

Our response to the Office for Students consultation on the new approach to regulating student outcomes

Universities UK (UUK) 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 questions regarding this consultation

Question 1: Are there aspects of the proposals you found unclear? If so, please specify which, and tell us why.

N/A

Question 2: In your view, are there ways in which the objectives of this consultation (as set out in paragraph 7) could be delivered more efficiently or effectively than proposed here?

Outcomes are not the only measure of quality and there is no universal or agreed definition of what a 'good outcome' is, so there are limitations in an over-reliance on this approach. However, we recognise that continuing in and completing a course and securing a professional job are important to many students. In most cases, we would expect outcomes to improve where quality also improves.

A condition of registration focused on outcomes is proportionate in the context of the wider B conditions that cover the academic experience, student support, and awards. Combined we think these are sufficient to address the OfS's concerns and meet their objectives. However, we must avoid an unbalanced weighting in which outcomes take precedence above the other measures on quality because of the rules-based versus principles-based approach. Measuring outcomes is important but we must understand how providers achieve this. If universities have the time, space and resource to focus on areas covered by the other B conditions then improved outcomes will follow. We must also recognise what is and is not within the control of a provider.

Notwithstanding this, we agree that there must be some minimum expectations on the outcomes students can look to achieve. Universities and the regulatory framework must be transparent on this point. The proposals – with adjustments as suggested in our response – help meet this objective.

We would like the OfS to note that the sector already reviews the performance of courses through internal processes. To help address concerns about low-value courses we launched a [framework for programme review](#). Through the framework, we have developed principles and best practice to help providers identify courses where value or quality might be an issue. These steps support the OfS's objectives while stressing the importance of proportionate regulation, given that internal reviews already occur.

This consultation is an improvement on earlier proposals. We welcome the increased transparency on how the OfS intends to regulate student outcomes and we support the general direction outlined. However, we think some areas require further changes if the OfS is to arrive at a proportionate and risk-based approach to assuring quality that will have the confidence of the sector, students and wider stakeholders.

Prioritisation: We need greater transparency on how the OfS intends to prioritise its assessments of regulatory compliance. The suggestion that the method could change each year and be based on sampling or themes would not be proportionate. We believe the OfS could achieve this through:

- Focusing on the most severe breaches where the risk to students is highest and where there is very strong statistical confidence to make a reliable assessment. The OfS could also consider cases of multiple breaches and where a breach affects large student populations.

- Committing to publishing early the annual approach to prioritisation and the rationale behind this. This may include drawing on an independent panel (with student input) to determine the prioritisation approach.

Student outcome measures: We think that continuation, completion and progression are useful measures of student outcomes and we recognise the relationship between quality and outcomes. Progression is perhaps the most complex of all the metrics. As the OfS recognises, no matter the level of support there will always be some factors a provider cannot control for. There are structural, socioeconomic factors that influence progression into highly skilled employment such as race, class and disability. While the Graduate Outcomes survey provides valuable information it is not a perfect measure. On continuation and completion the impact of personal characteristics and circumstances are also important, even if the provider does have greater influence here. This is why we support its use only alongside relevant contextual information.

Context: We welcome the reference to context when setting the numerical thresholds and again when assessing compliance. While we do not support a prescriptive list of what is acceptable context, we need more transparent and consistent approach to using context will.

- The OfS could achieve greater consistency by not typically intervening where a provider is within their benchmark.
- The OfS should always allow geographical labour markets, student voice and the value added measures as reasonable forms of context.
- The OfS must contextualise data it publishes to explain where providers deliver positive outcomes.

Avoiding unintended consequences: In the response to the [phase 2 quality and standards consultation](#) the OfS say, "We have engaged with equality considerations throughout our policy development and decision-making process and, in both phases of consultation, we have explicitly called for responses on the potential impact of these proposals on individuals on the basis of their protected characteristics." We do not think the response from OfS has been sufficient to address sector concerns on equality. We are therefore calling on the OfS to carry out and publish an equality impact assessment on the proposals. While we understand this is not legally required, the regulation of students outcomes needs to be designed in a way that is not affected by unconscious biases that do not support the diversity of the sector and student population. The sector then needs an opportunity to comment on this and suggest mitigating actions where concerns and potential unintended consequences are raised.

Future proofing: The OfS should continually monitor the relevance of the indicators and whether they are delivering the desired aims. We recognise the OfS may introduce new indicators for modular provision, HTQs and TNE. The OfS should not try to apply all three student outcomes outlined in this consultation to all future indicators, particularly where the measures are no longer appropriate or reliable data is lacking. When undertaking new additions, the OfS should engage with the sector to assess whether the number of indicators and burden remains proportionate.

Burden: The proposed implementation timeframe in parallel with the TEF will be challenging for providers. While providers already review outcomes data internally, navigating the new construction and level of splits will add a burden in the short term. In adjusting to the new condition, the OfS itself notes providers will only have four weeks to review, check and understand their data before being subject to this revised condition. It will also involve providers preparing to submit for a TEF despite them possibly being ineligible – we do not think this is proportionate.

Condition B3 must also work alongside the OfS's other regulatory activity and wider government policy agendas. Aligning these ambitions is not insurmountable but will need careful design and close work with the sector.

- **Interaction with the TEF:** We support the distinction of minimum baselines in condition B3 and encouraging excellence beyond this in the TEF. However, the TEF's proposed 'requires improvement' category risks confusion with a baseline quality measure. The right place for regulatory compliance is through improvement notices or specific ongoing conditions. External stakeholders may assume the requires improvement category comes with an expectation providers would take monitored steps to improve. We have detailed how the OfS could mitigate this in our TEF consultation response.
- **Access and Participation Plans:** We welcome the sharing of data across the OfS's access and participation work. We support the commitment to consider context within condition B3's assessment and believe the use of the benchmark will be an important safety mechanism to avoid unintended outcomes by driving risk-averse admissions policies. However, the benchmark does not capture all targets that providers are working to within their Access and Participation Plans. We think the OfS needs to consider the potential unintended consequences of these proposals and mitigating actions in an equality impact statement.
- **Levelling up ambition:** Universities have a pivotal role in building the skills infrastructure, collaborating with employers, and delivering outcomes for

students in regions with historically lower levels of high skilled employment. We welcome a benchmark that will feature geographical data on employment and earnings. However, we believe local economic environment and employment opportunities should have a greater presence when the OfS consider contextual information.

- **Lifelong learning reforms:** Modular and more flexible learning has the potential to create significant benefits for the economy and to create opportunities for more individuals to access higher education courses. The new regulatory approach must be future-proofed and flexible. We welcome the OfS commitment to consult in the future on what changes might be necessary for these courses. However, the B3 condition needs to have flexibility to avoid the potential for significant changes in the future.
- **International Education Strategy:** We support the intention to improve the quality of international data and to understand the outcomes of TNE students. We think it is right not to regulate against B3 for these students while there are still data limitations. The OfS should work closely with the sector to develop suitable measures and in time consult on its proposals.
- **UK-wide coherence:** As the OfS is the regulator in England, understandably this consultation focuses on changes to provision in English higher education. However, we believe there is value to the regulator working proactively with the devolved administrations to ensure the overall coherence of a UK-wide system is maintained alongside any reform to the regulatory framework. Providers delivering cross-UK partnerships hold a shared stake in a working higher education infrastructure. A system without significant divergence will reduce the burden on providers.

Question relating to Proposal 1: Revising condition B3 and associated guidance in the regulatory framework

Question 3: Do you agree or disagree that the proposed wording of condition B3 will enable the OfS to meet its policy objectives? If you disagree, what changes do you think are necessary to do so?

Agree

We agree with there being a focus on student outcomes when assessing the performance of providers on quality. While this is not the only marker of quality or value, to maintain public confidence the sector needs to question and address poor outcomes where they exist. This will reassure students, taxpayers and wider stakeholders. Therefore, we agree with the regulatory focus on both numerical thresholds and contextual information.

Generally, the wording of the condition is in line with the policy objectives, but we recommend the below amendments.

New indicators and outcomes (B3.5.f.iv and B3.5.k.vi): We support the commitment (paragraph 17) to consult further should the OfS change the level of numerical thresholds, the approach to setting the thresholds, or the indicators they use. We are therefore concerned about the caveat ‘any other areas as determined by the OfS’ included within the proposed wording. We believe this could be inconsistent with other commitments to consult with the sector should outcomes and indicators change. We suggest the above words are amended to ‘any other areas as determined by the OfS in consultation with the sector’.

Local context (paragraph 20 b.ii): We believe that the OfS should consider the context of both rapid changes within a local area and the historic performance of local areas. In addition, we believe that the OfS should include a commitment to consider evidence of employment patterns and how providers contribute to the local skills system.

Student voice: We believe the OfS should consider graduate views as part of the OfS’s assessment of context. Students must have the agency to decide what is of value to them within their own goals and motivations. We think the OfS should commit to capturing this through the Graduates’ reflections dataset.

Prioritisation approach (paragraphs 24 and 25): The sector needs greater transparency from the OfS on how it will prioritise investigations and action and how it will ensure the approach is proportionate. We recommend that the guidance should state that the OfS will focus on the most severe breaches where the risk to students is highest and where there is very strong statistical confidence to make a reliable assessment. The OfS could also consider cases of multiple breaches and where a large student population is affected.

Paragraph 25 implies the OfS may use its 'general risk-based' approach in addition to the prioritisation process. From our understanding, the proposals in this consultation represent the OfS's risk-based approach and are rightly informed by data and detailed methodology. We would welcome clarity on how interventions based on other measures would not undermine the prioritisation process and the desire to focus on those areas of highest risk.

Question relating to Proposal 2: Constructing indicators to assess student outcomes

Question 4: Do you agree or disagree with the proposals for how we will construct a student outcome measures? Do you have any alternative suggestions?

Agree

We support the shared use of indicators across assessment of condition B3, the TEF, and access and participation. This will support transparency and consistency in the OfS's activity across its regulatory work and help minimise burden. Generally, we support the outlined measures, indicators and split indicators. In the short term, the 48 numerical threshold indicators will inevitably create a burden for providers as they work through the changes. However, we recognise the future benefit of split indicators which allow for more focused analysis without adding separate numerical thresholds.

We welcome the proposal to remove from condition B3 the indicator showing gaps in degree classifications awarded to students. It is more appropriate within the scope of Access and Participation Plans.

When constructing the data and assessing performance the OfS should be mindful of the time series coherence of the continuation, completion and progression datasets.

Data will correspond to different cohorts of learners. This should be considered when making assessments, considering context and issuing improvement notices. This issue is likely to increase with the Data Future reforms which will bring more real time data on completion into regulation, whereas progression data will remain lagged. We support the OfS's desire to use the most current data, but the OfS needs to be attuned to where certain contexts may appear within the data at different points in time. For example, the effect of the pandemic in responses to the Graduate Outcomes survey.

Outcome measures

We think that continuation, completion and progression are useful measures of student outcomes and we recognise the relationship between quality and these outcomes. We know that they matter to graduates and there is a history of measuring performance against these indicators. However, we also know they are not the only measures of quality with graduates having different views based on individual interests and ambitions.

For some students not continuing or completing their course could be a personal choice based on a change in life circumstances or a positive decision to pursue a different interest. However, we do agree that providers should do all within their control to support students to continue and complete their study. This is reflected in the new B2 condition of registration.

Progression is perhaps the most complex of all the metrics in terms of drawing a direct causal link between the role of the provider (the quality of the educational experience) and the student outcome being measured. As the OfS recognises, no matter the level of support there will always be some factors a provider cannot control for. There are structural, socioeconomic factors that influence progression into highly skilled employment such as race, class and disability. It is also dependent on the prevalence of vacancies in different locations at any point in time. Therefore, we welcome situating these outcomes within the context of a provider and progression being just one of three indicators used to measure outcomes. But we are clear this does not remove the responsibility for ensuring students are appropriately recruited and supported as far as possible to complete their studies and progress.

The Graduate Outcomes survey provides valuable information on where students go upon graduation. However, it is not a perfect measure. Our concerns are detailed in a [recent report](#), in short:

- It does not capture all the employment outcomes graduates might possibly pursue, and the census date does not align with many non-standard career paths (e.g., in the creative industries).
- There is a risk that the categorisation of jobs may become quickly outdated and miss out on emerging industries where it is reliant on SOC codes that only update every ten years.
- It does not effectively capture undergraduate students who immediately progress onto taught postgraduate study.
- Low response rates mean it only provides a partial picture of student outcomes.

This is why we support its use only alongside relevant contextual information.

Partnerships

Where providers award degrees in their name we agree that they should have some oversight of the student outcomes within their partners as part of their wider responsibility for ensuring minimum quality and standards requirements are met. However, we believe that the OfS's approach should be risk based. Where the OfS identifies an issue with a lead provider but which is predominantly evidenced within a partnership arrangement, they should be proportionate in how they work with the lead providers. For example, using focused improvement notices on the teaching partner. The OfS will also need to consider the different types of partnerships arrangements and not adopt a blanket approach without recognising different contexts. For example, access to student data across validation arrangements is not always present for degree awarding bodies.

We welcome the proposal not to prioritise assessment of a lead provider's indicators related to partnerships in the condition's first year. We believe it would not be right to do this until the OfS have consulted on their approach to collecting the information on different partnerships.

Under the proposals providers would have a new obligation to inform the OfS of current partnerships and the changes made to these. The OfS propose to achieve this through a one-off data collection. It is unclear if this would be an annual process or would only be completed once. Across the sector partnerships open and close frequently. Beyond partnerships opening and closing they will also need to consider appropriate means to track where partnership arrangements change, such as from sub-contracted to validated. Providers must have a timely means to inform the OfS of

changes to their partnerships. Where possible this reporting requirement should align with existing reporting – such as through the reportable events function. This would require changes to the guidance to make clear that a new or closed partnership should always be reported. The OfS propose to consult on this approach but it is unclear when they will do this. We would welcome clarity on what implications this might have on how the OfS will regulate partnerships in the immediate future.

Type of course

Different course types often bring distinct characteristics whether that is in their learning aims or in the students typically studying them. Future extensions to the levels of study or course type need to be mindful of the burden associated with generating multiple data points and metrics.

We welcome the desire to distinguish between courses at Level 4 and Level 5. We want to underline that students studying at these levels might not have any intent to progress to a Level 6 qualification or managerial or professional employment immediately.

Comments on future indicators

Looking to the future it is important the OfS monitor whether these indicators remain relevant and appropriate. We would welcome ongoing engagement with the OfS to monitor where incremental changes might be needed to the design and construction of the indicators. There is a risk that indicators could proliferate and no longer be proportionate.

We welcome the recognition that TNE provision is an important part of the sector's work but that current data limitations mean it would not be possible to regulate as proposed. Through UUKi we have convened a group to look at monitoring and evaluation tools in TNE and look forward to working with the OfS to develop an appropriate model that meets quality standards while recognising the nuances of this provision. This will take time but it is important to do this right to ensure longevity.

The desire for a more flexible skills system is likely to mean learners reskilling throughout their lives. We have concerns about the appropriateness of the proposed outcome measures for students studying on a flexible modular basis. For example, at what point would it be appropriate to assess continuation and completion? How could a progression measure take account of varying volumes of learning? Which provider would be judged on that student's performance if students move around the sector? We want to make these reforms work and would support the OfS exploring alternatives where proportionate.

Questions relating to Proposal 3: Setting numerical thresholds for student outcome indicators

Question 5: Do you agree or disagree with our proposed approach to setting numerical thresholds set out in Annex E? If you disagree, please provide reasons and any alternative suggestions.

Agree

We welcome the detailed analysis the OfS have provided on setting numerical thresholds. Generally, we support the proposed process and believe the transparent method will give the sector and the public confidence that the baselines are a reasonable estimate of what can and should be considered a sign of good quality.

We are glad that the risk of a more arbitrary threshold level (such as using quartiles or the bottom 10-20% of sector performance) has been avoided. We also welcome the use of separate thresholds for continuation, completion and progression, over an aggregated approach such as within the proceed measure.

In reviewing the baselines every four years, we recommend that any changes include consultation with the sector. However, we also believe that once set the thresholds should have longevity. While there may be good reason to adjust a numerical threshold – for example, in the context of a recession that will impact on the labour market and availability of jobs – we would typically support them staying level. This will support greater consistency in approach and more transparency.

Question 6: Do you agree or disagree with the proposed numerical thresholds set out in summary in Table 1 and shown in full in ‘Setting numerical thresholds for condition B3’?

Agree

Overall, we agree with the proposed numerical thresholds that are set out in Table 1. We welcome the starting point from the OfS that the English higher education sector is high performing. UK universities perform strongly compared to international

counterparts and this must be reflected within the OfS communications upon the launch of this new condition not to undermine the sector's strengths.

The proposals suggest that in areas where the sector is not high-performing it may be reasonable to set a numerical threshold higher than the sector average. However, it is unclear what evidence the OfS might draw upon to reach this judgement. We recommend that an independent panel of academic experts and students could inform such judgements if changes are to be made.

Question relating to Proposal 4: Publishing information about the performance of providers in relation to the OfS's numerical thresholds

Question 7: Do you agree or disagree with our proposal to publish information about individual providers' student outcomes and performance in relation to our numerical thresholds, as well as sector-wide data, on our website?

Disagree

We recognise the importance of the OfS's publishing information about an individual provider's student outcomes. This data is already available across different data sources, and bringing it together through a dashboard helps to ensure providers and the OfS are engaging with the same information. However, there is insufficient information for us to support the current proposals related to contextualisation and the approach to split indicators. Analysis of a provider's performance to the numerical threshold is only one aspect of assessing compliance with the B3 condition. Context and engagement with the provider are crucial steps in judging compliance. The OfS needs to present context clearly and transparently within its publications.

However, the OfS should consider the balance between publishing data related to all the split indicators and the accessibility of the data. There may be benefit in the OfS delaying publishing the split indicators until the first assessments have begun – in January 2023. This would give providers time to identify errors in the data and time for the OfS to explore how the data at this level may be contextualised. There is a risk that large volumes of data will be published without sufficient context.

If context is not present it may lead to a de facto hypothesis approach – in effect creating an 'initial' position as was previously a concern within the TEF. Within

condition B3 we believe the OfS (and other data users) should consider contextual information alongside the data, rather than as an after-thought. We accept that presenting context in an accessible way while avoiding overly complex dashboards will be a challenge. However, it is the responsibility of the OfS to ensure what it publishes is interpreted fairly. There are several options that we believe could achieve this:

- Given the OfS already have contextual information through the benchmark they should explore how this can be best displayed in the dashboard. The ‘student outcomes dashboard’ could only show the ‘view’ with both the indicators and the difference from the benchmark (or make this the default view). While this would add complexity to the visualisation it would signal the importance of placing the threshold within the benchmarked context and is already present in TEF dashboards.
- Where relevant the OfS could consider drawing on its ‘geography of employment and earnings’ dataset. The quintiles could be used to contextualise the progression measure.
- There is a wide variety of context that is not captured within the benchmarked data, which may help evidence why performance below the threshold still represents a positive outcome for students. An asterisk, linked explainer or different colour could be used to signal contextual factors, where an investigation has taken place or where the OfS are satisfied that positive outcomes are still being provided for other reasons. If something to this effect is not done, then this may lead to reputational damage for the provider despite them delivering positive outcomes to students.
- The OfS should draw on existing information that it holds to help contextualise the data published. This may include using the TEF submission as evidence of work within providers to support student outcomes.

Building on the above concerns, the contextualisation of data must be as consistent as possible. If contextual information is only added when a full and completed investigation has taken place (for example, a link to the outcome), then this risks inconsistency across the sector. The OfS need to think about how this will be shown to avoid false comparisons between those providers who have yet to be investigated but where they may still fall below a baseline. We recommend that more generic high-level amendments could be made in a timelier manner – for example alignment with the benchmark or geographical employment data or unique progression attributes of courses.

We believe that providers should have access to a data portal that sits behind the publicly available data published on the dashboards. For example, this would help providers who have multiple teaching partners of different sizes. Aggregated together this can obscure areas of good practice and areas of concern, impacting on their ability to identify areas and ideas for improvement. We also believe a portal should enable providers to filter data that is below or above the numerical thresholds to gain more accessible insights from the data. While we recognise that there is a risk of added burden we believe that this is information the provider would typically be looking at anyway. Through analysing it in an OfS portal, it would reassure providers that they and the OfS are reviewing the same construction of the data and so actually reduce burden. It would also enable providers to make representations on their data where there may be errors.

While we support transparency, we do not believe the data in its current form is appropriate to inform student choice. That said, we recognise that it is likely third parties may republish the data in a way targeted to students. We hope that in publishing this data it would deter third parties from constructing the data which may lead to errors and misreporting. However, we think the OfS should engage with third parties and produce guidance on the accurate presentation and contextualisation of the data.

Questions relating to Proposal 5: Making judgments about compliance with condition B3, including consideration of context

Question 8: Do you agree or disagree with the proposed approach to assessment set out in Annex F? Is there anything we could do to improve the clarity of this information for providers?

Agree

While we have concerns about how the OfS will prioritise and draw on context we do agree with the staged ordering of how an assessment is undertaken. We support the statement that 'each year the OfS will identify those registered providers that may be at risk of non-compliance with ongoing condition B3'. We believe this supports our

favoured approach (outlined in our response to question 9) that focuses on severity of the breach where there is very strong statistical confidence – over other measures such as sampling and themes.

Paragraph 29 notes ‘the OfS will determine which of these providers should be subject to assessment’. We believe that the prioritisation should have predictability and transparency. Where judgements are needed this should happen through an independent process and involve engagement from students and academic experts.

We welcome that the assessment of compliance will initially draw from existing information that the OfS has. We believe this is proportionate and will avoid a burden on providers to submit information that the OfS already has access to.

It is positive that the OfS commit to engage with providers to gather information and allow representations once a provisional decision has been made. We support the focus on understanding a provider’s context within the assessment. However, the commitment to invite providers to present contextual information should be strengthened - with paragraph 38 amended to ‘we will invite’ rather than ‘we may invite’.

Question 9: Do you agree or disagree with our proposed general approach to prioritisation? If you disagree, do you have any alternative suggestions for how we should approach prioritisation?

Disagree

Given the number of indicators and the approach outlined within condition B3 it is right that the OfS will need to prioritise their regulatory activity. The current proposals on how the OfS will prioritise their assessment lack sufficient transparency and proportionality. Given limited resources and their commitment to proportionate regulation we think that getting the approach to prioritisation right will be fundamental to meeting the OfS’s objectives.

Some approaches to prioritisation are unlikely to ever be suitable. For example, random sampling would go against the risk-based approach to regulation. Similarly, while a thematic approach may be interesting it risks not focusing on where the largest probability of non-compliance is, and therefore the biggest risk to students. We also believe that some thematic approaches are likely to be more appropriately located within the OfS’s work on access and participation. These two approaches (sampling and themes) are also unlikely to align with the OfS’s preferred method of

assessment – whereby all the indicators below the threshold are considered within the provider.

The approach to prioritisation must focus on those providers at greatest risk of non-compliance with condition B3. This means prioritising cases for assessment based on the most severe breaches (as defined by distance from the numerical threshold) and where very strong statistical evidence (95% confidence) is present. In addition, the OfS may consider the secondary measures of student population size and where multiple breaches occur within the same provider. This later point would align with the preferred approach to assessment (Option 2).

We propose that the prioritisation approach should be led by an independent process. This process should be responsible for deciding which providers are assessed on the basis of severe breaches, statistical evidence, number of breaches and number of impact students. An independent panel should include engagement from students and academic experts. Divergence from the factors of prioritisation and recommendations of the independent panel should require justification and it should be set out why it is in the interests of students. Transparency in how the OfS prioritise will be necessary for the sector to have confidence that the OfS consistently assesses student outcomes.

The OfS should annually publish the method of prioritisation. This should detail what approach (or combination of approaches) is taken in any given year, the rationale for this and what it considers a reasonable number of providers to target. Our strong preference is that the approach should not change year on year without a clear rationale and engagement with the sector to understand the implications. We believe this would risk not targeting the most severe breaches and contribute to a lack of transparency in the approach.

We believe that in several years it should be possible for the OfS to significantly reduce the number of assessments it is undertaking against condition B3. We expect the sector to strive to meet the condition and as the sector improves the level of OfS assessments must proportionately reflect this.

The OfS notes that through publishing the data of individual providers in relation to the threshold they expect this will ‘create incentives for providers to take steps to improve their performance’. It is unclear what the expectation is on providers who are not under investigation. We agree that it is an opportunity for providers to build on internal processes to improve the data and support their students. However, where a provider believes there is mitigating context it may be unclear what the expectation is pending an intervention.

Question 10: Do you think that the OfS should adopt Option 1 or Option 2 (see paragraphs 207) when defining the scope of each assessment for ongoing condition B3?

On balance, we propose the OfS should initially assess based on Option 2 – annually undertaking detailed assessments within a provider rather than assessing individual indicators separately over a prolonged period. We believe that it is likely the context within a provider or faculty could inform the OfS’s assessment of multiple indicators reducing the burden on providers.

We think Option 2 will be the most proportionate in the initial years of the revised condition as it will focus on the most severe breaches. However, undertaking these detailed assessments will be resource intensive and could take years of monitoring. Therefore, we think the OfS should review the use of Option 1 in a few years’ time. This would genuinely allow for pockets of poor performance to be identified proportionately. It would also give time for many providers to undertake internal improvement exercises and ensure that the OfS’s assessment is proportionate in the long term.

Whichever approach the OfS takes forward, it must align with their use of prioritisation. For example, Option 1 would be more appropriate if the OfS decides to use thematic enquiries for its prioritisation. If multiple breaches are considered a determining factor then Option 2 would be more appropriate.

Question 11: Do you agree or disagree with our proposals for considering the context of an individual provider when assessing compliance with condition B3?

Agree

We welcome the OfS’s recognition throughout this consultation that context is an important means of assessing whether a provider delivers positive outcomes. This averts a cliff edge approach to the thresholds. It also avoids providers facing unintended consequences for events outside of their control. However, we believe more can be done to ensure the application of context is transparent and consistently applied within these proposals.

Retaining a principles-based approach to regulation is important and it would not be feasible or desirable to set out a prescriptive list of what would and would not be acceptable. There is a risk that the current list of ‘not acceptable factors’ may be

unnecessarily prescriptive and risks pre-judging nuanced drivers behind student outcomes. Providers should be able to submit evidence they consider materially relevant.

Judging context

The OfS note that they are less likely to give weight to contextual factors that may have already been considered when setting numerical thresholds and constructing a benchmark value. We agree with this and note the risk of 'double counting' context. However, the numerical thresholds are at sector level and do not show things that may be particularly pertinent within a provider. For example, small and specialist providers and those with high numbers of mature learners. This means that a commitment to consider the benchmark consistently must be explored.

Benchmarking

We support the use of benchmarking as a consistent way of considering context. However, it is unclear how the OfS will review the benchmarking value when assessing compliance with condition B3.

We propose that if a provider is performing within their benchmark, although below the numerical threshold, this would generally preclude them from OfS intervention. We note the OfS say 'For the avoidance of doubt, the OfS will not treat a provider's performance against benchmark values as determinative of whether it satisfies condition B3'. While we agree to some extent, we believe alignment to the benchmark should represent a weight of evidence which while not determinative would be significant.

Under the TEF proposals the OfS consider performance within 2.5 percentage points of the benchmark in either direction to be in line with the benchmark. We recommend that the 2.5 percentage point window is used to support consistent use of the benchmark within condition B3.

We recommend that the benchmark would only be used at the point of assessing compliance with B3. Therefore, distance from the benchmark would not factor into the prioritisation process. This would retain the focus on numerical thresholds and avoid the possibility of identifying highly performing providers who are below their own benchmark.

We recognise that at present benchmarked data is not available for postgraduate levels of study. We believe the OfS should consider what other contextual data could be consistently applied to replicate this process.

Examples of context

We welcome the opportunity for providers to present a range of relevant context as their performance is considered. We acknowledge the need to balance statistical complexity with the need for clarity and transparency and that because of this there will be many factors are not included within the benchmark so need to be picked up elsewhere.

Student outcomes are one aspect of understanding the quality that providers deliver. We believe that the OfS could enhance its use of context in judging these by considering geographical differences, graduate views and the different starting points of students, for example the educational gain evidence provided within a TEF submission. These will be particularly useful in the assessment of the progression measure.

Geographical differences in employment outcomes

We believe geographical context should have a stronger place within the OfS's assessment of context. Under current proposals the OfS say they may consider local or regional issues where external factors mean there is a disruption in the established patterns. We believe that the recognition of context must go further than this. While changes in patterns will be important it is also important to recognise the different local contexts that providers operate in and how these structurally differ across the country – something that is being looked at through the government's levelling up agenda.

We welcome the geography of employment dataset being used within the progression benchmark. However, earnings are not the only measure that may be relevant when considering the local context. For example, the region in which the provider and its students are located, and whether it is a deprived area or an area with high skills needs. If progression data was not benchmarked on these other factors, it would be likely to penalise providers located in relatively economically disadvantaged regions. Given that vacancies and salaries vary across the country there is a further risk that providers are incentivised to partner with employers outside of their region if the potential salary return is greater elsewhere. Many providers will have historically built their portfolio of subjects in strategically important areas linked to local employer needs. The OfS must also therefore consider how providers contribute to the local skills system, as considered within UUK's framework for programme review.

Graduate views

We believe that graduate views on their own outcomes is a rich source of information that must be considered by the OfS. Students must have the agency to decide what is of value to them in relation to their own goals and motivations. It is important that the OfS is interested in the views of prospective, current and past students. We think the use of graduate views would be particularly useful in the assessment of subjects – where ambitions to progression into employment often vary.

We think the best way to consistently capture this would be through the Graduates' reflections dataset. This data can build more nuanced measures of good employment outcomes. For example, contextual information that may inform whether positive outcomes have been delivered could include survey responses to:

- How much graduates use skills gained during their studies. This accounts for differences in abilities and opportunities for applying higher level skills in the role, even in roles that are technically for non-graduates.
- Whether their current work fits in with their future plans. This helps identify career trajectories that aren't standard and might not be seen using the highly skilled employment' measure. This measure will also capture some of the variation in graduates' aspirations.
- Whether their current work is meaningful to them.
- The qualifications which were required or helpful for securing their role. Unlike using job titles, these responses will be sensitive to variation in similar jobs, and the ability for graduates to add value to traditionally non-graduate roles.

Different starting points of students

We believe it is important to recognise the different starting points of students when considering their outcomes. We support the use of entry qualifications as a factor within the benchmark. Given that the OfS is committed to measuring outcomes, we believe value added to the individual through measures such as educational gain would be beneficial. Although there is no widely accepted nationally agreed approach, example approaches may draw on value-added measures, approaches in the Office for Students Learning Gain Pilot or the education gain provider submission within the TEF.

Action from a provider

We support the recognition that the OfS will take account of action from a provider to address concerns about student outcomes. It is important to note that changes can take a long time.

All universities look carefully at the performance of their courses through internal processes. To better understand what internal processes providers go through to review their courses the OfS could reflect on the UUK framework for programme review. Universities have committed to setting out how they review courses, including what metrics and contextual factors are considered. Through developing a framework for programme review we have outlined how to identify courses where value or quality might be an issue.

Questions relating to Proposal 6: How the OfS will address statistical uncertainty in the assessment of condition B3

Question 12: Do you agree or disagree with the proposed approach to using statistical measures when considering a provider's performance in relation to numerical thresholds?

Agree

We welcome the use of statistical measures to address uncertainty. The expectation for strong statistical evidence (90%) before an assessment and very strong (95%) before regulatory action is broadly right. We also agree that there may on occasion need to be judgement around these levels to avoid a cliff edge approach. However, this must be viewed alongside the intention to operate a 'benefit of doubt approach' where a negative judgement is not formed if the dataset is small or has high statistical uncertainty.

Question 13: Do you have any suggestions for additional steps the OfS could take to provide greater clarity about the impact that the proposed approach to statistical confidence may have for individual providers?

N/A

Questions relating to Proposal 7: Taking regulatory intervention when a breach is identified

Question 14: Do you agree or disagree with our proposals to impose an ‘improvement notice’ where we find a breach of condition B3?

Agree

We support the escalatory approach should a provider be in breach of condition B3. We believe that beginning this process with a specific ongoing condition (improvement notice) is appropriate. As recognised throughout these proposals the OfS must recognise context within the improvement notice. For example, it may not be appropriate for the OfS to require improvement to meet and exceed the numerical threshold – as delivery below this may still represent positive outcomes.

Improvement notices normally set a date whereby improvements would be expected in providers. The nature of student outcomes measures compared to those within the other B conditions mean that it can take a significant time for improvements to be realised in the data – and therefore a provider would likely face a significant time spent with an ongoing condition against their name. This can have reputational impacts and create excessive reporting burdens. When drafting the content of the improvement notice the OfS should be mindful of this and the opportunity to consider credible plans or action taken by a provider.

Question 15: Do you agree or disagree with our proposals to take account of a provider’s compliance history in relation to condition B3 for the purpose of determining eligibility for other benefits of OfS registration?

Agree

We agree with the need for an institution’s compliance to condition B3 to be connected, in a coherent way, to the benefits of being registered with the OfS. However, it is unclear how compliance history will be proportionally assessed and what factors will be drawn upon in this judgement. For example, how would the scale and number of breaches be factored in? What time-period will be referenced and

how would production and delivery against credible improvement plans be considered?

The requirement to meet minimum baselines for eligibility to the TEF makes sense as the TEF is designed to assess excellence above the baseline. However, it is not clear from the consultation whether a breach on B3 should mean a provider was unable to receive – or would lose – an aspect rating on ‘student experience’. The approach needs to be proportionate and take into account where the breach has occurred and how significant the breach is. For example, if the concern within B3 related to post-graduate provision then it would not be appropriate for this to impact on the TEF.

Questions relating to Proposal 8: Timing of implementation

Question 16: Do you agree or disagree with the proposals for the implementation of the proposed approach to regulating student outcomes? If you disagree, do you have suggestions for an alternative timeline?

Disagree

The timeline between both B3 and TEF must work effectively together. We believe this can be achieved through introducing them in sequence rather than in parallel. Under the current proposal, a provider may be required to spend considerable time putting a TEF submission together only to be ineligible for submission. Although this is likely to impact only a small number of providers we believe the decisions on compliance with B3 should be made before the TEF submission window commences. As detailed in our TEF response we recommend that the TEF should be delayed until late winter or spring in 2023.

Over time we believe the new proposals will reduce the burden on the sector. However, the timeframe as proposed will be challenging for providers in the short-term and will add a significant burden. This is at a time when the sector is only starting to emerge from the Covid-19 pandemic and uncertainty remains. In adjusting to the new condition the OfS itself notes providers will only have four weeks to review and understand their data before being subject to this revised condition. This burden will be particularly felt by smaller providers with smaller data and planning teams. We believe this can be mitigated through changes to the TEF submission window.

Question relating to Considering regulatory burden on registered providers

Question 17: Is there anything else we could consider that would reduce regulatory burden for providers while regulating minimum requirements for student outcomes?

The balance of regulatory burden between identifying pockets of low performance must be weighed against the overwhelmingly high quality and good outcomes students receive. The burden on providers should be monitored on an ongoing basis – and more formally every four years along with the threshold review. This assessment should consider the extent to which condition B3 remains appropriate and still serves its purpose to reduce the burden on the majority of the sector. This should include the continued relevance of these definitions over time. The OfS should also reflect on the latest evidence and literature on the link of outcomes to success for students and taxpayers.

Given the short timeframe, there needs to be a timely mechanism for the provider to question errors in their own data. This is important due to the public presentation of the data along with the reliability for regulatory decisions. Providers will have to understand their own data before the new regulations come into force. This will be particularly present within smaller providers where the data analysis resources are smaller.

While providers will already review this data internally, the presentation and level of splits proposed will add a burden to navigate. We believe this burden will only occur in the short-term, as providers initially engage with their data. We also want to acknowledge that the indicators and splits will be valuable to providers. We would not recommend a move towards aggregated metrics such as the proceed measure.

To avoid the B3 condition having a sustained burden on the sector changes made to the levels of absolute thresholds every four years must be minimised. Generally, we should expect the threshold levels to be firm, with the cycle of review predictable and transparent.

We note that the DfE is proposing to use outcomes data as a lever for student number controls. We will respond to these proposals in full in the relevant

consultation but would like to underline the importance of avoiding duplication and/or potentially contradictory approaches. We are concerned that the use of different metrics, methodologies, and/or thresholds to define 'poor quality' could create confusion and additional layers of unnecessary bureaucracy.

Due to the availability of quantitative data, there is a risk that condition B3 is overly emphasised in proportion to the other B conditions. For example, the proposed prioritisation process and rules-based approach does not feature for the other B conditions. Together the B conditions provide rounded information of the experience and quality of higher education. As performance increases across the sector, we believe that in several years it should be possible for the OfS to significantly reduce the number of assessments it is undertaking against condition B3.