

# Consultation Response

Securing student success: risk-based regulation for teaching excellence, social mobility, and informed choice in HE

Submitted: 19 Dec 2017

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Consultation: [original link](#)

[Intro](#) and consultation documents: [A](#), [B](#), [C](#), [D](#), and [E](#).

Part of the HERA suite of consultations, cross-referencing permitted.

The consultation sets out the proposed new regulatory framework which will be the system to regulate higher education. It sets out what this will mean for the sector and students. It includes proposals for how higher education providers will enter the system, how they will be risk-assessed, the conditions they will have to meet, how they will be monitored, and what potential actions the OfS will be able to take.

BU staff member who prepared the response: Jane Forster

## In what capacity are you responding to this consultation?

Publically funded higher education provider; Bournemouth University

## Would you like us to keep your responses confidential?

No

## THE OFS AS A REGULATOR, AND ITS RISK-BASED APPROACH

### Do you agree or disagree that these are the right risks for OfS to prioritise?

Slightly agree

We support the first two objectives. In relation to “Sector-recognised standards” see our response to q7.

We support the intention behind the third objective; however, we believe that this should be restated. A major focus of the CMA guidance and of the reforms described in the HE Green and White Papers has been on student information and choice. As stated, this objective relates only to the period of study, and the reference to consumer interests is limiting and unhelpful. This measures a process/ input rather than an outcome, which is inconsistent with the OfS approach (see q7). This objective should be restated:

“3: that all applicants and students, from all backgrounds, are able to easily access information to support them to make informed choices about where and what to study, and about options once they have started their course, including about decisions to transfer or change courses”.

We do not support the final objective - there is no agreed definition of value for money. Value is different for every student, and perceptions change over time, and it will therefore be very difficult to measure – see our response to q10. We propose that this objective should be removed as the outcomes for students are covered by the three previous objectives. See our response to question 15 for our suggested replacement.

### Given all the levers at its disposal, including but not limited to Access and Participation Plans, what else could the OfS be doing to improve access and participation and where might it be appropriate to take a more risk-based approach?

We believe that the current process works well and we support the proposals for access and participation plans.

**Do you agree or disagree that a new Quality Review system should focus on securing outcomes for students to an expected standard, rather than focusing on how outcomes are achieved?**

Strongly agree

We strongly support the focus on outcomes rather than how outcomes are achieved, although we are concerned that this approach will be a challenge and a possible barrier to entry for new providers.

In terms of the standards to be achieved, the Quality Code Consultation uses the concept of 'sector recognised standards' without showing how these standards will be arrived at, and how they will be agreed and recognised within the sector. We suggest that there should be an evolution of the current subject benchmark statements, which were co-created with the sector.

We believe that to avoid duplication and the risks of inconsistencies, new standards should where appropriate, be based on the frameworks provided by

Professional, Statutory and Regulatory Bodies (PSRBs). There are other benefits of using PSRB standards where they do exist, as they will address the standards and requirements for graduate outcomes in those professions. We recognise that this will not be possible in all disciplines where pre-existing and generally applicable standards may be harder to identify.

We strongly oppose any move to reintroduce cyclical reviews for low-risk providers. A cyclical review does not fit with the stated risk-based approach of the OfS. We believe that reviews would be appropriate for providers with NDAPs during their probationary period as part of the suite of interventions available to the OfS, but this should not be a standard part of the process, particularly given the enhanced reporting and data that will be available to the regulator, including the TEF.

**Would exploring alternative methods of assessment, including Grade Point Average (GPA), be something that the OfS should consider, alongside the work the sector is undertaking itself to agree sector-recognised standards?**

No

GPA is just one option, it would be difficult to implement and changing the method of assessment would not make a difference to standards or quality or outcomes for students. Sector recognised standards are more important – see our response to question 7.

**Do you agree or disagree that a student contracts condition should apply to providers in the Approved categories, to address the lack of consistency in providers' adherence to consumer protection law?**

Strongly disagree

BU has a student agreement. We agree that students should have access to clear, accurate, specific and timely information at all stages of their HE experience

– a stated government objective (see our response to q5). However, we believe that a free-standing licence condition is unhelpful and duplicative.

There is a risk that student contracts become unwieldy and that applicants and students will not engage with them – at BU we worked hard to make ours accessible in presentation and content. Template contracts would make it difficult for providers to be innovative or creative and would make it less likely that applicants and students will engage with them to inform their choices.

Student contracts may provide clarity in a dispute and support remedies based on contract law. However, we do not believe that contracts are the best way to address student concerns. SUBU, our students' union, has commented that they believe that a strong role for the student voice in an institution, including student representatives, is more important, and that relying on legal remedies is a backwards step.

It is appropriate for the OfS to include reference to CMA guidance in its best practice guidance for the sector, and for regulatory action by the CMA to be a reportable matter and be taken into account by the OfS when considering regulatory intervention, we do not believe that this is appropriate as a free-standing licence condition. If it is a licence condition it should apply to all providers, including registered basic providers.

### **What more could the OfS do to ensure students receive value for money?**

Our students' union, SUBU, are responding on this question having consulted with our students. They agree that value for money is a subjective matter for students, but includes a wide range of experiences and opportunities, including in particular extra-curricular and co-curricular activities, including those related to work experience and social opportunities. These are difficult to measure and will be different for each student.

As noted above in our response to question 5, we propose that this objective should be removed. We believe that the focus on outcomes for students as set out in the first three objectives (subject to our proposed changes to the third objective) should address the issues raised in the value for money section.

We believe that the third objective should be restated to be a more general reference to providing appropriate and accessible information to support student choice generally – both before and during their programme. We believe that the other issues raised in this section are dealt with appropriately in the management and governance sections of the consultation and through a new 4th objective to support this:

“providers are well managed in accordance with public interest principles so that they are financially and academically sustainable”. See our response to question 15.

### **Do you agree or disagree that a registration condition on senior staff remuneration should apply to providers in the Approved categories? Are there any particular areas on which you think should the OfS should focus when highlighting good practice?**

Neutral

### **What are your views on the potential equality impacts of the proposals that are set out in this consultation? Please provide any relevant evidence if you can as this will support policy development going forward.**

We welcome the focus on participation and outcomes for WP students that goes beyond access.

We have particular concerns about the risk for WP students of providers entering and leaving the market quickly. WP students generally, as well as mature students and those who may live at home, which includes some groups of BME students, may have less flexibility and may be disproportionately affected by provider failure.

## **MAKING THE MARKET WORK & IMPROVING THE SYSTEM**

### **Do you agree or disagree that participation in the TEF should be a general condition for providers in the Approved categories with 500 or more students?**

Slightly disagree

The TEF is intended to highlight excellence above and beyond a baseline standard. It should therefore remain optional. We believe that in practice, as was demonstrated by TEF year 2, most universities will want to participate in the TEF and will be motivated to do so by the reputational benefit. However, given the discussions that are ongoing about the metrics and the methodology behind the TEF we believe that some institutions may choose not to enter and should be entitled to do so. The OfS should rely on the transparency and reporting requirements to address concerns about information sharing, and should be able to rely on annual provider reviews for providers with NDAPs (see our response to question 7)

We hope that the OfS will continue to develop the TEF, and the narrative around the awards, so that it continues to be a process which has benefits to providers and which providers want to participate in; rather than making it part of the regulatory process.

### **Do you agree or disagree with the proposed ongoing general registration condition requiring the publication of information on student transfer arrangements? How might the OfS best facilitate, encourage or promote the provision of student transfer arrangements?**

Slightly disagree

### **How might the OfS best facilitate, encourage or promote awareness of student transfer?**

We do not believe that this should be a general licence condition for all providers. The proposed template requires us to repeat, summarise and re-present material that is already covered by our policies. Concerns about transparency should be covered by guidance relating to information provision for students and applicants. See the comments we make in our responses to questions 5 and 9 about student contracts.

It may be that this would be appropriate as a specific condition to be imposed by the OfS for a new providers who may not operate in the same way as established UK providers in terms of their policies and procedures or where a specific risk is identified, either about quality or about financial viability.

We do not agree that promoting student transfer is the best way to support students. A transfer may be suitable for some students, and we support it in such cases. In the majority of cases we believe that “switching” is driven by personal circumstances and not by quality issues.

### **Do you agree or disagree with the proposed approach to sector level regulation in chapter 2?**

Strongly agree

Subject to our specific comments above, we support the general approach to regulation in chapter 2.

As drafted, the objectives of the OfS (and the priority risks) do not include a reference to sector level regulation, although it is a major focus of the consultation. We understand the desire to focus on outcomes for students but, in the light of the statements about sustainability of the sector and student protection, we propose a new objective, to replace the fourth one (see our response to question 5). The new one would be that:

“providers are well managed in accordance with public interest principles so that they are financially and academically sustainable”.

### **THE REGISTER - CONTENT AND ACCESS**

#### **The initial conditions should provide reassurance that providers will meet the general ongoing conditions without creating unnecessary barriers to entry. Given this, are the initial conditions appropriate?**

Slightly agree

We believe that conditions E4 (compliance with consumer protection rules) and F (student protection plans) should be removed as initial conditions for most providers - see our responses to questions 9 and 12. E4 and F should be replaced with a more general condition about providing easily accessible information to applicants and students to support them in making informed choices when selecting their course and during that course, including about decisions to transfer or change courses – see our response to question 5 where we also propose a new OfS objective relating to this.

We propose that condition H (student transfer arrangements) should be removed (see our response to question 14). If it remains, we do not understand why condition H would not also be an initial condition.

#### **Do you agree or disagree with the proposed lists of public interest principles and who they apply to?**

Slightly agree

Yes, we agree with this list and that they should apply to all Approved providers.

We note a concern about the freedom of speech principle – while we support this principle, we note that many of the concerns raised about freedom of speech in the media recently have been concerns about students’ unions. It is important to note that while we work closely with our students’ union, it is an independent charity. When considering its approach in this area, the OfS needs to ensure that it does not penalise one charity (the university) for the actions of another (the students’ union) as in most cases the university is not responsible for the actions of its students’ union and is dependent on the goodwill and co-operation of its student’s union in implementing the university’s code of practice. For example, we believe that the most likely reason for cancelling an event is that internal procedures, such as risk management procedures or those put in place to address Prevent requirements may not be followed in good time, or there may not be time to address any concerns raised.

**Do you agree or disagree with the proposed approach on the application of conditions for providers wishing to seek a Tier 4 license?**

Strongly agree

Yes, we agree with this approach – the standard should apply to all relevant providers in the same way.

**Do you agree or disagree that paragraph 7 and 8 should be removed from Schedule 2 of the Education (Student Support) Regulations 2011, which lists the types of courses that allow with access to the student support system? If you disagree, are you aware of any courses dependent on these provisions to be eligible for support?**

Neutral

**Do you agree or disagree with the proposed approach for the benefits available to providers in the different registration categories?**

Neutral

**If you are a provider, can you provide an indication of which category you would apply for (under these proposals) and why?**

Approved (fee cap)

We wish to continue to provide our current range of undergraduate degrees, using our Fusion approach which brings together research, professional practice and education – for this reason the ability to apply for research funding is important to our approach. We operate a Fair Access Agreement successfully.

We note a concern expressed by our partner, Kaplan International Pathways, in relation to the Foundation programmes which they offer to international students who are then able to progress onto courses at BU. Kaplan are concerned that the OfS will not regulate FHEQ 3 providers – and they believe that these providers and these courses should be subject to the same guidance and regulation as other providers. We would appreciate clarification as to the regulatory regime that will apply to these providers.

**ON THE REGISTER**

**Do you agree or disagree with the general ongoing registration conditions proposed for each category of provider (see the Guidance for further detail)?**

Slightly agree

We believe that conditions E4 (compliance with consumer protection rules), F (student protection plans) and H (student transfer arrangements) should be removed. These should be replaced with a more general condition about providing easily accessible information to applicants and students to support them in making informed choices when selecting their course and during that course, including about decisions to transfer or change courses – see our response to questions 5, 9, 12 and 14.

We believe that condition E3 should be removed and dealt with via the public interest provision under conditions E1 and E2 – see our response to question 11. We believe that condition I (Notification of changes to register to maintain accuracy) should be clarified to refer to significant changes not “any” change.

Condition K should be amended to remove the reference to quality ratings.

We do not believe that condition L (facilitating electoral registration) should be a free-standing condition. This is another area where the OfS can publish best practice guidance but it is not necessary to make it a licence condition.

We believe that condition P should be removed – see our response to question 13.

If these conditions remain in place, we believe that conditions F (student protection plans) and H (student transfer arrangements) and L (electoral registration) should apply to registered basic providers. We also agree with our students’ union, SUBU, that condition A3 should apply to registered basic providers.

## **Do you agree or disagree with the proposed approach to risk assessment and monitoring?**

Slightly agree

We generally support the approach to risk assessment and monitoring.

The impact assessment says that there will be “reduced administrative costs and duplication of processes” – we support this as an objective but there are areas in which we consider that there will be increased rather than reduced processes and administration.

We request that the OfS keep the data and reporting requirements under review to ensure that they do not become onerous or create an administrative burden on providers that is greater than currently exists. As regards random sampling, we do not believe that this should be necessary given the extensive reporting requirements.

The proposed licence condition around student contracts is one area where there is overlap and duplication with an area that is already subject to regulation and there is already extensive guidance in place. We also believe that template student contracts would increase bureaucracy and defeat the purpose of the objective to ensure that student have access to information to inform their choices. See our response to question 9.

We have similar concerns about the student protection plans. While we support these in cases where there are imminent concerns about whether an institution is viable financially or in terms of quality, we believe that for the majority of providers the template is an additional requirement that duplicates the contents of their existing policies and adds no value for students – see our response to questions 16 and 22.

## **Do you agree or disagree with the proposed approach on interventions (including sanctions) and do you agree or disagree with the proposed factors the OfS should take into account when considering whether to intervene and what intervention action to take?**

Slightly agree

## **OFS’S RELATIONSHIP WITH OTHER REGULATORS AND BODIES**

### **Do you agree or disagree with the proposed approach the OfS takes to regulating providers not solely based in England?**

Neutral

### **Do you agree or disagree with the principles proposed for how the OfS will engage with other bodies?**

Slightly agree

We agree with this approach. However, we believe that this is a significant area and we are disappointed that it is given so little discussion in the document. We note the section in the White Paper (para 36) “We will act to ensure teaching and research remain coherent and coordinated at the national as well as the institutional level, including recognising the value of research led teaching through TEF and consideration of the interaction between teaching and research in Lord Stern’s review of the REF”.

There is no discussion of how this coherent and co-ordinated approach will be developed in the consultation paper, although it is referred to in para 339. We are concerned that the current changes to the REF, alongside the new focus of the OfS means that there will be even less incentive than there currently is to ensure that education and research are joined up and support each other for the benefit of students and other stakeholders, including university staff.

## **PUBLICATION OF THE REGISTER**

### **Do you agree or disagree with what additional information we propose that the OfS publishes on the OfS Register?**

Strongly agree

## VALIDATION

**Do you have any comments on the proposed exercise of OfS functions in relation to validation, in particular in relation to ensuring that the validation service is underpinned by the necessary expertise and operates in a way that prevents or effectively mitigates conflicts of interest?**

We do not support the proposal that the OfS should be the validator of last resort itself. It is not appropriate for a regulator to itself carry out the services that it is regulating, despite the statement in paragraph 401 about conflicts of interest. We support the commissioning arrangements, provided that they are not compulsory.

## TRANSITION ARRANGEMENTS

**Does the information provided offer a sufficiently clear explanation of how a provider will apply for registration in the transitional period and what the consequences of registration are in this period?**

Yes

## OfS AS PRINCIPAL REGULATOR FOR EXEMPT CHARITIES

**Do you have any comments on the above proposal of how the OfS will act as the principal regulator for exempt charities?**

We support this approach

**Provided that the Secretary of State considers OfS regulation is sufficient for these purposes, should exempt charity status apply to a wider group of charitable higher education providers? In particular, considering that providers in the Approved categories will be subject to conditions relating to Financial Sustainability, Management and Governance, and the provision of information (as set out in the Guidance), do you have any views on whether the OfS's proposed regulation of providers in these categories would be sufficient for the purposes of it carrying out the functions of Principal Regulator.**

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