

Addressing the challenge of regulatory burden

Regulatory burden has become a focus of discussions on the efficiency and effectiveness of the regulation of higher education providers in England. Universities UK (UUK), alongside other voices in the sector, raised this as a leading concern in evidence to the recent House of Lords Industry and Regulators Committee inquiry into the Office for Students (OfS).

Regulatory burden refers to all those activities that higher education providers are required to do – and evidence that they are doing – if they want to stay registered with the OfS. They need this if they want to sponsor international student visas, have degree awarding powers, hold a university title, and give their students access to the student loans system. Crucially, however, burden is created when these activities are additional to ‘business-as-usual’ and universities’ existing work in pursuit of their mission and strategy. As a sector in receipt of significant amounts of funding, it is right that providers are regulated and their spending is efficiently allocated.

We are clear that some “burden” is unavoidable, and that the activities required by many parts of the OfS’s regulatory framework are things that any responsible institution, committed to delivering for students, would be dedicating resource to anyway. There are also parts of the OfS’s registration conditions that relate to requirements that sit beyond it, for example registration with the Office for the Independent Adjudicator for Higher Education (OIA) to ensure students have access to an independent complaints scheme.

But there has been growing unease about compliance activity becoming disproportionate, and so diverting universities’ attention away from the things that the regulation is meant to be achieving. A balance needs to be found in which compliance activity offers appropriate assurance, to students and the public, without the effort being so great as to be at the expense of the student experience.

The scale of the challenge

To understand the issue better, we commissioned [Moorhouse Consulting](#) in April 2023 to undertake research into the experience of regulatory burden among our members in England, all of which are registered with the OfS. The research showed that despite welcome moves by the OfS to begin addressing some of the sector's concerns, there are still many aspects of the OfS's regulatory approach – the regulation itself and the way in which regulation is conducted – that universities felt were not working well.

The research estimates that:

- 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, the total could be as much as 128 FTE at executive level, 638 FTE at manager/director, and 1,289 at officer/coordinator level.
- 45% of universities feel that regulation takes up a significant or major proportion of governing body time.
- 41% of universities feel that the costs of regulation outweigh the benefits and 34% saying the costs and benefits were only balanced.

The research also found respondents felt:

- There was a lack of clarity on regulatory timelines, a lack of alignment between OfS and other higher education regulators, and aspects of ineffective delivery of regulation.
- Where regulation is poorly executed, for example duplicating existing data collection or consisting of overly technical and lengthy guidance, it reduces resources that would otherwise be available to support student experience, and so creates an opportunity cost.
- We are not yet at a truly risk-based approach, often a one-size-fits all approach was being adopted.
- We are missing there being a constructive working relationship between the regulator and the regulated.

It is important to note that the research focused primarily on the experiences of our members and what they feel they must do to comply with regulation and their perceptions of the impact of this on their wider activities. It does not necessarily reflect what the OfS itself would expect or require of providers. We want the research to provide a basis for the OfS and the sector to come together to understand where and how burden is generated and be able to tackle it.

The research nevertheless strengthens the case for thinking again about how the legislation that created the OfS, the 2017 Higher Education and Research Act (HERA), is being interpreted and what changes might be needed if we are to reach a truly proportionate and effective regulatory approach, as intended and to which we are collectively committed. This would be an approach that can command the full trust and confidence of government, the sector, and the public in its ability effectively to protect the interests of students while continuing to support the benefits of a diverse and autonomous sector.

To drive this work forward, we need to consider what a well-regulated higher education system looks like and what is needed to achieve this. This includes learning from other sectors (a process started by the research from Moorhouse), learning from higher education sectors around the world, and understanding the different forms that regulation can take. We will be exploring how different approaches can be combined and applied within the context of higher education, to uphold a thriving sector in which opportunity and quality are central to universities' role in serving society. Creating a system in which unnecessary regulatory burden is kept to a minimum will be a key consideration.

However, the research suggests there are things that the OfS, the government, and the sector can already be doing to help reduce the burden within the current regulatory framework.

Reviewing the performance of the OfS

The research from Moorhouse engaged as many as 62 UUK members in England, collecting evidence for the first time using a consistent series of questions and over a defined period, and independently analysing the results. However, the sector is both larger and more diverse than UUK's membership. The research was also reliant on self-reported data and did not explore the perspectives of other actors, including those of the OfS. There is also ongoing expansion of the regulatory framework creating more OfS activity, meaning there are further aspects of burden to be explored. It is also the case that some of the perceived burden related to regulatory requirements would exist with or without the OfS. For example, compliance with consumer law.

We are, therefore, calling for a full review of the OfS to take place under the Public Bodies Review process. This needs to be more than a just self-assessment by the OfS and Department for Education (DfE). It needs to draw on the experiences of those being regulated, to understand the impact the OfS is having on the sector, and the extent to which the costs of its activities are outweighing or being outweighed by the benefits. The independent chair of the review needs to be supported by an expert

panel, and the terms of reference should draw on the wide range of evidence already presented to the recent House of Lords Industry and Regulators Committee inquiry into the OfS.

Reducing the current regulatory burden

Ahead of this, based on the recommendations from Moorhouse and our emerging thinking, we would welcome the opportunity to work with the OfS to consider collective approaches to reducing regulatory burden. We are recommending that:

The OfS publishes a transparent regulatory burden impact assessment ahead of stipulating any new – and changes to - expectations of providers.

The research showed that the burden of regulation can vary considerably between and within the different registration conditions, and that there is a difference between the initial introduction of a condition and ongoing compliance. The OfS, in its [2023-24 business plan](#), indicated its intention to invite provider feedback specifically on burden when consulting on regulatory changes. This is welcome, but we think the commitment could go further by adopting a consistent approach to assessing burden and ensuring this carries significant weight in any decision-making.

- The OfS should set out the methodology that will guide its approach, recognising that it will impose a burden, including working with the sector to consider how it will support providers to supply this feedback and how the feedback will be used and weighted alongside other considerations when assessing the costs and benefits. This could be modelled on the existing Higher Education Statistics Agency (HESA) [‘burden assessment methodology’](#).
- The OfS should use these assessments to estimate the total scale of regulatory burden, using this information to update and revise relevant key performance measures. OfS could use this information to revise the existing key performance measure on efficient regulation.

The OfS sets out how it intends to identify regulatory requirements that need reform or removal from the regulatory framework.

In our evidence to the House of Lords inquiry, we argued that the OfS should develop a mechanism by which regulation can be reviewed and in cases where sufficient progress has been made, to have these updated or removed from the regulatory framework. We welcome the commitment from the OfS in its latest business plan (published following our evidence) to ‘identify conditions of registration that the OfS believes may no longer represent an appropriate regulatory approach and consult on removing or revising those conditions’.

- The OfS, in its annual reporting to its sponsorship department, should be asked to consider how effectively its regulatory requirements are supporting its objectives, and what it is doing to minimise any unintended consequences, including burden.
- The DfE, when recommending areas for OfS interest, should encourage the OfS to explore with the sector non-regulatory approaches first and to provide evidence on the effectiveness of these approaches before proposing new conditions of registration.

The OfS initiates a relationship reset, working with providers to review its engagement strategy and rebuild trust and understanding between the regulator and the regulated sector.

Our members reported that they still find themselves often uncertain about what is required of them by the OfS. This is sometimes resulting from regulatory guidance and instruction that is felt to be overly long and technical, and hard to digest, but also in the lack of confidence they have in the OfS to respond in a consistent and proportionate way. This creates the risk of ‘gold plating’, in effect providers engaging in unnecessary activities to go beyond what they think is required so they feel doubly and even triply assured that they are fully compliant. This, arguably, is a logical response to a relationship with the regulator that is currently characterised by a degree of mistrust.

The OfS has previously recognised this challenge and the connection to burden. They have also commissioned research into providers’ experiences of OfS’s engagement to try to improve relations. However, the research we commissioned suggests progress is too slow and the problems are persisting. In part, we think this is because changes have too often focused on making small improvements to the current engagement approach rather than exploring how engagement and relationship management can be done differently, and trust be rebuilt.

- The OfS should work with the sector to explore where there is scope for a change in their approach to sector engagement and relationship management, and how this can support a relationship reset.

The OfS revisits its approach to risk-based regulation to be genuinely targeted towards areas of high risk and more transparent, to assist universities to respond proportionately.

Our members also reported facing considerable uncertainty over whether they are the subject of regulatory attention or not, and on which issues they should be focusing their attention. One option to mitigate this would be for the OfS to communicate more regularly with a provider what their risk profile is, so they know

whether they are likely to face more engagement over the coming year (and plan for it).

Similar practice takes place in Australia, where their regulator, 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.

- The OfS should aim to share their current risk assessment with providers directly and on an annual basis. Providers should be given the opportunity to provide additional context and comment on the report. Sharing this will support a shared understanding of risk, identify areas for enhancement, and ensure provider student protection plans are as effective as possible, and avoid unnecessary activity.

The DfE reconvenes the Higher Education Data Reduction Taskforce to assess and address data burden across OfS and other relevant regulators, including the OfS's counterparts in the rest of the UK.

The research shows that data requirements alone require significant resource and planning within a university, while wider discussions have shown that data requests across different regulators often duplicate and lack alignment. It is not the responsibility of the OfS alone to solve this problem, and it requires all relevant regulatory and funding agencies to work together more closely.

- The Higher Education Data Reduction Taskforce should undertake a mapping exercise of all the data requirements being asked of the sector, to understand what is required and why, how the data is used, and the costs and benefits of its collection.
- The Higher Education Data Reduction Taskforce should convene relevant regulatory and funding agencies and facilitate discussions on how they can consolidate their data request requirements and reduce duplication.

The OfS provides a timetable of consultations and expectations for sector engagement.

The research recommends that the OfS set and communicate a clearer operational plan for regulatory delivery. The OfS already publishes deadlines for data returns and scheduled information requests, and an annual business plan. However, in the 2023-24 business plan, this includes at least five intentions to consult but no timetable for when this will happen.

The OfS should consider:

- Publishing an annual timetable of consultations to allow universities to plan resource allocation to respond in a meaningful way.
- Avoiding multiple concurrent consultations.
- Adopting the recommended 12-week consultation period promoted in the [government code of practice for consultation](#).
- Engaging earlier with the sector and in advance of publication, to ensure that the proposals are clear and understood upon publishing the consultation.

UUK facilitates sharing of good practice among its members on managing burden.

While the research observed a universal feeling from our members that regulatory activity was creating unnecessary burden, it was evident that beneath these headline findings there were variations in experience. Some of this was linked to size and a university's resources, but in other cases there were also different internal processes and structures being established. The lessons from other sectors presented by Moorhouse showed that in those areas where regulation has been long-established, organisations have developed ways of managing burden.

A regulatory model is relatively new for higher education and the sector is adapting. While there are things the regulator and government might do to address some of the challenges, we recognise that the sector also has a responsibility to consider how it is using its resources efficiently and seek to make changes where they might be able to streamline approaches. There is a role for UUK to play in facilitating opportunities for universities to explore how they can best respond to the requirements they are now facing, and we would be keen to work with the regulator to understand how best to support our members.