focus on the issue where there is a concern and seek to reduce the burden of unnecessary investigations elsewhere within a provider. However, a provider’s wider delivery of quality and standards remains relevant context. Reference should be made to existing internal academic quality reviews. We also remain cautious, as above, as to whether the data can go down to the level suggested to permit such a targeted approach.

On issues of enforcement, we recommend that consideration is given to the number and type of students affected but also the likely impact of any enforcement or penalty on quality and standards for other students. Poor quality provision should not be allowed to go unchecked and it is right that quick action is taken to remedy issues where there are significant concerns. The management of this process, however, must not be to the detriment of students. For example, how the judgement is communicated must not see students’ hard work and attainment being called into question externally.

Questions relating to all proposals.

Question 5: Do you have any comments about any unintended consequences of these proposals, for example for particular types of provider or course or for any particular types of student?

There are several potential unintended consequences of the proposals that we have identified and discussed above:

- Confusion emerging internationally about UK HE's quality and standards and potential damage to the UK HE brand, impacting on international recruitment and TNE partnership opportunities.
- A weakening of opportunities for cross-UK working and collaboration if the link to the UK Quality Code is broken, and further implications for the devolved administrations' international reputation and use/maintenance of the UK Quality Code.
- The fostering of a more risk-averse sector, reluctant to recruit students from more disadvantaged or non-traditional backgrounds if their outcomes cannot be guaranteed. Similarly, a sector reluctant to deliver some programmes, reducing choice for students, particularly where they are less geographically mobile (e.g., disability, family and caring commitments, employment).
- A sector that focuses less on innovation and enhancement in the quality of their offer and more on meeting narrowly defined targets.
- Students and graduates coming under undue pressure to meet narrow definitions of 'successful' student outcomes and suffering from poor mental health.
- There is a risk that this new direction for quality and standards will not be appropriate for future study patterns. In turn, this may reduce engagement with flexible and lifelong learning which is a government priority and essential for learners looking to upskill and reskill.

[Question 6: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?](#)

We do not think that the proposals will directly impact on individuals based on their protected characteristics but as discussed, the unintended consequences of encouraging providers to be more risk averse in their admissions decisions and/or their course provision may have a disproportionate impact on some students for whom choice will be reduced. This could be an issue for disabled students who are potentially less geographically mobile and for BAME students who due to persistent

attainment gaps at a school level may not have the same choice of provider at the point of application. Therefore, we consider it appropriate that the OfS conducts a thorough equality impact assessment on any final proposals.

Question 7: Do you have any comments about where regulatory burden could be reduced?

The principles- and risk-based approach has the potential to reduce regulatory burden considerably. Whether this can be realised will depend on the clarity with which the new regulatory conditions and accompanying guidance is developed. We are calling on the OfS to ensure opportunities and time for the sector to engage meaningfully in the second stage of the consultation and later in reviewing any guidance or documentation that follows. We would also recommend that any new approach is tested before final implementation and the burden assessed across a range of providers. Where any increase is identified that is not related to inevitable ‘start up costs’ of a new approach, the OfS should consider where there is scope to reduce unnecessary burden elsewhere within its regulatory approach.

Question 8: Do you have any other comments?

The OfS should carry out an impact assessment of the proposals, particularly given the over-reliance that the new approach will have on data that is either experimental, partial, and/or under development. As in previous reforms for quality and standards, we would also recommend that the OfS pilots a new approach and tests guidance with the sector to ensure it can deliver effectively on what it is designed to do and without detrimental unintended consequences. Where concerns of unintended consequences are identified, a risk register with clear mitigations must be developed.

We would also like to reiterate our concerns with the amount of consultation the OfS is currently doing. While we welcome the chance to engage, the OfS has publicly recognised the considerable pressure the sector is under during the current pandemic and has committed to reducing burden where possible.

This is needed so that providers can focus on ensuring the health, safety and wellbeing of their students while maintaining quality and standards. The volume of consultation activity currently underway risks either distracting providers from their central goal of supporting students and staff at a time of significant challenge or leaving providers unable to dedicate sufficient time to providing detailed feedback on OfS proposals.