

A Genealogy of the Office for Students

The Office for Students is much more than a bureaucracy tasked with protecting the interests of students – it is a regulatory authority established under the Higher Education and Research Act of 2017 to oversee all aspects of the operation of higher education institutions in England and to enforce the higher education policies of the government. The steps by which the Office for Students came into being are as follows:

1. [The Browne Review](#) was commissioned by the Blair government, which was committed to an ambitious expansion of higher education, but its report was not published until after the general election of 2010. The purpose of the review was to find an affordable way of generating a better-educated workforce, since the UK was recognised to be at a competitive disadvantage internationally. It argued that, since a university degree generally opens the way to higher-paid employment, **students could be expected to “pay more in order to get more”**. It also assumed that **competition for fee-paying students among institutions** would encourage them to improve the service they offered to students, and this was the basis for its claim that its proposals would **“put students at the heart of the system”**.

2. [The Willets White Paper of 2011](#) adopted that phrase “Students at the Heart of the System” as its title and took over from Browne the idea of **“putting financial power in the hands of learners”**. It spoke of making information more readily available to potential applicants, including information on “employment and earnings outcomes”, and requiring universities to publish the results of student surveys of lecture courses in order to stimulate competition between individual academics as well as institutions. It proposed that **a risk-based approach to quality assurance** should be adopted (i.e. concentrating regulatory effort on those cases where there is reason to suspect failings) and that a new regulatory framework be introduced, reducing the barriers to **new “higher education providers of all types”**. **Key Information Sets** were introduced at this stage, and controls on the number of students admitted by universities were removed at the same time that the main burden of **the costs of tuition** was **shifted from teaching grants to fees** in 2012. Legislation was deferred until the effects of the new funding arrangement had become clear, but **the notion that competition between institutions would**, in the words of the Browne Review, **“drive quality and value for money for students”** became axiomatic for government higher education policy from this point onwards.¹

3. In March 2015, **the Competition and Markets Authority (CMA)** issued its advice to universities on their [obligations to undergraduate students under consumer law](#) which included (i) giving students clear, accurate and timely information to enable them to make informed decisions about what and where to study, (ii) ensuring that their terms and conditions, particularly with regard to courses and costs, were fair, and (iii) ensuring that their complaint handling processes were clear, fair and accessible. The CMA advice also made it clear that students were entitled to seek legal redress if a university was found to be in breach of consumer law.

4. [The Johnson Green Paper “Fulfilling our Potential” of November 2015](#) presented itself as a consultation document, but made it clear from the outset that the Government was already committed to two lines of action:

- 1) encouraging **new types of “provider”** to enter the market in higher education courses and compete for students with existing institutions, in which connection **student choice** was now perceived as **“a key driver of change”** (p. 11), and

¹ See the response of the Department of Business Information and Skills to consultation in 2012 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197258/12-890-government-response-students-and-regulatory-framework-higher-education.pdf, pp. 3-4. This document also promised continuing support through HEFCE for “strategically important and vulnerable subjects”.

- 2) introducing the **“Teaching Excellence Framework” (TEF)**, which had indeed been a Conservative Party manifesto commitment in the 2015 general election.

The title “Teaching Excellence Framework” was clearly chosen to mirror that of the existing “Research Excellence Framework” (REF) and the TEF was in part designed to **compensate for the effects of the REF** – the strong financial and reputational incentives provided by the REF had been encouraging universities and individual academics to concentrate their efforts more on research, and it was now argued that an additional set of financial incentives (i.e. **permission to increase fees** in line with inflation: p. 13) was needed in order to improve teaching. The main thrust of the TEF, however, was **not aimed at motivating good teaching**, but at motivating institutions to bring about certain outcomes. (The TEF was in fact later renamed as the “Teaching Excellence and Student Outcomes Framework”, but the acronym TEF has been retained).

The **assessment measures** proposed for the TEF (pp. 33-34) were

- (i) the employment destinations of graduates,
- (ii) the retention and continuation of students enrolled on courses, and
- (iii) student satisfaction as measured by the National Student Survey²,

and it was openly acknowledged that these could only be regarded as **“proxies” for teaching quality**. It was nevertheless claimed that, on the basis of the TEF, students would be able to “use the TEF results to help inform their decisions about which institution to attend”, employers would be able to refer to it when making decisions about which graduates to employ, and graduates would be in a better position to repay more of their loans. In these ways, it was argued, the system would provide **better value for money for taxpayers** as well as **employers and students**.³

The Green Paper also proposed that the number of public bodies involved in overseeing higher education be reduced to **a single regulator** for the higher education sector (incorporating HEFCE, OFFA, etc.), which would be called **“the Office for Students” (OfS)**: in this way the proposed reforms would build on “the central tenet of the 2011 reforms, putting students at the heart of the system”. The OfS would hold responsibility for monitoring the behaviour of all HE institutions, for setting them (unspecified) “targets”, and for ensuring a “level playing field for all providers”, as well as for such specific matters as “access agreements, teaching funding, TEF and quality assurance”.

5. The technical consultation on the TEF in May 2016 explained how the scheme would be used to assess the responsiveness of institutions to requirements for widening participation, as well as addressing a key problem that had been acknowledged in the Green Paper: the **absence of any clear measure of teaching quality**. The solution proposed was to adopt a set of **“core metrics”** that provided **numerical measures of teaching outcomes** and would stand as proxies for effective teaching. The three core metrics were to be

- (i) teaching quality as reflected in the evaluations of teaching registered in the National Student Survey,

² The reliability of the NSS results as a basis for assessing teaching quality was strongly challenged at the time: see

<https://www.timeshighereducation.com/blog/nss-and-teaching-excellence-wrong-measure-wrongly-analysed> and <http://cdbu.org.uk/wp-content/uploads/2016/01/CDBU-response-to-consultation-140116sans.pdf>.

³ The argument that action was needed to ensure “value for money” was partly based on the results of the annual **academic experience surveys**, in which a third of undergraduates at universities in England indicated that their course represented very poor or poor value for money, and this became a recurrent theme in the government’s campaign for its higher education reforms. What was never acknowledged in that context, however, was the force of the observation in the report on the 2014 survey – the first in which students had been asked to indicate their sense of whether their courses were providing them with value for money – that **the expression of students’ concern in this area was “not unexpected given that the shift from government funding to student (loans) funding has not meant a commensurate increase in resource for learning and teaching for institutions”**

http://www.hepi.ac.uk/wp-content/uploads/2014/05/HEA_HEPI-Report_WEB_160514.pdf, p. 9).

- (ii) learning environment as reflected in completion rates as well as the evaluations of academic support registered in the National Student Survey, and
- (iii) student outcomes as reflected in employment destinations.

Since student evaluations are a problematic basis for judging quality of teaching as such⁴, and the outcomes measured by the other two metrics are manifestly influenced by social, personal and economic factors over which universities have no effective control, the use of this basis of assessment in the TEF met with widespread scepticism among university staff.⁵

6. [The Johnson White Paper “Success as a Knowledge Economy” of May 2016](#) provided a fuller description of how the OfS would be conceived, describing it as “**a new market regulator**” with an “explicit duty to promote choice and competition” which would champion student choice, the transparency of information, and high quality of educational experience for “students from all backgrounds” (p. 63). The main premises for the policies set out in the White Paper, however, were that the value of higher education should be judged in terms of the contribution it made to enhancing the economic performance of the nation, and that **competition between institutions** was the only effective mechanism for raising quality, incentivising providers to “raise their game”, and offering consumers “a greater choice of more innovative and **better quality products and services at lower cost**” (p. 8).⁶ In pursuit of these aims, the OfS would be established as a single regulator for the whole higher education sector in England, with extensive powers to oversee the **governance** as well as the **financial sustainability** of institutions, and with responsibility for the government’s **Prevent strategy** as well as for using the **outcomes of the TEF** as a basis for determining the **level of the fee cap** to be set for individual institutions (pp. 65-66).

7. In the [Higher Education and Research Act](#) as it was passed in April 2017, the power of the government (via the OfS) to decide on the setting of fee levels became subject – in Schedule 2, section 5(2)(b) – to the express approval of both Houses of Parliament, a relatively strong check on executive action. But in other respects the powers of the OfS as now enshrined in law are essentially as conceived in the White Paper of May 2016:

- Legislative underpinning for the TEF is provided by §25(1), which empowers the OfS to give “**ratings**” to institutions relating to “the quality of, and the standards applied to, higher education that they provide” – although §26 requires **a review of the TEF** by “a person who would command the confidence of registered higher education providers” within a year of the date on which §25 comes into force. (It is now expected that this review will take place during the academic year 2018-19.)
- §47 gives the OfS **powers to validate degree courses** alongside, and independently of, existing universities. (The most likely circumstance in which the OfS would invoke this power is that a higher education institution becomes insolvent – the policy of encouraging new providers entails the possibility of institutions also going out of business.)
- §45 gives the OfS **powers to withdraw the authority of any university to award degrees**, even if that authority had been granted by a Royal Charter or an Act of Parliament.

⁴ Cf. footnote 2.

⁵ A survey published in the *Times Higher Education* of 16 February 2017, pp. 42-43, revealed that “only 4 per cent of academics and 6 per cent of administrators believe that the proposed framework will accurately assess teaching quality, with 75 per cent of the former and 71 per cent of the latter saying it will not”, while “only 12 per cent of academics and 18 per cent of administrators believe that it will improve quality”: <https://digital.timeshighereducation.com/THE160217-yZRKQ3/html5/index.html?page=1&noflash>.

⁶ Ostensible authority for this approach was provided by a CMA report published in June 2015 (<https://www.gov.uk/cma-cases/competition-and-regulation-in-higher-education-in-england>) and cited in the White Paper, p. 8, which argued that making it easier for new providers to “enter and expand will help drive up teaching standards overall; enhance the life chances of students; drive economic growth; and be a catalyst for social mobility” (§11).

- With regard to **quality assurance**, §46 requires the OfS to “request advice from the relevant body regarding the quality of, and the standards applied to, higher education provided by a provider” before authorising that institution to award degrees; but Schedule 4 (Assessing higher education) places the **power to recommend that a particular body be designated** as responsible for quality assurance squarely with the OfS.
- The regulatory regime for higher education established by the Act is **more dirigiste than ever before**. While the description of the general duties of the OfS in §2 provides some **protection for the autonomy of HE institutions** (and extends this in specific ways to the freedom of academic staff to inquire), the same section of the Act permits **government ministers** (subject to certain specified limitations) to issue **guidance that may be “framed with reference to particular courses of study”**, and §77 gives them **authority to issue regulations specifying how the OfS should perform any of its functions**.
- §§15-21 equip the OfS with **powers to suspend, de-register or impose financial penalties**⁷ on any higher education provider in England, while Schedule 5 gives the OfS **powers**, subject to the issue of a warrant by a JP, **to enter and search university premises** if it suspects that there has been a breach of registration or funding conditions.

The behaviour of the Minister for Universities between September 2017 and January 2018, in connection with the consultation that was then taking place over the duties and functions of the OfS, certainly showed that, as far as he was concerned, the OfS had powers to make judgements and impose regulations on universities relating to such diverse issues as Vice-Chancellors’ pay, grade inflation on degree courses, and ensuring freedom of speech on campuses. But it is in any case apparent from the provisions in the Act that there is considerable potential for conflicts of interest to arise, given that the regulator it establishes is an **enforcer of the market approach** to higher education which also carries **ultimate responsibility for quality and standards**, and that its powers of intervention include the **power to validate degrees awarded by the very institutions it regulates**.

What presents itself as an office for students, then, is in reality both a heavily armed regulator designed to enforce the wholesale **transformation of the English higher education sector into a market-orientated system** and an instrument for compelling universities to provide **the sort of service that the government thinks students ought to want**. The [Strategic Guidance](#) for the financial year 2018-19, issued to the OfS by the new Minister for Universities on 20 February 2018, shows very clearly how the policies established by his predecessor continue to be vigorously pursued: on p. 3 it asks the OfS to ensure that the REF, the TEF and the KEF (Knowledge Exchange Framework) are **“mutually reinforcing”**.

David Midgley, March 2018

⁷ See also

<https://www.timeshighereducation.com/news/english-universities-risk-multimillion-pound-fines-under-ofs>.