



The OfS as a regulator, and its risk-based approach

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

Throughout this consultation there is a failure to acknowledge the complex nature of the relationship between students and providers, one in which responsibility for “outcomes” (which we define in terms of students’ progression, achievement, and employability) is shared between students, staff and the institutions of which students are members.

The wording of all four objectives (using such terms and phrases as “received”, “are supported”) is consistent with the notion that the student is a passive recipient/consumer which, if carried forward would reduce the “student academic experience” to one of training rather than higher education. For example, Objective 3 refers to students’ “interests as consumers”.

Furthermore, the failure throughout this consultation to define key technical terms such as “outcomes” (see above) and “academic experience” presents a problem that if not tackled now will have to be dealt with through the courts.

6 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?

7 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?

The question rests on a false dichotomy: a focus on “securing outcomes for students” is not incompatible with, or an alternative to, focusing at the same time on “how outcomes are achieved”. As with “outcomes” and “academic experience” the failure to define in the consultation documents what is meant by the phrases “securing outcomes for students” and “how outcomes are achieved” is not helpful.

Whilst we would strongly support any action or system that encourages providers to “determine their own processes to drive up quality” (para 15), any new Quality Review system must entail an assessment of the provider’s competence in developing structures, processes and systems that are- and will continue to be- fit for purpose. This is implied by some of the Conditions of Registration.

On “Quality Review”, it is imperative that the new system is (and is seen to be) rigorous in both its design and the way it is implemented. It must represent a significant improvement on what has gone before and QAA’s current process of “Quality Review Visits”, and be undertaken by reviewers whose experience and expertise is as credible for this task as is that of those charged with reviewing research excellence. The approach adopted will need to be consistent with the European Standards and Guidelines or it will lack international credibility, reduce the attractiveness of English HE to international students, and make cooperation on higher education across the UK difficult.

8 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?

We think this is a matter in the first instance for the collective academic judgement of those qualified to comment on assessment matters in the higher education sector in England and across the UK. It has yet to be shown that the disruption that would be entailed in switching to GPA across the higher education sector in England would provide worthwhile benefits or that the regulators for HE in Wales, Scotland and Northern Ireland would be willing to take the same route.

9 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?

In broad terms we welcome the suggestion that the rights and responsibilities of both students and providers should be more clearly specified. We have already commented that students need to be recognised as jointly responsible with their providers for the outcomes that are achieved. That joint responsibility needs to be reflected in the text of any model student contract.

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

We think that providers should be required to publish audited annual statements showing how students' fees are spent.

11 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?

The proposal creates an incentive for remuneration committees to take reputation into account when deciding senior pay. We think that remuneration committees should also be required to show the particular contribution the relevant senior member of staff has made to the organisation's achievements that merit their particular remuneration. We also think that there should be claw-back arrangements for awards made by remuneration committees on the basis of prospective improvements in institutional performance that do not materialise subsequently.

12 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.

Comments

We think that this is an interesting and valuable contribution to the ecology of regulation. Its application to all approved providers is to be welcomed

Making the market work & improving the system

13 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?

Participation in the TEF should not be a general condition for approved and approved (fee cap) providers, unless and until the DfE/OfS is able to demonstrate (to the satisfaction of Parliament) that the TEF enables a genuine measure of teaching excellence. In this respect, the credibility of the TEF to date is undermined by its reliance on proxy (and contestable) measures of teaching quality.

14 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?

Agree

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

We think that it will be important for individual students to understand that their initial choice of a course/programme and provider does not have to be final and that as their interests and capacity for learning develops they can apply to change their programme/course and their provider. This is of continuing importance for all students but would have greater significance for students where a provider is failing or has failed.

For this valuable dimension of the OfS regime to be practicable we suggest that agreed methods for awarding credits and a registry of credits earned and regularly updated degree transcripts (OfS operated or approved) will be needed, so that students can rely on it for their records rather than on a (possibly) failed provider. This will be particularly important in the case of NDAPs providers. It will also be necessary for OfS to agree with the HE sector and set minimum standards for awarding and recording credit.

As OfS proposes to develop itself as a “validator of last resort” it would be logical for it to adopt the linked position as “credit recorder of last resort”. For this to work it will need to convene panels of expert peers to practice credit rating on student portfolios which will familiarise them and OfS staff with the technical demands of assessment and making academic judgements. The experience of the former Council for National Academic Awards (CNAA) and (to an extent) the Open University Validation Service (OUVS) would be a good starting point, here.

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

In broad terms, we agree. However, the continuing insistence on the relevance of the deeply-flawed TEF will need to be tackled.

The register - content and access

16 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 are appropriate?

The conditions are, in broad terms, appropriate but until OfS defines what constitutes the “student academic experience” and “outcomes” the conditions will be unenforceable.

We have other reservations about the wording of some of the Conditions, which are more suited to be applied to training than higher education. In particular, it is regrettable that Condition B3 states that “the provider must deliver successful outcomes for its students...”. Given our earlier comments on the complex relationship between providers and their students, one in which there is a shared responsibility for the students’ outcomes, it is not and cannot be the provider alone that “delivers successful outcomes”. A crucial question is whether the procedures employed by the OfS or the DQB will have sufficient rigour to provide valid and reliable assessments of providers’ compliance with these conditions.

We also think that it will be necessary to require all providers to be able to demonstrate that they have reliable, safe, and enduring methods of recording students’ achievements. A section of the provider’s student protection plan should specify how it ensures that its academic records are secured for the lifetime of their students.

As noted previously, the experience of the former CNAAB and OUVS would be relevant here

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

We agree – with some reservations.

First, Principle VI (academic governance) will be crucially important in ensuring that a provider is, now and in the future, capable of meeting the various Conditions of Registration. The capacity of a provider’s governing body to assure OfS that its academic standards are sound and that the “academic experience” of students (however defined) is satisfactory is itself dependent on the calibre of the provider’s academic governance arrangements. Given that these are essential to the provider’s own success and that of higher education in England, more prominence needs to be given here to the academic governance of a higher education provider - as it is in Criterion A1 for the grant of degree awarding powers in the “Simplifying Access to the Market” proposals. We think that it is necessary for it to be generally understood that the statements in that Criterion apply to all awarding bodies. For that reason, it is unfortunate that Conditions E1 and E2, together with the Public Interest Principles, focus largely on the role and responsibilities of governing bodies.

Second, we are concerned that there should be a rigorous procedure for testing a provider’s adherence to the public interest principles. If the procedure is to be effective, it must not rely on a governing body’s assurances of compliance with the Principles and, in particular, its assurance that the arrangements for academic governance are effective: there must be some independent means of verifying the assurances.

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

The arrangements to “de-conflict” the respective regulatory requirements of the OfS and UKVI/Home Office regulatory regimes are to be welcomed. Until, however, there is more detail about how this will be achieved than is provided in the “Transition” document there will be a concern that satisfying the requirements of the two systems will put some smaller providers in jeopardy.

19 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?

Please provide details of any courses being supported under the student support system below:

N/a

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

The Schedule needs to be replaced with a statement that ties support to courses/programmes that have learning outcomes that are linked to Levels 5, 6 and 7 of the FHEQ.

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

N/A

On the register

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

Our agreement is subject to the reservations expressed in responses to previous questions.

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

The proposed approach lacks credibility, and its consistency with the “principles of best regulatory practice” (as set out by the House of Commons' Regulatory Reform Committee) is questionable.

The consultation document enters a commendable commitment to the early identification of “emerging risks”, the “imminent breach” or the “probability of breach” in the future one or more of the conditions of registration. This would be entirely consistent with a “risk-based” approach to the assessment and monitoring of providers. In support of its proposals, the document goes on to refer to the approach that has been developed by the Australian Tertiary Education Quality and Standards Agency (TEQSA).

In developing its own approach, TEQSA employs the distinction between “lead” (input) and “lag” (output) indicators. TEQSA defines a “lead indicator” as one that “assists in identifying potential emerging risks through consideration of activity that may cause a risk event”. A “lag indicator” on the other hand, relates to the “actual history and ... record of the provider”. On page 99 of the consultation document it is noted that TEQSA’s overall evaluation of a provider focuses on four areas: the first two (regulatory history, and student profile and outcomes) fall into the “lag” category; the last two (staff resources and profile, and financial viability and sustainability) are examples of “lead” indicators.

The consultation document states that the general monitoring of providers will be based on “lead indicators” that will “allow the OfS to anticipate future events and identify sector trends”. However, with the exception of the “composite financial sustainability” indicator, the examples provided in paragraph 236 fall into the “lag” and not the “lead” category. They may alert the OfS that a risk has been realised, but they will not enable it to “anticipate future events”.

If the OfS’ approach to the assessment and monitoring of providers is to be genuinely risk-focused it must be less reliant on quantitative data or “metrics”. By their nature, such data will describe a provider’s current and past performance and it is probable that any attempt by the Regulator to extrapolate from these data will be contested. In short, more attention needs to be paid to the gathering of qualitative intelligence (cf para 41) and the methods by which this will be gathered.

The current HEFCE Regional Consultant/Assurance Review system provides a good illustration of how qualitative information can inform the understanding of metrics and vice-versa.

24 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?

Much will depend on the means OfS uses to investigate and verify the information the provider submits.

OfS’s relationship with other regulators and bodies

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

Higher education is an international activity and inter-provider and inter-sector relationships are vital to the reputation and academic health of the English system. For this reason, the absence in the consultation documents of any reference to the European Higher Education Area (and its Standards and Guidelines) is lamentable. Reciprocity between the home nations of the UK will not be assisted if OfS fails to operate in line with the European Standards and Guidelines.

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

We think it will be better for students if OfS works directly with these bodies and does not use the DQB as intermediary.

Publication of the register

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

Agree

Validation

28 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 think that OfS can perform a useful function as an “honest broker” in improving validation services (as set out in paras 393-395). However, for the OfS itself to validate awards it will need to become an awarding body.

Unless OfS passes through the DAP scrutiny process, there will be serious questions about its competence and credibility as a validator that is able to satisfy itself that a body of academic provision will enable students to meet the learning outcomes specified for an academic award and/or credits.

As an awarding body the OfS will have to choose whether to adopt and follow existing sector-established standards for measuring academic achievement and managing quality or to set its own academic standards and quality management arrangements. Should OfS decide to set its own academic standards, etc., this is likely to eclipse standard setting by the sector in favour of Government-set academic and quality standards.

Transition arrangements

29 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?

In general terms, we agree.

OfS as principal regulator for exempt charities

30 Do you have any comments on the above proposal of how the OfS will act as the principal regulator for exempt charities? Please leave your comments below:

No

31 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.

No comments