

# UUK response to the OfS consultation on quality and standards (phase 2)

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 remarks

Universities across the UK are strongly committed to delivering a high-quality experience for all their students, irrespective of their background, the course they are studying, and the mode or location of their studies. We want our students to succeed in their chosen fields and be able to meet their aspirations through the experiences and learning they gain through higher education. Maintaining academic standards to uphold the value and credibility of the qualifications they gain is also central to universities' work. This is evident across the overwhelming majority of provision.

This work is supported by the activities UUK has been leading for many years to strengthen approaches to quality and standards. Recently this has included:

- Exploring the development of a framework to support UUK members in England in taking ownership of enhancing portfolio review processes, focused on delivery of high-value sustainable courses and improved transparency and consistency of processes.
- Making significant progress in tackling concerns about grade inflation through the UKSCQA statement of intent, including establishing principles for effective degree algorithm design and degree outcomes statements, with work now underway to strengthen the external examining system

- Commissioning the Quality Assurance Agency for Higher Education (QAA) to develop the Quality Evaluation and Enhancement of UK Transnational Higher Education Provision.
- Working with Independent Higher Education and the Association of Colleges to develop guidance on managing collaborative teaching partnerships, including quality and standards, during the pandemic and beyond.
- Supporting the QAA Academic Integrity Charter to support genuine, verifiable, and respected qualifications.

As UUK noted in its response to phase 1 of the OfS' quality and standards consultation, however, we recognise the regulator's concerns about outlier courses that may still be falling short. It is in nobody's interest to allow provision that could be deemed 'low quality' to go unchecked. Students deserve a high-quality education, while the reputation of the sector, within the UK and internationally, is reliant on universities being subject to robust regulation. Students should be able to feel proud of their education and the public should be able to feel confident that UK universities are deserving of their world-leading status.

We have been pleased to see the efforts made by the regulator to address some of the concerns raised by UUK and others in phase 1, as evident in the proposals themselves and in the consultation analysis.

UUK welcomes the stated commitment to maintaining a principles- and risk-based approach which is focused on minimum baselines. We are encouraged that institutions should be able to demonstrate compliance with these baselines, and to innovate and enhance beyond these, in ways appropriate and relevant to their context. This is important to support student choice, encourage innovation, and protect institutional autonomy. What 'good' looks like will vary across different types of provision. We also think the guidance and additional clarity in the proposed conditions is largely helpful in expressing what can demonstrate compliance in different scenarios, although we have identified some areas that we think require amendment. We also consider the focus for the proposed conditions to be appropriate as areas over which a university has control, namely the education and supporting infrastructure it provides.

While UUK agrees with the proposals in principle, if this regulation is to be effective, there are aspects of the proposals that will require additional consideration. We would welcome further opportunities to engage with the regulator on the issues set out below.

All students deserve a high-quality education, whatever their course. Universities must also act responsibly when working in partnership. However, we have concerns about unnecessary regulatory burden arising where provision that is funded and overseen by other regulatory bodies, providers, and/or jurisdictions is subject to additional layers of OfS regulation. It risks discouraging new partnerships forming, despite the benefits these will bring to current government agendas, such as levelling up, lifelong learning, and the cross-government international education strategy. There is a related issue of whether this is an efficient use of OfS resource, which is paid for through registration fees.

There will also be differences in the information that can be gathered and what can be monitored. A commitment to contextualisation and the use of academic experts to inform judgements are welcome, but questions remain. How will appropriate academic experts be identified, when will they be called on, how will their independence be protected, and what weight will their advice have alongside other evidence? What will OfS consider to be relevant context, and how will this be fairly and consistently applied across different types of provision? At this stage it is not clear how the OfS will identify and investigate potential breaches in practice.

This extends to questions on enforcement and the proportionality of a regulatory response. It is important that poor quality is identified and addressed. However, whether a breach is significant enough to result in an institution-wide penalty – for example, withholding of a Teaching Excellence Framework (TEF) award – will need to be fairly judged, particularly where the impact on other students could be detrimental. We note that, by the consultation's own admission, this proposal on TEF-related penalties is underdeveloped.

Notwithstanding the different regulatory and quality assurance approaches across the UK's four nations, the sector values and benefits from those areas where a UK-wide approach can be maintained. Removing references to the UK Quality Code still risks confusion for international audiences, which might impact on recruitment of international students, weaken transnational education partnerships, and undermine the brand of UK higher education. As the OfS transitions to their new approach, we strongly advise that opportunities for consistency are explored, and that meaningful dialogue is maintained with providers across the UK. This should include undertaking an impact assessment on the implications of the proposals for arrangements elsewhere in the UK and on the UK higher education brand. The OfS must then also consider how it will communicate its approach to audiences internationally, in order to retain their confidence in and understanding of the quality of UK higher education.

Finally, we recommend that the OfS does not introduce any of the proposals into the regulatory framework, including new conditions, until the forthcoming consultation on B3 (student outcomes) and the TEF is complete. This will not only ensure coherency, but it will also support the sector to introduce any necessary changes to internal processes in a coordinated way. Where this affects students, they will also need time to communicate changes, ideally in advance of a new academic year and in line with consumer law. It should also not be forgotten that we are still grappling with uncertainty in respect of the COVID-19 pandemic and its impact on teaching and learning. This will affect capacity within institutions, the ways in which they are delivering courses, and the data being collected.

UUK has welcomed this opportunity to shape the next iterations of the regulatory framework and as set out in our response, we agree with many of the proposals in principle. We think our response provides useful reflections and constructive feedback that we hope the OfS can take on board, and we look forward to future opportunities for further engagement.

## **Questions relating to proposal 1**

### **Question 1a: Do you agree or disagree with the proposed introduction of ongoing condition B1 and associated changes to the OfS's regulatory framework as set out in Annex A?**

Neither agree nor disagree

### **Question 1b: Please give the reasons for your answer to Question 1a.**

We agree with the OfS in paragraph 42 that effective regulation of quality and standards requires attention being paid to input measures relating to the provision that supports positive experiences and outcomes for students. While the vast majority of provision is of a high quality, the sector is strongly committed to tackling low-quality courses where provision is falling short, and this necessitates monitoring and investigation of course content, design, and delivery. Student outcomes are undoubtedly important, but as stressed in UUK's response to the first phase of consultation, these are not wholly in the control of an institution, and therefore should not be the only focus of regulation. We support the attention paid to the education itself that an institution delivers.

We think that the principles-based approach and how the condition is defined – alongside illustrative examples – ensure sufficient flexibility for institutions to exercise autonomy over their courses and curricula.

However, as detailed further in our response to Q14, we have concerns about the intended coverage of the conditions B1, B2, B4 and B5. This is particularly true in the context of international and transnational education (TNE) partnerships on courses that are not funded by the OfS or through student fees paid to the registered provider in England, and in instances where this will create dual regulation. There is also a lack of clarity currently on how the approach taken to the proposals – for example, on the issue of contextualisation – will interact with proposals on B3 and the contextualisation of non-benchmarked outcomes data. We would welcome the chance to work with the regulator on how context will and should be incorporated and judged.

### **Question 1c: Do you have any alternative suggestions to the proposal in Question 1a?**

We recommend adapting B1.4.d.i and B1.4.d.ii to include reference to learning outcomes ‘as relevant to the content and learning outcomes of the course’ and ‘as relevant to the level and learning outcomes of the course’. This is terminology commonly understood within the sector. It is used to help design courses and curriculum and will ensure the focus remains on how the course relates to students.

We recommend making explicit and more formal the use of expert academic advice within the condition of registration and/or within the regulatory framework guidance. It is important to protect the independence of decision-making on whether content is ‘up to date’, ‘coherent’, and presents ‘challenge’. This is vital for all aspects of any assessment of compliance on B1. This could be incorporated into paragraph 6 of Annex A by changing ‘would expect to draw’ to ‘will draw’ to show intent. Regarding whether a course is up to date, we would welcome guidance related to a provider’s Competition and Markets Authority (CMA) obligations in such instances where a course’s content changes or is not considered up to date.

As in our response to Q8c, we would also welcome more information about how academic experts will be selected to reflect the diversity of providers and courses. We would also welcome more information on how their assessment will be weighed against other information that the OfS might refer to when making any judgement.

The definition of 'coherent' in paragraph 10.a includes a concern around curricula which offer limited options beyond a mandatory core. Programmes with limited optional choices are not uncommon in some disciplines and are not necessarily a cause for concern. This is particularly true where course content is designed to meet professional standards and is also common across TNE delivery in Asia and Southern Europe. We recommend changing the final sentence of paragraph 10.a from 'would be likely to be of concern' to 'could be of concern', reflecting a more nuanced position on this.

On a more presentational point relating to B1, B2, B4 and B5, the OfS may want to consider how it presents the definitions. Currently, due to alphabetical order, there are definitions of terms listed before the terms themselves appear. This makes it difficult to read and loses some of the clarity that the definitions aim to provide.

**Question 2a: Do you agree or disagree with the proposed introduction of ongoing condition B2 and associated changes to the OfS's regulatory framework as set out in Annex A?**

Neither agree nor disagree

**Question 2b: Please give the reasons for your answer to Question 2a.**

We agree that institutions must provide the kind of support, resources, and environment that will best enable a student to succeed within higher education. We understand that the quality of the experience itself and how accessible it is will impact on students' ability to engage effectively and to gain the most from their education. Institutions are also strongly committed to widening access and participation and narrowing attainment gaps, and they are already doing significant work in this area to ensure students from disadvantaged backgrounds are not disadvantaged. In principle, we do not see the condition of registration being at odds with access and participation plans, but it will be important to ensure that there is coherence and coordination in practice to avoid creating additional regulatory burden.

We support the proposal to focus the condition on aspects relating directly to a student's academic experience, and the decision not to use this condition to regulate services such as student counselling and bursaries. There may, however, need to be some consideration as to whether careers support is always a necessary requirement

for a student. For a student already supported by their employer to undertake short courses or micro-credentials in continuing professional development (CPD), additional careers support may not be expected by or be required for that student for them to succeed.

While the inclusion of student engagement and focus on student feedback mechanisms are important, we welcome the recognition that institutions must balance these against maintaining academic rigour, and will seek to do so. However, the OfS must be mindful of cultural sensitivities and expectations, particularly in respect of TNE, which may not always enable an institution to promote the same kind of feedback approaches.

However, as set out above and below, there are some outstanding questions that require more consideration.

### **Question 2c: Do you have any alternative suggestions to the proposal in Question 2a?**

We recommend changing B2.2.a and B2.2.b to ‘enable’ rather than ‘ensure’, if the condition is to retain regulation on ‘succeeding in and beyond higher education’ (or to change the ‘i’ and ‘ii’ components to start ‘i. Ensure’ and ‘ii. Enable’). Institutions can and do put in place a wide range of support for students to enable them to thrive on their course and to access opportunities aimed at increasing their chances of successful outcomes. However, it is not within an institutions’ power to ‘ensure’ a successful outcome. Context will also influence how a ‘successful outcome’ is defined and measured, and may vary across provision types, geographic location, and student groups. Moreover, this is an outcome that we understand will be proposed as a component of a revised B3, and therefore the focus for B2 should be on the input measures of what an institution provides.

We recommend adapting 32.a and 32.b of the guidance for B2 to say, ‘have reliable and consistent access to’ (matching 32.d) to reflect that both hardware and software may be accessed in different ways – for example, through access to specialist labs and libraries. This is different to a student ‘having’, which implies that they are in possession of the hardware and software. This may not always be necessary or proportionate to providing quality. This proportionate approach would more closely meet the expectations for distance learning students. In such cases, it may be more reasonable to expect a provider to inform cohorts of students living and studying ‘off campus’ about the minimum internet connection needed, for example.

Paragraph 32.f in the guidance for B2 implies, in not specifying otherwise, that institutions would be responsible for creating a ‘quiet space that is appropriate for studying’ even in the case of distance learners. We recommend this is amended to refer specifically to study space on campus and within university accommodation.

Paragraph 52.b discusses the expectation for providers to ‘fund the provision of resources’. In their access and participation plans, universities recognise the need to commit additional financial resources to ensuring students can fairly access and engage in their chosen course. However, in its current form, the condition and associated guidance is unclear on the extent of this expectation. We welcome the caveat that this is appropriate ‘where the students registered on the course are not reasonably able to provide resources themselves’, but neither the definition attached to what a student can be reasonably expected to provide themselves, nor how that judgement will be made, are clear. Equally, what is a reasonable assessment of whether a resource in a particular format (eg a laptop loan versus access to PCs in a library) is necessary for a given course? The B2 condition should complement activity undertaken in the access and participation plan. We recommend that the OfS should outline how it will align these two regulatory tools. This could be achieved through guidance on where the condition relates to all students, and where the condition applies to individual learners who may require additional resources and support.

Physical and digital learning resources differ greatly by jurisdiction. TNE can open opportunities for students in developing countries by providing access to good quality education through locally available resources (whether these are digital or physical). There must be appropriate contextualisation to avoid any strict interpretation of a condition of registration that requires a provider to offer the exact same type of learning resources to students in territories where broadband connection or access to advanced lab facilities may not be available. This would risk the discontinuation of programmes that widen access to higher education around the globe and produce outcomes that are contextually appropriate for those students and equivalent to those produced for students in the UK when adjusted for context.

Paragraph 52.e places a requirement that the staff team designing and delivering a course should collectively be sufficient in number. We welcome that judgements about a sufficient level of staffing will be made by academic expert judgement and PSRBs. It is important the staff numbers can be contextualised within the programme structure and delivery method, and therefore a rules-based judgement on staff-student ratio should not in itself be an indicator of appropriate staffing levels.



**Question 3a: Do you agree or disagree with the proposed introduction of ongoing condition B4 and associated changes to the OfS’s regulatory framework as set out in Annex A?**

Neither agree nor disagree

**Question 3b: Please give the reasons for your answer to Question 3a.**

We agree on the importance of ensuring assessment is effective, valid, and reliable, and ensuring that students receive awards and classifications (where relevant) that are a fair and accurate reflection of their achievement. UUK, with GuildHE and under the auspices of the UK Standing Committee for Quality Assessment, has led the sector to make considerable progress on addressing concerns about grade inflation. We believe that steps taken by institutions in England (and Wales) to undertake reviews of degree classification trends and publish degree outcomes statements will support institutions to comply with the condition (for example, paragraph 53). UUK and GuildHE, with QAA, are also undertaking work to strengthen the external examiner system with sector-led principles and expectations that will support providers to assure the quality and standards of their awards. We continue to see external examiners as central to upholding standards.

The OfS must ensure that regulation here does not create tension, however, with other ambitions – namely, commitments to narrow attainment gaps by levelling up and not levelling down. Changes in academic regulations that can be evidenced and that maintain academic rigour, driven by legitimate pedagogical rationales to support students, should not be penalised without reference to academic experts and the advice of the Designated Quality Body (DQB). For example, an institution removing level 4 marks from an undergraduate degree classification algorithm might result in an increase in upper degree awards overall, but this might be driven by a plan to better support student transitions (in line with the kind of support described in B2). It may also offer a more reliable account of a students’ attainment upon graduation at level 6.

On the issues of academic integrity and essay mills, UUK has been active within the QAA-led Academic Integrity Advisory Group and has encouraged members to sign up to the Academic Integrity Charter. The growing proliferation of essay mills, however, requires a coordinated effort between institutions, the regulator and government. We would therefore encourage the OfS to work with us on this issue.

### **Question 3c: Do you have any alternative suggestions to the proposal in Question 3a?**

Within the condition and guidance, there is some confusion on whether ‘credible’, in the context of awards, refers to reflecting a student’s ‘knowledge and skills’, or refers to how the students’ performance compares to others within a cohort and over time. In B4.2 these are separated out, and yet in B4.3.e they are joined together. UK higher education primarily uses criterion-referencing through which each student is assessed individually, and their resulting award determined by their performance alone. If an entire cohort performs at the highest level and demonstrates all the knowledge and skills required, the fact that this might represent an increase over time does not mean the award is invalid or unreliable. Nevertheless, we also recognise that any significant change to awards or classification will need to be understood and explained.

To ensure coherence with B4.2, we recommend that B4.3.e is amended to say something to the effect of ‘relevant awards reflect students’ knowledge and skills and are comparable to those granted previously’. This should extend to paragraph 52. Here we recommend the insertion of ‘unexplained’ and ‘decrease’ within 52.a (‘an unexplained increase or decrease’). An artificial decrease should be of just as much concern as an artificial increase. We would be concerned if the regulatory framework focused so much on inflation that as an unintended consequence, it encouraged institutions to unfairly downgrade students so as not to be at risk of a breach.

We also believe that credibility, defined as reflecting students’ knowledge and skills in B4.3.e, should not be solely ‘in the reasonable opinion of the OfS’, but informed by expert academic judgement. It should also be judged in conjunction with B5 and the application and use of sector recognised standards.

We consider it an infringement on institutional autonomy in the guidance (paragraphs 50.e and 52.c) to require students to be penalised regarding their proficiency in the English language. We recognise the importance of ensuring that courses taught in English both support students and require students to demonstrate a certain level of proficiency. However, the level of English language needed and expected might vary depending on the nature of the course. For example, in some TNE courses there may be multilingual approaches that this could undermine. Here, the expectation of proficiency in the English language needs to be mediated by the usefulness of this skill in the jurisdiction where the course is delivered.

While it is important to have a command of the language, it is not for the regulator in a principles-based approach to tell an institution how it should assess a student’s

skills or ability, to set marking criteria, or (in effect) to determine that proficiency in the English language should be given priority within the learning outcomes of a course, above other relevant skills. Some providers have in place additional guidelines for students with Specific Learning Difficulties (such as dyslexia), which means learners are not ‘unduly penalised’ for grammatical, spelling or punctuation errors. These are appropriate adjustments providers may choose to make and should not be judged to be a breach.

It is also important that ‘technical proficiency’ is carefully defined. Some learners, such as apprentices, are able, and providers are required to admit them to study without level 2 English if they are at such a level at the end of their programme. The extent to which ‘technical proficiency’ in written English has then been obtained needs careful judgement and context within the type of provision and expected graduate destinations.

## **Questions relating to proposal 2**

### **Question 4a: Do you agree or disagree with the proposed introduction of ongoing condition B5 and associated changes to the OfS’s regulatory framework as set out in Annex B?**

Neither agree nor disagree

### **Question 4b: Please give the reasons for your answer to Question 4a.**

We support the proposal to include the degree classifications developed by UUK, GuildHE and QAA on behalf of the UK Standing Committee for Quality Assessment (UKKSQA) to be adopted as ‘sector-recognised standards’ for regulation (B5). They were developed through consultation with the sector and, since their introduction in 2020, have been included in plans for work on degree classification by 76% of providers across the UK. They ensure more consistency and transparency in how providers award classifications. Institutions are also using them to train staff and support external examining functions. As a key item of university regulations, they also inform reviews of marking schemes, assessment, and course design.

The ‘threshold standards’ detailed in the Framework for Higher Education Qualifications of Degree-Awarding Bodies in England, Wales and Northern Ireland

(FHEQ) are also well established and enjoy the support and confidence of the sector, as shown in the phase 1 consultation analysis.

However, unlike in proposal 1, there is relatively little information provided on how OfS might assess compliance and the ways in which providers might demonstrate this.

### **Question 4c: Do you have any alternative suggestions to the proposal in Question 4a?**

The assessment of degree classification descriptors must recognise that they were developed as a reference point. As part of a risk-based regulatory approach, institutions must be allowed to develop classification descriptors appropriate to their institutional, faculty or course context. This is necessary to both reflect the diversity of the sector, but also to enable flexibility and innovation in the future. It is not in the interest of students for degree classification descriptors to be applied uncritically and with no adaptation. More detail is therefore needed on how an institution will need to demonstrate 'consistency with' these before any investigation. This may include defining and adapting the term 'consistent' in B5.2.a and B5.2.b. We recommend that the lack of direct adoption should not in itself be a cause of concern and does not preclude consistency with the sector-recognised standards.

The assessment process is also unclear and should draw on the expert judgement of academics who are best placed to assess how providers have referenced the standards. We note that the OfS and DQB may judge compliance by assessing the work of previous students (B5.2.10). This could present an administrative and cost burden from archiving assessment (which can take varied forms, such as performance and artefacts). If this requirement goes beyond existing practice, there may also be potential implications for data protection and an individual's data retention rights.

We recommend that consistency with the sector-recognised standards could also be assured through mechanisms such as external examiners reports, degree outcomes statements and internal quality assurance processes. UUK is working with GuildHE and QAA to strengthen the external examiners system, for example, and will be considering the use of the standards by examiners when comparing across and within institutions. We agree with the principle that where the OfS instigates an investigation the DQB should be asked to collect this. However, it is unclear what mechanisms there are to ensure the findings are considered, or whether the OfS can overrule judgements by the DQB.

Further detail would be welcome on how the OfS may identify future sector-recognised standards and incorporate them into the regulatory framework. We recognise the consultation analysis notes of no immediate intent to introduce further sector-recognised standards or introduce the Higher Education Credit Framework. However, the mechanisms by which the OfS may instigate this and consult with the sector are unclear.

We recommend adapting B5.3.d the definition of sector-recognised standards to reflect the Higher Education and Research Act (HERA) definition (13(3)) which 'is determined by persons representing a broad range of registered higher education providers and commands the confidence of registered higher education providers.' It is important that the sector-recognised standards document should be subject to consultation and have the sector's confidence, and not simply updated 'from time to time'.

We recommend that Annex D: Sector-recognised standards, part B paragraph 44 is amended to include the sentence 'If some criteria are not applicable to a given course, they may not need to be referenced'. As featured in the original degree classification document, this supports the intended function of the descriptors to reflect diverse courses and assessment methods.

## **Questions relating to proposal 3**

**Question 5a: Do you agree or disagree with the proposed introduction of initial condition B7 and associated changes to the OfS's regulatory framework as set out in Annex C?**

Agree

**Question 5b: Please give the reasons for your answer to Question 5a.**

It is reasonable to provide an alternative route for new providers seeking to join the register. We are supportive of achieving this through compliance with a new initial condition of registration. As proposed, we think the condition strikes the right level of equivalence with the ongoing conditions of registration. It is also right that the institution should detail the capacity and resources necessary to deliver on the plans.

### **Question 5c: Do you have any alternative suggestions to the proposal in Question 5a?**

We recommend that the definition of 'credible' in B7.3.b is expanded with examples beyond a provider's past performance. As the proposal notes, most new providers are unlikely to have a track record of delivery as evidence to draw from. The consultation raises that the DQB have experienced challenges in formulating forward-looking judgements for providers, particularly where a history of delivery is not in place. To support this, we recommend that the guidance within the B7 condition should more closely reference the requirements of B1, B2 and B4. This should make clear the types of evidence and content of plans that may or may not be appropriate.

### **Question 6a: Do you agree or disagree with the proposed introduction of initial condition B8 and associated changes to the OfS's regulatory framework as set out in Annex C?**

Agree

### **Question 6b: Please give the reasons for your answer to Question 6a.**

As in 5b above, it is reasonable to provide an alternative route for new providers seeking to join the register. We are supportive of achieving this through compliance with a new initial condition of registration.

### **Question 6c: Do you have any alternative suggestions to the proposal in Question 6a?**

We recommend that the definition of 'credible' in B8.3.a is expanded with examples beyond a provider's past performance. As the proposal notes, most new providers are unlikely to have a track record of delivery as evidence to draw from.

## Questions relating to proposal 4a

**Question 7a: Do you agree or disagree with the approach to information gathering and assessment proposed in paragraphs 85-90 above and as set out in the proposed guidance for initial conditions B7 and B8 in Annex C?**

Agree

**Question 7b: Please give the reasons for your answer to Question 7a.**

We welcome the proposed role of the DQB to provide evidence of compliance related to new providers looking to join the register. The DQB acts as a necessary link to expert academic judgement, which is fundamental in assessing conditions B7 and B8. We also support that, where a provider is applying for new degree awarding powers, the DQB can streamline their evidence collection process.

**Question 7c: Do you have any alternative suggestions to the proposal in Question 7a?**

While we are supportive of this proposal, we recommend that greater clarity is provided on the status of evidence and judgements made by the DQB – for example, whether the OfS can overrule judgements by the DQB and, if so, how the rationale for doing so will be shared.

We support the proposed examples of where a quality review would not need to be undertaken, specifically where an already registered provider seeks registration in a different category, or where there are changes to a provider's legal form that result in a new registration application. These are reasonable examples of where the OfS may not need to commission a review as they are likely to hold sufficient evidence of compliance already. However, the guidance also suggests that the OfS reserves the right to gather evidence itself. The above examples suggest that new evidence collection would not be required, as the OfS would simply be drawing from existing evidence. We recommend that any evidence gathering of expert academic judgement must be assigned through the DQB. Further examples and guidance on the circumstances in which the OfS expect to gather evidence or ask another body or individual to do so would be useful.

## Questions relating to proposal 4b

**Question 8a: Do you agree or disagree with the approach to information gathering as part of an investigation proposed in paragraphs 91-98 above and as set out in the proposed guidance for conditions B1, B2, B4 and B5 in Annexes A and B?**

Neither agree nor disagree

**Question 8b: Please give the reasons for your answer to Question 8a.**

We welcome the OfS commitment to engage with a provider in the first instance where there are compliance concerns and to gather further evidence, and would encourage the OfS to adopt this approach across all its conditions of registration. Similarly, we welcome the option for a provider to respond to a provisional decision with further evidence before a final decision is made. We also support the use of the DQB in the process of investigations and evidence gathering, and recognise the importance of including both staff and students in any investigation.

While we welcome the focused approach to evidence gathering and the reduced burden this will create, it remains unclear at what level a breach will be investigated, how much provision needs to be of concern to prompt an intervention, and indeed how this will be identified. Some courses have very small cohorts, or some – such as research degrees – may be very individually experienced. It is not evident from the proposals how general monitoring and investigation at a course level could practically happen. It could result in issues being missed, while others could be disproportionately targeted based on students' awareness of and engagement with the notifications process and cohort sizes. Equally, it could result in multiple disparate and uncoordinated investigations at any one time. Even if these do not progress beyond a conversation between the institution and the regulator, it will have burden implications for the institution, the OfS and the DQB. This will be particularly true if the OfS and DQB are experiencing this across the sector, which might extend to TNE provision where data gathering and on-site visits create further obstacles.

We would welcome further details about the relationship between the OfS's notifications process and the procedures of the Office of the Independent Adjudicator (OIA), particularly to ensure consistency in how a 'notification' and a 'complaint' is handled. Further clarity would be welcome on whether the OfS intends



to only investigate areas of concern that have been found to be justified by the OIA. Setting out how the OfS will work with the OIA in this context will help ensure areas of responsibility are clearly understood by providers, students, and other stakeholders.

In the case of B5 and the retention of assessed work, there will need to be more clarity provided on the period over which an institution is expected to hold onto work, and how this corresponds to GDPR requirements.

### **Question 8c: Do you have any alternative suggestions to the proposal in Question 8a?**

To ensure consistency and transparency, and to build capabilities within the DQB, we would recommend the DQB being the default for investigations and evidence gathering. This is implied in 97.a. but would require changing the proposed wording in the regulatory framework itself to:

Where the OfS considers it necessary to use its investigatory powers it will, as a rule, ask the designated quality body to gather further evidence. Where the OfS considers it necessary to conduct the investigation itself or through another appropriate body or individual, it will need to set out the reasons why, in this instance, the designated quality body should not be tasked with evidence gathering.

We also think that the DQB should always be used to identify appropriate independent academic experts. This will be particularly important for B1 (eg on whether course content and delivery are up to date with current thinking), B4 (eg in assessing trends in awards and classification considering relevant enhancement activities within the design of a course, and judging the validity of an assessment), and B5 (eg in re-assessing previously marked work). It is an area where the proposals are currently lacking in detail, and it is important that the independence of the academic experts is protected and that institutions can feel confident in this. This will include outlining if and when the OfS can overrule judgements by the DQB, and if so, on what grounds. The OfS needs to be more transparent in how this will be approached.

Where there are concerns at a subject or course level, the OfS should work with institutions to understand how they are already reviewing their provision and courses.

## Questions relating to proposal 4c

**Question 9a: Do you agree or disagree with the approach to taking account of a provider's compliance history for the purpose of determining eligibility for other benefits of OfS registration proposed in paragraphs 103-126 above and as set out in the proposed guidance for conditions B1, B2, B4 and B5 in Annexes A and B?**

Neither agree nor disagree

**Question 9b: Please give the reasons for your answer to Question 9a.**

We agree on the need for an institution's compliance on the conditions of registration relating to quality and standards to be connected in a coherent way to the benefits associated with being registered with the OfS, such as degree awarding powers and university title. However, it is not possible to agree fully without more detail on how compliance history will be proportionally assessed – for example, over what period, and over how much of an institution's higher education period – and how this will be developed in the context of the TEF (proposals and consultation forthcoming). Instead, we recommend that:

- a) The OfS considers this proposal in conjunction with the development of a future TEF and postpones deciding on this until there is more clarity. For example, if a fourth rating category is introduced that sits below 'excellence', how might this correspond to conditions of registration, and could this be a more reasonable approach than preventing an institution from participating in TEF?
- b) The OfS develops and presents a more detailed plan on how 'compliance history' will be assessed, considering the period over which it is considered, the scale of any breach (eg one element of one condition of registration versus a total breach across all aspects, or one course versus all courses), and how any credible improvement plans in place might be able to counter the breach.

### **Question 9c: Do you have any alternative suggestions to the proposal in Question 9a?**

We are awaiting more details on the TEF-related elements of the proposal.

## **Questions relating to proposal 5**

### **Question 10a: Do you agree or disagree that the OfS should use its role as EQA provider to inform assessments of condition B4?**

Agree

### **Question 10b: Please give the reasons for your answer to Question 10a.**

In principle, we support that the OfS should use its role as external quality assurance (EQA) provider to inform assessments of condition B4. Apprenticeships above level 4 are in scope of the OfS's regulatory powers and we recognise this may inform assessments of condition B4. The relationship with the DQB in delivering the EQA will be an important element to this assessment. We encourage the OfS to work closely with the sector as it develops this new area of responsibility to ensure degree apprenticeship provision of a high quality continues to grow.

More widely, we also welcome that the proposal goes some way in clarifying the roles of the Institute for Apprenticeships and Technical Education (IfATE) and the OfS when regulating apprenticeships. However, there is still a risk that, where the roles overlap, there may be contradictory or duplicate requirements for providers. The OfS rightly operates on a risk-based system, and we would support the assessment of apprenticeships to reflect this. With Ofsted becoming responsible for the inspection of apprenticeships at all levels, providers are likely to face an increased reporting and inspection burden. We would want to avoid contradictory approaches being considered because of the way B4 is being applied alongside the apprenticeship standard assessment plan. Any additional administrative burden on providers should only be to satisfy elements of condition B4 not covered by the IfATE framework, and should be essential to determine that standards are being maintained. We therefore support, where possible, the intention to make use of all available evidence that providers are required to possess to meet the IfATE framework obligations and Ofsted's expectations.

### **Question 10c: Do you have any alternative suggestions to the proposal in Question 10a?**

As referred to in response to question 3c above, we suggest that any references to expectations for assessing proficiency in the English language need to be inclusive and appropriate to the expectations on providers to support language development within specific apprenticeship standards. Suitable assessment of language proficiency should be considered by appropriate academics (and other professional stakeholders, in the case of apprenticeships) within the context of the course and subject. Condition B4 should not make unreasonable expectations of the standard of English language of degree apprenticeship graduates. If they have met the entry requirements needed to enrol on their programmes and reach a standard expected of their programme of study, this is sufficient.

## **Questions relating to all proposals**

### **Question 11: Do you have any comments about the proposed implementation of the proposals in this consultation?**

The OfS should not implement the proposals in autumn 2021, although we would recommend that the OfS publish their response and intentions as soon as they are available.

Implementation in autumn 2021 would be in the middle of an academic year, in which course content, assessment and academic regulations would have already been set. While we understand the necessity to ensure students are protected from any compromising of academic standards, it is inappropriate to expect staff to have to undergo any form of internal review (and potentially introduce substantive changes) in the middle of an academic session. This would also present problems for students if the ways in which they were expecting to be taught and assessed in 2021-22 undergo a significant change.

We would also argue that, if the OfS already has significant concerns with any provider, they should be acting on these. If they do not, they should permit an institution time to reflect on the new conditions of registration and guidance, and to implement appropriate processes through which their provision will be reviewed – and where necessary, adapted – for the 2022-23 academic year. This will also allow institutions time to work with any of their partners, in the UK or overseas.

The OfS should also not underestimate the longer-term impact of the pandemic. In the current context, it is unlikely that by autumn 2021 the sector – and society at large – will not be affected by the pandemic. Even if the pandemic starts to improve in the UK, this may not be felt globally, which will impact international students’ ability to travel into England, home students’ opportunities for outward student mobility, and the delivery of TNE in its intended format.

It is also advisable to implement the new B conditions and TEF as a full suite and with coherence across them. We recommend that, in the forthcoming consultation, the OfS reflects on the outcome of this current stage – for example, on issues such as coverage and contextualisation. We also recommend that the regulator provides the sector with a further opportunity to comment on the proposals presented here in the context of the B3 and TEF proposals.

**Question 12: Do you have any comments about any unintended consequences of these proposals, for example for types of provider or for any particular types of student?**

We would recommend that the OfS conducts research and an impact assessment on partnership arrangements to understand how the decision to extend regulatory responsibility across all provision will impact the sector’s appetite and ability to enter partnerships. While we understand the logic of the approach, there remains a risk that the increased regulatory burden associated with pursuing a partnership might result in fewer validation agreements. This will have implications for providers without degree awarding powers and for the students who may be seeking the education that these providers specialise in.

Providers who operate across the UK nations hold a shared stake in a working higher education infrastructure. It will be important that the burden on providers is monitored as the proposals are implemented. There may also be implications for institutions looking to maintain and expand their TNE provision. We recommend that the OfS undertakes an impact assessment of the proposals on provision elsewhere in the UK and on the sector’s international reputation.

**Question 13: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?**

No – but we would recommend that the OfS conducts a full equalities impact assessment prior to finalising its approach.

## **Question 14: Do you have any other comments about the proposals?**

We welcome the stated commitment to maintaining a principles- and risk-based approach to regulating quality and standards that is focused on minimum baselines. We are encouraged that institutions should be able to demonstrate compliance with these baselines, and to innovate and enhance beyond these, in ways that are appropriate and relevant to their context and to different courses. This is important to support student choice, encourage innovation and protect institutional autonomy. Nevertheless, we also think the guidance and additional clarity within the proposals is largely helpful in expressing the minimum that would be expected in different scenarios.

All students deserve a high-quality education, whatever their course. Universities must also act responsibly when working in partnership. However, we are concerned about unnecessary regulatory burden arising where provision which is funded and overseen by other regulatory bodies, providers, and/or jurisdictions is subject to additional layers of OfS regulation. There are also questions as to what would happen if the OfS's judgement was at odds with the judgement of the 'primary' regulator. This extends to programmes across borders that not only operate under dual regulation, but also operate under dual jurisdiction. The issue of what jurisdiction would prevail in case of conflict, and what body would settle an eventual conflict.

This risks discouraging new partnerships forming, despite the benefits these would bring to current government agendas, such as levelling up and lifelong learning. It is difficult to foresee all the regulatory implications of delivering collaborative provision overseas, as well as potential changes in host territory regulation. Therefore, strict interpretation of conditions of registration may also jeopardise existing partnerships and disincentivise entering new arrangements. This will hinder the achievement of the goals of the cross-government international education strategy (achieving £35 billion in education exports by 2030).

There is the further potential – as the consultation itself notes – that this may mean 'more than one provider being responsible for compliance with this condition in relation to the same course'. If there were a compliance issue, it is not clear how that would be investigated and subsequently penalised, or what this would mean for consideration of 'compliance history' in relation to TEF, degree awarding powers (DAPs) and university title. There is also a question as to whether this is an efficient use of OfS resource, which is paid for through registration fees.

There will also be differences in the information that can be gathered and what can be monitored. A commitment to contextualisation and the use of academic experts

to inform judgements are welcome, but questions remain. How will appropriate academic experts be identified, when will they be called on, how will their independence be protected, and what weight will their advice have alongside other evidence? What will the OfS consider to be relevant context, and how will this be fairly and consistently applied across different types of provision? At this stage, it is not clear from the proposals how the OfS will identify and investigate potential breaches in practice. This will be especially relevant later for B3 if it is also intended to apply across all provision, but takes a more quantitative and rules-based approach.

This extends to issues of enforcement and the proportionality of a regulatory response. It is important that poor quality is identified and addressed. However, whether a breach is significant enough to result in an institution-wide penalty – for example, withholding of a TEF award – will need to be fairly judged, particularly where the impact on other students could be detrimental. We note that, by the consultation’s own admission, this proposal on TEF-related penalties is underdeveloped.

We maintain that removing references to the UK Quality Code risks confusion for international audiences, which might impact on the recruitment of international students, weaken transnational education partnerships, and undermine the brand of UK higher education. As the OfS transitions to their new approach, we strongly advise that opportunities for consistency are explored, and that effective and meaningful dialogue is maintained with providers across the UK. The OfS must also consider how it will communicate its approach to audiences internationally and in other UK nations, in order to retain their confidence in and understanding of the quality of UK higher education.

The UK Quality Code also remains a resource developed with significant sector input. As the consultation analysis suggests, it enjoys widespread confidence from the sector. We therefore believe that, while the Quality Code may no longer hold a regulatory function, as per the proposals, the sector will continue to make use of it and its advice and guidance in demonstrating compliance above the baseline.