

## Background

University Alliance represents 18 higher education institutions in England and Wales educating almost a quarter of all undergraduates in the UK. Alliance universities have been proud leaders in technical and professional education since the Industrial Revolution and are still crucial to the success of cities and sectors today.

This document forms our written submission to the Department for Education's consultation on behalf of the Office for Students (OfS) regarding the regulation of the higher education sector. The OfS will introduce the new regulatory framework: a risk-based approach to higher education with an unflinching focus on the student.

Below are our responses to questions posed by consultation paper.

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

**Q5 Do you agree or disagree that these are the right risks for OfS to prioritise?**

(4.) Slightly agree

The risks described seem to be a sensible overview of the risk landscape and they are suitably student-focused.

**Q6 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?**

It will be important for the OfS to use the wide range of data and evidence at its disposal to identify specific gaps in achievement and impediments to progress, and ensure providers take the appropriate action to address these issues. However, it must also be noted that provider interventions may vary based on local and institutional contexts.

In its overall approach, OfS should strengthen existing mechanisms that encourage collaboration and practice sharing between providers as well as other relevant partners, such as schools and employers, to ensure access, participation and success are at the core of its activities, and at the core of the activities of the

providers it will be regulating. In particular, from the outset, the OfS should encourage the development and growth of initiatives that address current disparities identified by OFFA and the sector (e.g. access and attainment gaps among ethnic groups, mature and part-time students, and disabled students, among others). OfS should deploy Student Opportunity Funding to correct imbalances in overall access funding. In comparing institutions with only 25% of students from WP backgrounds and the other has 40%, we can see the funding in the latter is much more stretched. The Student Opportunity Fund should be at least maintained at its present level.

The framework's focus on retention and success as well as access is very welcome. While OfS will not require access and participation plans from 'registered basic', it must closely monitor providers' statistical submissions and their impact on access. Given the enhanced scope of OfS powers of intervention in this area, it is important that it is made clear that OfS will facilitate the sharing of best practice, but not impose solutions on providers, such as mandatory school sponsorship. Using enhanced data gathering should lead to sector wide targeting of key demographics.

The OfS should also give clear and stretching guidance on what constitutes an adequate access and participation statement under condition A2 – at present, they could be very limited and totally vague, and yet still be compliant.

**Q7 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?**

(2.) Slightly disagree

We agree that it is important to secure outcomes to expected standards. However, when in matters of quality, and in particular whether students feel they have been engaged in a valuable and rewarding experience, the means can be as important (or even in some circumstances more important) as the ends. It will be important that the OfS makes clear that quality cannot only be understood in terms of standards and outcomes – student experiences matter. In particular, they are central to understanding the concept of 'value for money', as the student's investment is in their experience not just their outcomes. Even if the OfS has no direct remit of its own to improve student experiences, it should not do anything to impede a sector

quality model that aims to improve the means of delivery. In addition, the OfS should seek to research and understand student experiences.

**Q8 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.

The OfS should not seek to mandate any aspect of student assessment, as to do so would conflict with section 2, subsection 8 of the HERA 2017 – protecting institutional autonomy in matters of assessment. In addition, we do not accept a distinction between methods of assessment and methods of aggregating assessments, as the latter has a clear bearing on the autonomous awarding powers conferred by DAP acquisition. Some institutions may adopt GPA approaches anyway, in whole or part, and the OfS should monitor and evaluate this where it occurs.

We note in addition that the use of a GPA based system does not in itself achieve any improvements to comparability across the sector, or any additional control of grade inflation.

**Q9 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?**

(3.) Neutral

We do not have difficulty in principle with a registration condition that references consumer law, however it is imperative that the the interaction between the OfS and the CMA should be clarified. The OfS guidance is to follow CMA advice. It therefore appears that unless for some reason the CMA finds fault and takes enforcement action, the institution by definition must be deemed compliant with the relevant registration condition. The OfS should state this explicitly; it is clear that the CMA is the relevant authority on consumer law, and crucial that there should be no ambiguity about where in the system this is to be judged. This condition should also apply to providers in the registered (basic) category, as they are also subject to the requirements of consumer protection law.

**Q10 What more could the OfS do to ensure students receive value for money?**

The OfS, regulated providers and HE sector bodies should work together to maximise student engagement, give students the tools to exercise judgements about value, and raise concerns with providers where there are shortcomings. It is therefore problematic that the treatment of student engagement in the consultation is so weak. The OfS should have a comprehensive student engagement strategy which should be supported by resources committed to research into student views. This programme should be overseen by the OfS's student panel. In addition, where providers can demonstrate strong and successful student engagement and consultation practices that go beyond the baseline expectations implied in the revised UK Quality Code, this should be treated by OfS as evidence of lower regulatory risk, because it would mean the provider is highly sensitive to the needs, expectations and concerns of students as its key user group. By making this approach explicit, OfS will create a strong incentive for excellent student engagement practices without adding to regulatory burden.

**Q11 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?**

(4.) Slightly agree

We agree with the wording of the relevant registration condition.

**Q12 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.**

Other than the hoped-for positive equality impacts resulting from the access and participation functions, we would not forecast any major equality impacts. However, weaker-than-necessary regulation in registered (basic) providers may have an equality dimension, as students in those providers are more likely to be from disadvantaged backgrounds and/or have protected characteristics.

### **Making the market work & improving the system**

**Q13 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?**

(2.) Slightly disagree

University Alliance strongly supports the TEF. The vast majority of University Alliance members participate in the TEF and will continue to do so. However, the sections of HERA that legislate a 'ratings scheme' (i.e. the TEF) included provision that ratings should be given to higher education providers "where they apply for such a rating" [HERA s.25, ss.1 & ss.2]. Parliament's intentions were clearly to construct this as a specifically voluntary process, and that should be respected. It may be that it could be applied as a specific registration condition in limited circumstances where the TEF is seen as a tool to bring about provider improvement where there is clear evidence of failure requiring intervention.

**Q14 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?**

(3.) Neutral

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

Transfer options may be important to students for a wide range of reasons. It may be that they have to make lifestyle changes or relocate, or that they are unhappy in the place they have come to study, or dissatisfied with the programme or other aspects of the experience. Because supporting student transfer relies upon the adoption of sector-wide good practice, it is a proper matter for a universal registration condition. As supporting transfer may help to prevent people leaving higher education unnecessarily, it can be seen as an extension of access and participation in terms of a wider role for OfS beyond baseline minima, so it should give guidance and if necessary commit resources to enabling the sector to improve.

Our concern would be that encouragement and promotion of transfer arrangements, including publication of information, may be insufficient to make a real difference in practice to student transfer on a wide scale. If, after a period of time, OfS concludes it does not have the right tools to make progress in this area, then OfS and DfE should consult again on possible further actions.

The OfS should work with providers and the designated data body to ensure that successful student transfers do not count against institutions on retention measures, either for risk monitoring or in the TEF.

**Q15 Do you agree or disagree with the proposed approach to sector level regulation in chapter 2?**

(4.) Slightly agree

Broadly, we are supportive of the approach. We believe it could be strengthened by taking some simple additional steps:

- we would advocate the OfS looks again very carefully at the list of registration conditions and considers whether any of them (or parts of them) could be held 'in reserve' for deployment as 'specific registration conditions' on providers that are showing greater risk factors; this would reduce the weight of regulation and bring the risk-based principle to life in practice; we indicate below (Q18) where this could be useful
- the OfS should explicitly adopt a 'one-in-one-out' rule for general registration conditions (i.e. those applicable to all providers) after the opening list is in place; this has long been the government's approach to business regulation there is some ambiguity in the HERA about what constitutes 'day to day management', which is important as it bears on the meaning of 'institutional autonomy';
- the OfS can help to clarify the situation by making a policy statement to the effect that, in its view, 'day to day management' means any action that an institution's governing body and its senior executives may take under its governing documents
- the OfS should also make a clear policy statement about how it will relate in practice to the CMA, and in particular that it will not judge any provider to be non-compliant with the consumer protection registration condition unless the CMA has taken some form of enforcement action; there can only be one regulator for consumer law in the sector

- the crucial role of the student voice is undervalued and underdeveloped in the consultation paper, which seems like a significant omission given the context that this is supposed to be a highly student-centred body; we set out some proposals for improving this in answer to question 6 above, but the issue runs more widely than the question of value for money and should be deeply embedded across all the OfS's functions.

### The register – content and access

**Q16 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?**

(2.) Slightly disagree

Condition B3 is would benefit from alternative drafting. The OfS should not stipulate that a provider “must deliver successful outcomes for its students” as this could be construed to mean that it must not allow unsuccessful outcomes – i.e. give them fail grades. Nor should it stipulate that the outcomes are “recognised and valued by employers”. University Alliance institutions go to great lengths, with considerable success, to engage employers and produce graduates with the knowledge and skills they need. But specific employer recognition and valuation remains out of their control, so this is not a fair condition.

A better wording might be “The provider must enable successful outcomes for its students which promote their opportunity for, and capability in, employment and/or further study”. We note that the language of ‘enabling student success’, as opposed to ‘delivering successful outcomes’ is already used in condition D. To the extent that successful outcomes means graduate employment rates, this is properly a matter for student choice based on high-quality public information (and indeed recruitment selection in the labour market), not for regulators.

We see no strong reason why conditions B1, B2, B3 (as redrafted), should not apply to providers in the ‘registered basic’ category. Conditions E1 and E4 should definitely apply to providers in the ‘registered basic’ category, as such providers are equally subject to the requirements of consumer law as any provider in the ‘approved’ categories – we surely do not want a situation where the OfS is seen to

be uninterested in the application of consumer law in any officially recognised providers.

**Q17 Do you agree or disagree with the proposed lists of public interest principles and who they apply to?**

(4.) Slightly agree

The public interest principles as set out in the guidance are reasonable and appropriate, and are in many cases underpinned by statute or related provisions such as charity law. There should be no reason not to extend the principles across all providers in the HE sector where public funding is involved, whatever the legal status of providers.

**Q18 Do you agree or disagree with the proposed approach on the application of conditions for providers wishing to seek a Tier 4 license?**

(4.) Slightly agree

**Q19 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?**

(3.) Neutral

**Q20 Do you agree or disagree with the proposed approach for the benefits available to providers in the different registration categories?**

(4.) Slightly agree

**Q21 If you are a provider, can you provide an indication of which category you would apply for (under these proposals) and why?**

N/A

University Alliance is not a higher education provider, but all University Alliance members will apply for registration in the Approved (Fee Cap) category.

### On the register

**Q22 Do you agree or disagree with the general ongoing registration conditions proposed for each category of provider (see the Guidance for further detail)?**

(3.) Neutral

A1 – Agree

A2 – Agree, but OfS should give clear guidance on what A&P statements should contain

A3 – Agree

B1 – Agree

B2 – The words “including through the admissions system” should be removed – as until firm acceptance of an offer, individuals are not actually the provider’s students.

B3 – Suggested rewording above

C1 – Consider applying only as specific registration condition in context of risk)

C2 – Agree (all UA HE provision already meets threshold academic standards)

D – Consider applying only as specific registration condition in context of risk)

E1 – Agree

E2 – Agree

E3 – Consider applying only as specific registration condition in context of risk)

E4 – Agree but extend to registered basic category

F – Agree

G – Agree

H – Agree only in part (see above)

I – Agree

J1 – Agree in part. This is a multi-part condition; while J1a seems reasonable, J1b and J1c seem very overbearing; it would be better to restrict the general condition as J1a only, and only apply J1b and J1c as specific conditions on providers judged to be high risk or non-compliant in practice with J1a.

J2 – Agree

K – Agree

L – Consider applying only as specific registration condition in context of risk)

M – Agree

N – Agree

O – Agree

P – Disagree (see above), or at least consider applying only as specific registration condition in context of risk.

**Q23 Do you agree or disagree with the proposed approach to risk assessment and monitoring?**

(2.) Slightly disagree

The provisions on 'random sampling' are under-explained in the consultation paper, which does not explain what will actually occur in practice when a provider is randomly selected. Will it involve the submission by the provider of additional information? Visits by OfS officials? Interviews with people inside the provide and/or with students? How much notice will be given? How long will such processes take, and how long after them can providers expect those carrying out exercises to comment on their findings? It is essential that all these matters be explained, and may be helpful to clarify how it will resemble, or differ from, a QAA institutional audit. It also needs to be clarified whether exercises under this provision will be carried out by the OfS directly, by the designated quality body, or by both. We would expect the OfS to carry out an additional consultation on these matters before implementing this part of the risk monitoring approach.

**Q24 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?**

(4.) Slightly agree

**OfS's relationship with other regulators and bodies**

**Q25 Do you agree or disagree with the proposed approach the OfS takes to regulating providers not solely based in England?**

(4.) Slightly agree

The approach outlined is likely to be sound in the vast majority of cases. This is, however, an area where the OfS will need to be thoughtful and monitor any unusual

situations carefully. The landscape may be affected by policy divergence within the UK, by Brexit and by evolving trading relationships across the globe. Corporate structures may become highly complex, and the OfS must see through that where necessary to ascertain whether risk to student interests is increased.

**Q26 Do you agree or disagree with the principles proposed for how the OfS will engage with other bodies?**

(4.) Slightly agree

### Publication of the register

**Q27 Do you agree or disagree with what additional information we propose that the OfS publishes on the OfS Register?**

(4.) Slightly agree

### Validation

**Q28 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?**

The proposals for promoting improved validation arrangements within the sector appear sound. However, OfS and DfE should make it clear as a statement of policy that the powers to enable the OfS's validation powers will only be considered as a last resort and a full consultation would be undertaken before doing so. We continue to regard this option as a poor solution for providers and for students. Despite the comments in paras. 405/406, students will not be well served by an award from the regulator, as employers are likely to find it confusing and treat it as a signal of poor quality.

### Transition arrangements

Q29 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

Q30 Do you have any comments on the above proposal of how the OfS will act as the principal regulator for exempt charities?

The proposal is sound.

Q31 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.

There appear to be no significant reasons why there should not be an extension of exempt status where the OfS is able to regulate, but it seems clear this treatment can only be extended to providers that the OfS directly regulates (i.e. they must appear on the register in their own right). It would not be an appropriate solution for providers in the registered (basic) category, as the exercise of OfS regulation would appear too weak to give confidence to the Charity Commission or to the public.