

House of Lords Industry and Regulators Committee: UK regulators

Evidence from Universities UK

[Universities UK \(UUK\)](#) is the collective voice of 142 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.

Summary

A thriving higher education sector, serving society, requires effective and enabling regulation. The response of UUK below refers primarily to experiences of regulation by the Office for Students (OfS), and should be read in conjunction with evidence recently submitted to the House of Lords Industry and Regulators Committee into the OfS.

We are supportive of recent efforts being made by the OfS to respond to sector concerns and work with the sector where we have a shared interest. However, the experience of OfS provides evidence of challenges remaining with regulation in the UK. These include:

- the ability for a regulator to retain its independence, particularly from political pressures, and to be clear in its responsibilities versus those of The Government.
- the need for a regulator to be more coordinated with other regulators operating in the same sector, to reduce duplication, burden, and potential contradiction.
- the importance of transparent and effective accountability mechanisms, and opportunities for regulated entities to engage in a dialogue about their experiences.

1. Are UK regulators being given a clear job to do?

1.1. The Office for Students (OfS) was established under the Higher Education and Research Act (HERA) 2017 and set up in 2018 to act as the lead regulator of higher education providers in England. Providers, including universities, must register with the OfS if they want to access public funding, have their students able to access student loans, sponsor international student visas, call themselves a university, and to award degrees. To be registered and stay registered, they must comply with the OfS's conditions of registration.

1.2. As in [our evidence to the recent House of Lords Industry and Regulators inquiry into the OfS](#), we are of the view that the OfS is an example of a regulator where the duties are clearly stated and appropriate. We agree on the need for regulation in higher education, and agree with the OfS on what its priorities should be: quality and standards, equality of opportunity, and enabling regulation. We have welcomed the regulators' recent efforts to engage more regularly and more constructively with the sector in pursuit of these objectives, including a programme of institutional visits and greater visibility of the senior leadership team.

1.3. The OfS is an example, however, of a regulator that has appeared to struggle with the interpretation and prioritisation of its general duties (section 2 of HERA), resulting in a lack of clarity about its regulatory interventions and expectations. It is not always clear to the sector what actions or outcomes are likely to prompt regulatory concerns, because the regulator itself appears unclear on how it is supposed to navigate a complex set of issues including where certain duties appear to be in tension. For example, minimum baselines for student outcomes set clear objectives but can prompt risk averse behaviours, deterring providers from recruiting certain students or delivering certain courses, thus reducing the student choice and access to higher education which the OfS aims to uphold.

1.4. The OfS as a regulator appears constrained by the absence of a consistent and well-articulated higher education strategy in Government. We see a regulator trying to address all issues, often without a clear long-term strategic vision from Government or a robust evidence base supporting that vision, and without being given space to respond in an appropriate way.

1.5. It is important to note, however, that in the pursuit of clarity we need to avoid adopting a one-size-fits-all model of regulation. Different sectors and markets require different approaches, [as set out by the National Audit Office](#). Each regulator needs to work with its sponsoring department and the sector it regulates to ensure there is clarity in what it is trying to achieve and how it will achieve it, and this itself must be tailored. In the case of higher education, the autonomy of our universities is a central – if not defining feature – of what is recognised as a world-class system and produces the kind of diversity and innovation that continues to provide students with choice. The spending of international students alone [contributes £15 billion to the UK economy](#). Institutional autonomy also safeguards academic freedom and freedom of speech. An overly prescriptive or rules-based approach to regulation would be inappropriate and put this at risk.

1.6. We would ask that the committee reviews the evidence we submitted to its previous inquiry into the OfS for a more comprehensive report on issues specific to this regulator. The remainder of this written evidence covers issues of particular relevance to the current inquiry.

2. Is the right balance being struck between the responsibilities of regulators and those of the Government, particularly where there are political or distributional trade-offs that need to be resolved?

2.1. In the case of higher education in England, there sometimes appears to be a lack of join-up between Government activities and those of the regulator. This creates questions about which of the two is ultimately responsible for determining the terms by which a provider operates. For example, in its response to the HE reform consultation in July 2023, [the Government announced](#) its goal to impose limits on ‘the number of students universities can recruit onto courses that are failing to deliver good outcomes for students’. The Government has responsibility for student finance policies (through the

Department for Education working with the Treasury) and the OfS has responsibility for regulation, but in areas such as student number controls, it is unclear where responsibility sits.

3. **Are regulators appropriately independent of government? Is the right balance being struck between strategic and political input from government and preserving the operational independence of the regulators?**
 - 3.1. The OfS is an example of a regulator where serious questions have been raised about its political independence. The [recent House of Lords Industry and Regulators Committee inquiry into the OfS](#) reported it 'lacks both real and perceived political independence'. A recurrent concern across the sector is that the OfS Chair has chosen not to resign the party whip of the Government while he retains his position within the House of Lords. This is in marked contrast to chairs of most other regulators. We would strongly support a requirement for the chair of any regulator, the OfS included, to resign the whip as a condition of their appointment. This should increase the confidence of the regulator in determining its own priorities and strategy. It should also give confidence to those that are regulated that they can expect consistent and objective regulation, which can help them to comply and support a constructive working relationship.
 - 3.2. There have been regular examples of the OfS being a regulator that has appeared unable to deviate significantly from political priorities. Government guidance has been highly prescriptive and subsequent OfS positions have regularly been almost wholly aligned with Government, while the views of experts and wider stakeholders has been dismissed. For example, in a [letter dated 31 March 2022](#), the Secretary of State twice gave strong support for a new 'requires improvement' category in the Teaching Excellence Framework (TEF). This was subsequently implemented by the OfS despite both an [independent review of the TEF](#) and three-quarters of 239 responses to the [relevant consultation](#) advising against this. In the same letter, the Secretary of State specified computer science and law should be prioritised for upcoming investigations into student outcomes despite the relevant condition of registration (B3) still being under consultation. Both subjects were later prioritised in the first wave of B3 investigations. This has led to a perception that the regulator is not appropriately independent.
 - 3.3. There are some examples of the OfS being more assertive in taking an independent stance, for example retaining the National Student Survey (NSS) despite ministerial pressure to remove or radically reform it. This suggests it is possible for regulators to challenge a Government steer. However, even here, subsequent changes to the survey appear to have been driven by political priorities. This is seen in the inclusion of a new freedom of expression question introduced to the England-only question bank to support growing political interest in freedom of speech.
4. **Does the Government provide too much or too little guidance to regulators in making decisions, particularly in deciding between different objectives and priorities?**

- 4.1. The experience of the OfS suggests that the Government can too often see regulation as a mechanism through which to pursue its policy objectives even when tangential to the OfS' core role as a regulator of English Higher Education. This is evident in the volume of ministerial guidance. Between 2018 and October 2023 there have been [27 separate pieces of published government advice and guidance to the OfS](#). One impact of guidance on this scale means ongoing adaptation of a regulatory framework. This, in turn, creates an additional burden for the regulated entities who must navigate frequently changing requirements and expectations. In recent [research commissioned by UUK](#), we found a university, on average, has a full-time equivalent (FTE) of 17.6 dedicated solely to regulatory compliance. Across all 116 UUK members in England, this could amount to as much as 128 FTE at executive level, 638 FTE at manager/director, and 1,289 at officer/coordinator level. This is all time and resource that is not being spent on improving student experience, which is the thing the regulation aims to uphold.
- 4.2. With 25 conditions of registration in the current regulatory framework for higher education in England, the remit of the OfS is already extensive. There are significant concerns about further expansion of this framework in response to ministerial interventions and the Government's legislative programme. This includes the proposed creation of a new condition of registration on harassment and incorporation of freedom of speech into the OfS' remit. Neither were originally envisaged during the passing of the Higher Education and Research Act (HERA) 2017. We recognise the importance of both these issues. However, we believe non-regulatory and collaborative approaches could have been explored first and where they were considered, enough time allowed to assess their impact before moving to a more formal regulatory approach. We believe a regulator should be given greater freedom to judge the levers that will be most appropriate rather than be instructed to regulate before these have been explored. We have previously recommended the OfS develops a mechanism for reviewing regulation where it no longer remains relevant or necessary. We were pleased to see this referenced in its [latest business plan for 2023-24](#).
- 4.3. This would be in line with the approach set out in the recently launched [Better Regulation Framework](#). While this is targeted primarily at government departments, a similar checklist on 'indications that alternatives have not been adequately considered' (paragraph 5.10 of the Better Regulation Framework) could be adopted within a regulator to inform how it responds to a government request.
- 4.4. [We have also previously recommended](#) that following on from the OfS's welcome commitment to consider regulatory burden when consulting on new proposals, that it develops a regulatory impact assessment framework to assess further the relative costs and benefits of any changes. This will ensure that if further regulation is thought to be needed, there is a comprehensive and transparent assessment of its impact which will identify any potential unintended consequences.
- 4.5. In the examples of letters above (paragraph 3.2.), we do not disagree with Government stating its priorities. There needs to be some signalling of strategic objectives. However,

the level of prescription in guidance to the OfS is often considerable. For example, letters have stated [the types of provider](#) that should be investigated, without presenting any evidence to explain this. Instead the OfS should be allowed the freedom to pursue the overarching Government priorities around student outcomes in a way that is evidence-based and focused on high risk providers, while still being in line with the expectations set out in the 2017 Higher Education and Research Act.

4.6. The expansion of the OfS's remit in response to increased instruction from Government not only creates a strain on resources within an institution it also leaves the regulator under pressure to cover more policy areas, which in the OfS's case has required an increase in registration fees. In September 2020, the OfS committed to a 10% real terms reduction in registration fees over two years. In [guidance from the Secretary of State in March 2022](#), however, OfS were advised that the fee reduction was not necessary in view of the priorities they were being asked to pursue. Subsequently, in May 2023, [providers were notified of net increases of up to 12%](#) in registration fees. This cost is being absorbed by the sector and, ultimately, means the income from student fees being diverted into regulation. It is worth noting that the House of Lords Industry and Regulators Committee recently raised concerns over the sector's financial sustainability.

5. Are the roles and remits of different regulators sufficiently discrete, or is there overlap and duplication?

5.1. Higher education providers are subject to regulation by multiple bodies. While the OfS is the lead regulator for higher education in England, for specific courses – whether determined by type of provision or the subject discipline – there will be overlapping and additional regulation.

5.2. For example, [degree apprenticeships are subject to regulation and/or oversight](#) from the OfS, the Education and Skills Funding Agency (ESFA), Institute for Apprenticeships and Technical Education (IfATE), Office for Standards in Education, Children's Services and Skills (Ofsted), and Office of Qualifications and Examinations Regulation (Ofqual). In other cases, providers are subject to the requirements of professional, regulatory and statutory bodies (PSRBs) which accredit courses including those with fitness to practice elements. There are [over 160 PSRBs](#) with distinct requirements, that will dictate things including assessment design, contact hours, and curriculum. There will not always be alignment which can result in having to map and meet multiple requirements. Where there is equivalent regulation, for example on quality assurance, we think there is more scope to streamline processes and for regulators to trust the guidance or relevant counterparts.

5.3. The issue is particularly pronounced in higher education in data collection and reporting. Universities must submit data not only to the OfS and other regulatory bodies but also agencies which include the Student Loans Company and Office for National Statistics. While each has a distinct purpose and responsibility, our members report significant duplication in requirements. One member reported to us a total of 99 data returns being required for the 2022-23 academic year, from the OfS and others. This has been

supported by a team of 7 full-time staff members. We welcome [the Government's recent commitment](#) to a review of data burden across the higher education sector, as announced in November 2023.

5.4. However, we have welcomed activities from the OfS to engage proactively with PSRBs in revising its guidance on the retention of assessment. This includes understanding assessment requirements for different subjects and being flexible on its own requirements where it is reassured that a PSRB has sufficient oversight.

6. How effectively do regulators co-operate with one another, and how could this be improved?

6.1. UUK welcomed the creation by the Department for Education (DfE) of the [Higher Education Data Reduction Taskforce](#) in 2022 to address concerns about duplication in data collection and publication. However, we note the group has not met for some time nor reported any outcomes. We, as well as other sector representative groups, continue to argue for it to be reconvened and an immediate priority to be mapping the data burden across all the regulatory bodies universities engage with. This should include involvement of the funders and regulators in the devolved administrations where data requirements and collections operate cross-border.

6.2. In England, we also believe the OfS could do more in its role as lead regulator to recognise the wider regulatory reality in which providers operate. This could be supported by the creation of an HE regulation network, for example, led by the OfS and accountable to the DfE. This would be designed to support coordination (e.g. on data collection), minimise duplication of processes (e.g. quality assessment and assurance of courses), and to respond effectively to emerging and/or critical issues in a coordinated way (e.g. Covid pandemic, industrial action). Similar models could be applied in other regulated sectors.

6.3. This could be aided by the Better Regulation Unit (as detailed in the Better Regulation Framework) within the department, which has the potential to ensure a holistic view of regulation across the higher education sector.

6.4. Across the UK, we would encourage the funders and regulators to work more closely and constructively. While there are inevitable differences in approach, the strength of UK higher education and its international reputation benefits from cross-UK approaches. In higher education, regulation does not appear to be coordinated well across the UK. For example, both the Higher Education Funding Council for Wales (HEFCW) and the Scottish Funding Council (SFC) submitted formal responses to the [OfS consultation on the NSS](#) despite the NSS being a UK-wide survey owned by the four national funder-regulators of UK higher education in which they should have been fully engaged.

7. Do the UK's regulators have the necessary skills, capabilities and expertise internally to perform the roles they have been given? If they do not, how could this be improved?

- 7.1. Under HERA, the OfS must assess or make arrangements for the assessment of quality and standards. [We believe an independent designated quality body \(DQB\) remains most appropriate for external quality assurance](#). This is crucial for academic standards, which are set, maintained, and owned by the sector, and in the assessment of degree awarding powers. Both were [cited during HERA's](#) passing and informed clauses relating to establishment of an independent DQB. This recognises the role of academic expertise in advising on whether content is 'up to date' and whether it offers sufficient stretch. Regulators should be skilled in making regulatory decisions but should also look to utilise sector expertise effectively to inform those decisions.
- 7.2. We have welcomed the efforts made by the OfS to ensure academic expertise is embedded within their approach to quality investigations. However, hosting such a function in-house is inevitably subject to greater volatility. Even an independent regulator must respond, reprioritise, and redirect resource across its activities as events, intelligence, and ministerial guidance requires. Experts on quality need the space to make informed, impartial, evidence-based reports against which a regulator can then make a judgement. A dedicated DQB provides greater stability and reassurance, which is important for consistency in assessments and for clarity of process among international audiences. It is also notable that while launched in May 2022, only three quality investigation reports have yet been completed. While these are complex cases, it would be reasonable to expect a timelier response.
- 7.3. As above, there are also areas where regulators can benefit from engagement with the sector they are regulating and other partners. For example, in the case of OfS and its proposals to regulate on harassment and sexual misconduct, the OfS would need to recognise the complexity and challenge involved in tackling these issues, [which differ substantially in nature to issues covered in many other conditions of registration](#). There is already considerable evidence of good practice in the sector to build on. There are also other agencies, for example community groups and local police forces, who have expertise to help improve campus safety. It should not be assumed that a regulator is always best placed to lead on an issue.
- 7.4. The [Regulators Code](#) states it is good practice to establish ways for regulated entities to feed into the development of the regulation that affects them. Sector expertise can ensure potential problems are identified and mitigated before a policy is introduced. This can be achieved through consultation and ongoing sector engagement, particularly when this is done at an early stage. However, we would also recommend the OfS exploring the creation of a provider panel to complement its the existing student panel. Such a group can act as a technical reference group for testing new proposals, sense check strategic messaging and communication, and support an understanding of existing practice and mechanisms within the sector. This would aid the work the regulator has already embarked on to improve engagement with the sector.

8. Who should hold the regulators accountable for their performance against their objectives? What is the appropriate role of Parliament in performing this scrutiny role?

8.1. Regulators should be accountable to Parliament but should also be accountable to the individuals or groups they are regulating on behalf of. There is arguably a role for greater student involvement in holding the OfS to account. During the recent inquiry into the OfS, there were [significant concerns raised about the relatively powerlessness of the OfS Student Panel](#) and a lack of diverse student voices in the OfS governance structures. We would therefore recommend the OfS explores how it can increase student representation on its board and in its committee structures, and that any Parliamentary scrutiny of the OfS invites the views of the OfS student panel.

9. How should the Government and the regulators themselves facilitate appropriate scrutiny and accountability of regulators? Are regulators sufficiently transparent about their own performance?

9.1. The government should consider revisiting the approach by which it holds regulators accountable, while also evaluating the implementation of the Better Regulation Framework launched in September 2023. The experience of the OfS has demonstrated what happens when there is insufficient oversight and accountability. It is widely felt, as reported by the House of Lords Industry and Regulators Committee, that the OfS cannot demonstrate how they are referring to the [Regulators' Code](#) and regulatory best practice.

9.2. Achieving greater oversight of the regulator in higher education, and regulators more generally, could include undertaking a biennial survey of the regulated with the regulator, to inform oversight by the relevant sponsorship department and be included in the regulator's key performance measures. This would identify where changes in engagement with the sector or the regulators' approach might be needed as well as where things are working well and what can be learnt from this.

10. What mechanisms and metrics could be used to hold regulators accountable on a regular and ongoing basis and to judge whether a regulator is performing well?

10.1. The OfS has several key performance measures (KPMs) which can be a useful method for assessing performance on an ongoing basis. However, these KPMs have been subject to change over the five years in which the OfS has been operational, which can make tracking progress over time more difficult. There are also questions as to how effective they are in monitoring the regulator's own performance. Much of their focus is on the outcomes of regulation and how the sector is performing. There is only one KPM ([KPM11, comprising three measures](#)) focused on how the OfS itself operates.

10.2. We recommend that the OfS leadership, its governing body, and its sponsorship team look again at how it assesses its own performance and updates its KPMs accordingly. Areas for consideration, and which we think would be relevant to any regulator, are

engagement with the sector it regulates, the type and amount of correspondence, responsiveness, and an ability to meet deadlines.

10.3. The OfS was due for a review of its fee model two years after its establishment. However, this is still yet to happen. We think that this should not only happen but that as part of annual reporting into the relevant sponsorship department, there must be consideration of how the costs of regulation are borne across a sector and how this interacts with factors such as size and risk, what the impact of this cost on providers is, and then crucially how any registration fee income has been spent.

10.4. We are supportive of the Better Regulation Framework's calls for 'earlier and more consistent evaluation of whether implemented regulations are achieving their aims'. In the context of the OfS, we have been consistent in saying that a new regulator should be given time to bed in and refine its regulatory requirements and approach. However, we welcome the expectation that any regulation which is failing to achieve its desired outcomes, or which creates unintended negative consequences in pursuit of them, needs to be revisited.

11. Do any of the UK's international comparators address the above questions particularly well? What lessons, if any, can the UK learn from other jurisdictions on these matters?

11.1. Australian regulation of higher education, under the Tertiary Education Quality and Standards Agency (TEQSA), provides useful lessons for improving communication between the regulated and the regulator on areas of risk. TEQSA, undertakes an annual [risk assessment of all providers](#), which is typically shared back to each provider. Providers can then respond, which may lead to an adjustment in the assessment and ensures the regulator has considered all the relevant factors in their judgement. It also means remedies can be put in place before problems escalate, meaning students are protected from things going wrong rather than relying on regulatory penalties being imposed after the event.