

Office for Students Consultation

A. Introduction

1. The Government is seeking views on behalf of the new Office for Students (OfS) regarding the regulation of higher education. The OfS will introduce the new regulatory framework: a risk-based approach to higher education with a focus on the student.
2. There are five inter-related consultations, with the first of these being the principal one:
 - Securing student success: risk based regulation for teaching excellence, social mobility and informed choice in higher education
 - Office for Students: registration fees (stage 2)
 - Simplifying Access to the Market: Degree Awarding Powers & University Title
 - Designation of a body for English higher education information
 - Designation of a body to perform the assessment functions for higher education in England
3. The University's response is set out in the following pages. The actual submission was made via on-line forms.

20 December 2017

B. Consultation on the Regulatory Regime

1. Name: Professor Adam Tickell

2. Email: vc@sussex.ac.uk

3. Capacity: Publically funded higher education provider

Organisation: University of Sussex

4. Confidential response? No

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

Slightly Agree

We agree that the objectives are appropriate, and that a risk-based approach to regulation is appropriate and consistent with others forms of regulation. We note that the objectives may be in tension with each other, and hence that the OfS will need to take a holistic view when monitoring and assessing providers, rather than a narrow and simplistic one.

For example, elements of the delivery of objective 2 (high quality academic experience) might be perceived to be counter to the wishes of students as consumers (objective 3), if the latter is taken too broadly (i.e. ‘the customer is always right’). The Chair designate’s Foreword notes that the intention is “not [to] reduce higher education to a crude transaction between buyer and seller”, and it is hoped that this principle will not be forgotten.

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 else might it be appropriate to take a more risk-based approach?

We note that the OfS does not intend to impose targets for widening access and participation, but will expect providers to be making “real progress” and will use sanctions if not. The robust language raises concerns about the nature of the process of judgement that OfS will use in assessing a provider’s progress, given that this is not set out, and may be more subjective than objective.

The provision by the OfS of examples of different good practice would be sensible and helpful. We note that there should be an expectation of heterogeneity in providers, and hence the OfS should not have inappropriate expectations of seeing their examples of good practice necessarily replicated in all providers.

A risk-based approach might involve recognition of a provider’s track record in achieving high attainment or in making “real progress” on widening access and participation over successive periods of time, which would suggest that there is a lower risk of them failing to continue to do so, subject to any natural limits.

We would note, notwithstanding the focus on access and participation, that there could be negative effects as a consequence of the other proposed provisions of the regulatory framework. There could be a narrowing of approach and range of activity. Providers might seek to optimise their widening access provision, but reduce their wider outreach activities, as the latter could be seen as a general public good rather than leading specifically to the provider meeting its access expectation.

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?

Strongly Agree

We agree that focusing on outcomes allows for greater variations in how providers might choose to deliver those outcomes, which provides for greater choice for students and greater flexibility for providers. It should also promote greater innovation in delivery, as long as the required outcomes are not defined in ways that prescribe the delivery methods or processes.

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?

No

We strongly support the development of a GPA approach, by the sector rather than by the OfS. As noted in the consultation document, the OfS will be acting as a regulator, rather than as a provider or determinant of such structures. Equally, in promoting variation and choice across the providers, the OfS may not wish to prescribe an approach in this area. The OfS may, however, want to encourage providers to pursue and complete this piece of work, and wish to consider a positive stimulus to do so.

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?

Slightly Agree

We agree that the nature of the contractual arrangement between the student and the provider should be clear. We also agree that a level of consistency in approach across the sector would be beneficial, but that variations are also a natural part of a market.

We believe that student protection plans are important, especially in the context of an unplanned market exit, and suggest that this might be particularly relevant for new providers, as they establish themselves. In terms of a risk-based approach, one might expect the OfS to wish to pay more attention in those circumstances than to an established provider with a good track record. However, we do not believe that it is practical, or good use of public resource, to expect detailed contractual arrangements to be in place with other providers to cover all courses, in all eventualities. Instead, it might be appropriate to have general plans in place, and a small number of broad agreements with one or two other providers, to provide a launch pad should an exit become likely. The template provided illustrates this approach.

Whilst supporting the principle, we are concerned to ensure that the required detailed descriptions of course content do not constrain appropriate evolution of that content, nor militate against inclusion of content as a result of new discoveries or changes in the environment that is the subject of the course.

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

No comments.

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?

Slightly Agree

We agree that an element of transparency of senior staff pay is appropriate, subject to the protection of individual rights and those of commercial confidentiality. We also believe that making available one or more pay ratios or profiles would be appropriate. However, rather than focusing on senior staff pay in isolation, we believe that OfS, taking a risk-based approach, would wish to take into account the performance of the provider, including a measure of the rate of (positive) change.

We are concerned about the somewhat arbitrary choice of the thresholds proposed, and wonder how they will be appropriately adjusted over time so as not to become outdated.

We note that an institution's figures (individual and ratios) will be affected by their subject mix, for example if they include a medical school. We also note that greater transparency can lead to inflationary pressures.

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 future policy development going forward.

No comments.

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?

Slightly Agree

We recognise the potential burdens on smaller providers. However, it may be that they are also narrow in their range of subjects, and hence could have a similar concentration, at subject level, to some much larger providers. We therefore suggest that it may still be appropriate for smaller providers to be required to participate at subject level.

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?

Strongly Agree

The OfS might usefully disseminate good practice, so that institutions are able to adopt similar approaches, and hence reduce or eliminate incompatibilities between the two ends of a transfer.

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

Slightly Agree

We strongly support as a point of principle a commonality of approach to transparency for all providers registered with the OfS. It is one of the advantages of the proposals that all providers will operate under a common framework. We hope that the OfS will maintain the expectations

for transparency, reporting and release of information (e.g. all providers being subject to the same expectations with respect to Freedom of Information). The expectations should be properly enshrined in the registration criteria.

The University is unequivocally committed to supporting and promoting free speech within the law. Over the last year, the University has been very vocal about its moral duty to support free speech and we have planned a series of events with the express intention of stimulating debate on this. Our Students' Union has a 'Liberate the Debate Society' and a sophisticated approach that they refer to as their "Safer Space and Good Conduct Policy". This is an enabling policy to ensure that everyone participating in Student Union activities and events have to commit to respectful but challenging debates.

Nevertheless, it is important to recognise that student unions are legally independent charities, separately regulated by the Charities Commission. Many student unions in England have adopted policies that seek to balance their desire to support free debate with their belief that the student interest is not served by hosting speakers with extreme views – not of all whom are covered by the Prevent Duty. For the avoidance of doubt, neither the University nor our Student Union takes this position, but we must respect the integrity of unions who take such an approach. For example, student unions may wish to prevent speakers who have controversial – but legal – views on sexual violence from speaking as this is clearly a greater risk to women in the UK than is an act of terrorism.

The proposal that Universities are responsible for the behaviour of independent organisations where we have no trustee or managerial control will risk: (i) undermining the independence of student unions; (ii) undermining the student voice; and (iii) poisoning the relationship between the University and the student body. We strongly believe that student unions should be separately required by the Charities Commission to justify their external speakers' policies.

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 appropriate?

Strongly Agree

We note that there is no means for a provider to be eligible for research funding from Research England without being registered for student regulation at the highest level. This suggests that providers who do not wish to access student finance would still be regulated as if they do. Whilst this might be a hypothetical scenario, it might apply first to a postgraduate-focused research institution.

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

Slightly Agree

The public interest principles, as stated, seem to be appropriate. However, we have some concerns as to how compliance with them might be interpreted by the OfS. An overly narrow approach may result in a constraint on providers' ability to deliver diversity of choice and richness of experience to the market and to students. We believe that the student interest is better served by longer-term sustainability and reputation of providers.

An example of this would be an over-interpretation of the Accountability principle, which could undermine the ability of providers to deliver an innovative and mixed programme of studies and other experiences, based on a range of academic expertise. Equally, an over-interpretation (actual or perceived) may cause some providers to review their portfolio of

subjects and courses, potentially leading to the narrowing of range covered. Whilst this might be a natural market-based response, it may not be what the OfS and the Government wishes to see. This could particularly apply to high-cost subjects, many of which are recognised as strategically important. It might also undermine universities' roles in delivering the Industrial Strategy.

We also have a concern about some of the conditions for members of governing bodies, in that they seem to be stricter in some respects than equivalent requirements for company directors and charity trustees. Conflicting and overly constraining requirements are not helpful, and may restrict the ability of providers to attract the most talented individuals, e.g. those who are likely to have other business interests.

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

Strongly Agree

No comments.

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?

Neutral

No comments.

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

Slightly Agree

No comments.

21. 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)

The nature of the University and its current activities means that this is the appropriate category.

22. 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

As with many aspects of the consultation, the principles of the conditions seem to be reasonable, but the reality will depend on the way in which the OfS operates the regulatory regime and undertakes its judgements. We suggest that there should be a substantive review of the performance of the regime and of OfS in overseeing it after a reasonable period, say two years of full operation, to ensure that the operational reality matches the strategic and policy objectives.

We observe that the consultation makes no mention of the continuation or replacement of the Memorandum of Accountability and Assurance (MAA). Many providers will have contracts and loan agreements that depend on compliance with the MAA and its successor documents, so a clear indication of relevant processes for agreement of a new MAA or equivalent is essential.

This illustrates the need for a single point for corporate assurance, and of the OfS responsibility to oversee the health of the sector.

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

Slightly Agree

We generally support the approach proposed, and in particular that the OfS is not intending to produce summative risk ratings or use RAG status for providers.

However, we have some concerns about the realism of “real time” warnings. This phraseology suggests a much higher frequency of reporting (of at least some data) than is currently the case (notwithstanding the Data Futures project). This might be challenging for the DDB to manage, for providers to provide, and for OfS to analyse. We also note that the timing of the provision of such data might necessarily vary between providers to a greater extent than is currently the case, as they deliver more flexible programmes of study. This is already true of postgraduate research students, who do not necessarily start and finish at the same times of year as the majority of undergraduate and taught postgraduate students, but might also apply to accelerated degrees on a different pattern.

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?

Slightly Agree

The availability of a range of interventions is appropriate, along with an approach that uses risk-based and other factors in assessing a provider’s particular situation.

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

Neutral

No comments.

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

Agree Strongly

We are pleased to see the recognition of the need for close working relationships with other relevant bodies, and hope that there will be good co-ordination between those bodies to avoid duplication or double jeopardy. It is also vital as part of the role of OfS in enabling providers to play their part in the delivery of the Industrial Strategy, the drivers of and conditions for which are not necessarily the same as for the delivery of education under the proposed regime.

The OfS should act as the single point for corporate assurance, rather than it being split between OfS, UKRI and others.

27. Do you agree or disagree with what additional information is proposed that the OfS publishes on the OfS Register?

Slightly Agree

No comments.

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 have no substantive comments, but note the potential conflict of interest that is identified in the consultation document. It would damage the OfS's reputation if there was any perception of differing standards being applied.

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?

Yes

No comments.

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

We believe that it would be appropriate for the OfS to be the Principal Regulator for exempt charities.

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.

We believe that it would be appropriate for the OfS to be the Principal Regulator for this wider group of providers.

C. Consultation on OfS Registration Fees

The initial questions are as for the main consultation.

1. Do you support the proposal to charge Registered Basic providers a flat rate annual registration fee?

Yes

Please give reasons if your answer is 'No' or 'Not sure'

2. Do you support the proposal to charge Approved and Approved (fee cap) providers an annual registration fee varied by their size?

Yes

Please give reasons if your answer is 'No' or 'Not sure'

We note that this fee is 18 times that for Registered Basic providers. We look forward to the evidence showing that this is an appropriate ratio in relation to actual cost.

3. Do you support the proposal to measure the size of Approved and Approved (fee cap) providers for the purposes of calculating their annual registration fee on the basis of their full-time equivalent (FTE) higher education (HE) student numbers?

Yes

Please give reasons if your answer is 'No' or 'Not sure'

4. Do you support the proposed banding model to group Approved and Approved (fee cap) providers by their size?

No

Please give reasons if your answer is 'No' or 'Not sure'

We support the principle of the banding model, and the gradations at the lower end to recognise the needs of smaller institutions. However, we are concerned by the bluntness of the upper two bands (J and K) in comparison. We believe that these should be split further; for example, 10,001-15,000, 15,001-20,000, 20,001-30,000, 30,001+.

5. Do you support the proposed percentage distribution of costs between size bands?

No

Please give reasons if your answer is 'No' or 'Not sure'

The distribution would need to be modified to accommodate our proposed additional bands. A rate of increase for these new bands of 30% could be used. Our proposed revised scale would make the cost per FTE more equitable, whilst still providing the largest providers with an economy of scale.

6. Do you support the idea of setting registration fees in the future to reflect the regulatory effort associated with the provider? What do you see as the advantages and disadvantages of this model compared with the proposed fee model?

Yes

Please explain

We support the principle of making the fee match the regulatory effort in a risk-based system. However, the variation in consequent fee level would need to be material in order to provide any benefit in operating a more complex system than one based solely on FTE bands. We also recognise that those providers who may be considered higher risk may also be subject to other cost pressures as a consequence of their risk level.

We are also concerned that the figures provided are illustrative, and may not be particularly close to the fees that will actually be charged, based on the prospective costs of the OfS. Clarity on this point is urged.

7. Do you support the principle of a proposed discount for new providers in their first 3 years of fees?

No

Please give reasons if your answer is 'No' or 'Not sure'

We believe that new providers should be budgeting for this area of expenditure as part of the normal cost of doing business. A situation of a new provider that was dependent upon a discount would suggest that their case was not particularly sustainable, and potentially should not be supported. A situation of a new provider that did not require a discount would suggest an unnecessary use of public funds.

8. Please provide any further views you may have on the government's proposals on registration fee subsidies and exemptions.

We believe that the future review should consider whether those providers requiring regulation only in order to access a Tier 4 sponsorship licence should receive a discounted fee rate. We also agree that the fees should not be brought in until the first full year of operation, in 19/20, and that there should be a single registration fee, rather than a separate one for application.

D. Consultation on Degree Awarding Powers and University Title

The initial questions are as for the main consultation.

Question 1: Do you agree or disagree that the OfS should consider applications for New DAPs for research awards from providers without a three-year track record of delivering higher education in England?

Slightly Agree

The consultation uses the example of an overseas institution wishing to establish a UK presence. A different example might be a UK-based independent research institute that has an established research presence and environment, who might wish to expand their activity to include research students and hence wish to acquire DAPs. In such circumstances the OfS might wish to look for, say, a minimum of three years' delivery of high quality research.

Question 2: (With reference to question 1) Are there particular circumstances where authorisations of this type would be appropriate? If so what are they?

Yes

See previous question.

Question 3: Do you have any comments on the proposed New DAPs test and associated processes? In particular, do you think these tests and processes provide appropriate safeguards whilst enabling high quality new providers to access DAPs?

Slightly Agree

We support the existence, effectively, of two periods of three years before a new provider gains Indefinite DAPS (Figures 1 and 2 in the consultation document).

Question 4: Do consider the proposals for monitoring a provider with New DAPs during the probationary period to be adequate and appropriate?

Yes

The active engagement of the DQB during the probationary period is essential.

Question 5: Do you agree with the proposals for the OfS and providers to best ensure that students are aware of what type of DAPs, including New DAPs, a provider has? If you think there should be additional information requirements, please give details.

Strongly Agree

Students should be fully aware of the status of the provider in this respect. Whilst the OfS might wish to hope that the majority of applicants will demonstrate the appropriate level of quality, there is the possibility of a provider failing the probationary period, whether during it or at its end point. Given this, the OfS should look for a particularly well-developed alternative provision in this respect in the provider's student protection plan.

Question 6: Do you agree or disagree with the suggested change regarding the possible variation of the level 6 TDAPs criterion?

Slightly Agree

We agree that a variation may be sensible.

Question 7: (With reference to question 6) If the 50 per cent criterion is to be disapplied in some exceptional cases, what factors do you think the OfS should take into account when determining whether an application is an exceptional case?

A variation from the 50% requirement might be appropriate where a reasonable minimum number of the provider's students are at level 6, and that those students represent more than a lower threshold proportion. For example, it may be appropriate to require 50% or at least 500 students, where the number of level 6 students represent at least 30% of the total student population.

Question 8: Do the application processes for DAPs sufficiently align with the registration processes and conditions?

Yes

No comments.

Question 9: Do you agree or disagree that for providers that have obtained DAPs on an exceptional basis without having the majority of higher education students at level 6 or above (as proposed in question 6), the 55 per cent criterion for University Title should be adjusted to additionally require the majority of higher education students to be on courses at level 6 or above?

Slightly Agree

Whilst we supported the relaxation of the 50% criterion in relation to granting of DAPs, we believe that the 50% requirement should be reapplied in the case of University Title in order

to ensure that only providers with a significant amount of degree-level provision are able to obtain University Title. The OfS may additionally wish to consider applying a minimum number of degree-level students in order for the provider to be eligible.

Question 10: Do you agree or disagree that student numbers, for the purposes of the 55 per cent criterion for University Title, should be calculated based on the intensity of study, disregarding the mode of study? Please give reasons for your views.

Slightly Agree

We agree that calculating a more precise FTE figure would be beneficial, if that calculation is reliable and is based on data that is routinely and accurately collected. A minor improvement in accuracy requiring a significant increase in data collection burden would not be acceptable or viable.

Question 11: (With reference to question 10) Do you have any views on how students on accelerated courses should be taken into account, when calculating the percentage of higher education students at a provider? Should these students be counted as 1 FTE, or more?

Students on accelerated courses should be counted as 1 FTE. To count them at a higher figure seems to be illogical for this purpose, as they cannot represent more than one person. Whilst their period of study might be shorter than the current nominal full-time student, they still only represent a load of one.

Question 12 Do you agree with this assessment of the factors that should be set out in Secretary of State guidance to which the OfS must have regard to when determining applications for University Title? If you disagree, please give reasons. If you believe any additional factors should be included, please indicate what these are with reasons.

Slightly Disagree

We are concerned that the award of University Title is in danger of being reduced to a mechanistic, numbers-driven process. Whilst we support moves to lighter-touch regulation, we would not wish to see University Title awarded solely on a time-served basis.

We agree that a suitable track record should be required before University Title can be granted. However, we do not agree that the single period of three years' operating full DAPs is sufficient. We believe that a further period of, say, one or two years' operating indefinite DAPs would be appropriate. Such an extension would ensure that more than one cohort of students had passed through the provider, so that quality could be fully assessed, to ensure that the title would not be undermined.

We recognise that the 2004 changes have taken place, but would argue for caution in the OfS not having any view on the nature of the offering by a provider. Whilst highly specialist providers may well be appropriate, both for their intrinsic structure and focus, we would be concerned if this was applied without discrimination.

Question 13: Do you agree or disagree with this proposal of implementing the statutory provisions that allow for the revocation of DAPs and University Title and the variation of DAPs?

Strongly Agree.

Question 14: Do you consider the above proposals regarding a change in circumstances to be sufficiently robust to safeguard the meaning and value of DAPs and University Title?

Yes.

Question 15: Do you have any comments on the proposed DAPs criteria as set out in Annex A? Are there specific aspects of the criteria that you feel should be adjusted in light of the OfS's overall regulatory approach, in particular ongoing registration conditions?

No comments.

Question 16: Do you have any comments on the proposals for the assessment of applications for subject specific and Bachelor's only DAPs? Are there specific aspects of the criteria that you feel would either be particularly relevant or not relevant for either of these types of DAPs?

No comments.

Question 17: Do you have any comments on how a subject should be defined for the purpose of subject specific DAPs?

In line with the aim to have diversity in provision, any subject definition should be broadly based, if one needs to exist at all. It may be better for the applicant to define the subject or subjects covered by their application and thereby to justify the scope, content and any inter-relationship.

E. Consultation on Designation of a body for English higher education information

This consultation comprises one question (suitability of the applicant), along with the ability to recommend an alternative provider.

Question: Please state whether, in your opinion, HESA is capable of meeting all of the above designation conditions.

Yes

HESA has the confidence of HE providers, with a long and strong track record. Whilst maintaining the ability to analyse longitudinal records, it has evolved its data capture and services to reflect changing circumstances and needs.

In determining the responsibilities and services of the DDB, we recommend that consideration is given to ensuring that research and knowledge exchange-related data is adequately included. This will enable the DDB to meet the needs of UKRI and providers (and others) whilst reducing the duplicative or conflicting data provision burdens on the sector.

F. Consultation on Designation of a body to perform the assessment functions for higher education in England

This consultation comprises one question (suitability of the applicant), along with the ability to recommend an alternative provider.

Question: Please state whether, in your opinion, QAA is capable of meeting all of the above designation conditions.

Yes

QAA has the confidence of HE providers, with a long and strong track record. Whilst maintaining standards, it has helped to evolve those standards, in the UK and internationally.