

Government consultation on behalf of the Office for Students

Response from the Council for Defence of British Universities

Preamble

The Council for Defence of British Universities (CDBU) was formed in 2012 to bring together influential figures in the academic world and beyond with a shared goal of defending academic values and the institutional arrangements best suited to fostering them. In our response to consultations about the Higher Education and Research Bill we expressed reservations about a number of issues, notably the inadequacy of the TEF as a measure of successful teaching, and the dangers posed to UK Higher Education by opening the sector to private providers without adequate scrutiny.

We accept that we must now work with new entities: the Office for Students (OfS) and UK Research and Innovation (UKRI). We welcome this opportunity to offer comment on some of the difficult challenges that the OfS faces. Our aim is not to argue for a return to the past, nor to defend all existing practices or make ideological arguments, but rather to draw attention to some of the complexities inherent in the issues raised in the consultation document, in the hope that this may assist the OfS and the Department for Education in making decisions that will improve the lot of students without harming our higher education system.

Our responses to selected questions in the consultation document are as follows:

Part 1

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

We agree that risks 1-3 are important, i.e. the OfS should seek to ensure that (i) all potential students have access to higher education (ii) of high quality that (iii) leads to qualifications that retain their value. These points are in accord with our values and aims¹, which include:

- To make university education accessible to all students able to benefit from it;
- To promote and enhance teaching and research in conjunction with each other;
- To foster the intellectual skills and flexibility of students with due regard to the demands of a rapidly-changing economy, while developing the powers of the mind, enlarging knowledge and understanding, and enhancing the intellectual and material quality of life;
- To encourage the adoption of appropriate criteria for assessing the quality of teaching and research

The inclusion of risk (iv), value for money, we see as problematic.

In the context of public interest principles, as they are set out on pp. 46-48 of the Guidance document, the expression 'value for money' is a familiar and widely understood way of referring to the responsible use of public funds. But in the realm of personal experience it is a highly subjective notion which is strongly dependent on an individual's circumstances and sense of purpose.

1

¹ See <http://cdbu.org.uk/about/values-and-aims/>.

It is a remarkable feature of the development of the HE sector in England in recent years, as the recent report by the National Audit Office (NAO) has noted², that the confidence of students that they are receiving value for money has been shown by the annual HEPI Student Academic Experience Survey to have steadily declined since tuition fee levels were raised to £9,000 p.a. in 2012. It seems reasonable to infer, as the NAO report does, that the views expressed by respondents to the survey in this connection are “likely to be affected by the increased contribution English students are making towards course costs”.³ It is also worth noting that overall satisfaction with university courses, as measured by the National Student Survey, has remained remarkably steady, at around 84%, over the same period.⁴

In our view, it is not necessary to include ‘value for money’ on the list of objectives to be pursued by the OfS because a clearer sense of the value of HE courses is provided by objectives (ii) and (iii). We would also argue that the greatest foreseeable risk to sustaining that sense of the value is the idea that it might be acceptable for institutions to offer a lower value education at reduced cost.

In any case, care needs to be taken not to encourage the view among students that the fee that is paid on their behalf need only be sufficient to cover what is of direct benefit to them. It would not be in the interests of students to study at an institution that had no library, no laboratories and other facilities that are necessary for research as well as teaching, and no administrators to oversee activities such as outreach and the national evaluation procedures that are necessary for the pursuit of the other objectives described on p. 20 of the consultation document. All these, too, are areas to which fee income must be devoted under current funding arrangements. There is also a foreseeable risk that if institutions were encouraged to charge differential fees for individual subjects, some subjects would come to be perceived as inferior (because cheaper) while others (notably some STEM subjects) would come to be perceived as expensive and therefore be likely to see their uptake figures depressed, which would conflict with the purposes of the sector as described on pp. 47-48 of the consultation document.

From the point of view of the future development of the sector, if it can be demonstrated that meaningful progress is being made on objectives (i), (ii) and (iii), then the OfS should be in a good position to argue that ‘value for money’ (in the familiar and widely understood sense) is being achieved. But it is neither necessary nor desirable to make that a separate objective.

There is, however, an additional risk that we would recommend for monitoring by the OfS, and that is the danger that actions taken in pursuit of some of the aims described in the consultation document will introduce incentives for HE institutions that will tend to further undermine the security of employment of academic staff. That in turn could impinge negatively on the interests of students: if staff morale declines and the teaching available in particular subjects becomes transient, then the education of students will suffer. The introduction of the TEF will undoubtedly add to the pressures that are already imposed on academics by the REF, and these combined pressures have a real potential to detract from the quality of both the teaching and the research accomplished. This situation poses grave dangers to the HE sector and should therefore be monitored.

2. 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?

2

□ See <https://www.nao.org.uk/wp-content/uploads/2017/12/The-higher-education-market.pdf>, p. 6.

3

□ Ibid., p. 9.

4

□ For the 2017 report, see <http://www.hefce.ac.uk/lt/nss/>.

Students from disadvantaged groups are more likely to take part-time degrees as mature students. Applications for part-time degrees have also declined dramatically since 2011/12 – by 55 % according to the graph on p. 24 of the National Audit Office report, which is derived from HESA statistics – and this development appears to be linked to changes in fee structures, which would be outside the control of the OfS.

In terms of what the OfS can do, our main recommendation is that the OfS needs to determine more precisely what it hopes to achieve. We can consider two extreme models: neither of these would be desirable or workable, but they serve to illustrate the issues. Model A would propose that all HEIs should adopt entry criteria for all courses that ensure the proportion of students from disadvantaged groups matches the proportion of disadvantaged young people in the population. The problem with this is that on the one hand we know that, on criteria such as A levels, a much lower proportion of these students do well, and on the other hand, they may not choose to apply to certain courses and institutions. The danger of this model is that we could end up creating pressures for HEIs to take students who have neither the ability nor the motivation to do the coursework, leading to a high rate of drop-outs, which would be bad for both the student and the HEI. Model B adopts a very different approach, involving the creation of different kinds of HEIs that cater for students with lower academic qualifications who may have different interests and career goals. The danger here is that this approach could end up enhancing rather than reducing social divisions.

Elements of both models can serve a useful purpose, provided the risks to institutions and students are properly managed; the OfS clearly has an important role to play here. The emphasis to date has been mostly on incentivising existing HEIs to improve access rates, and this has led to many universities developing outreach activities as well as novel initiatives such as one Oxford college offering a 'foundation year' course.⁵ But there are limits to how far the model A approach can be pushed, and we agree with the point made by Sir Michael about the need to encourage diversity of provision and taking into account student choice (p. 9).

The concern here is that there is a real risk of commercial providers rushing in to provide low quality, less academic courses that are perceived as of poor value. There are clear precedents for this in the USA. We agree that there should be incentives for institutions to branch out and diversify the types of courses they offer, to include those that meet the needs of those who may not want to do a conventional academic degree. But we become uneasy when increasing diversity is mentioned in the same sentence as 'removing unnecessary barriers' for new providers (p. 23). Our anxieties might be assuaged if we had more information about the 'high quality new providers' that are frequently alluded to, in this document and elsewhere. There are already disturbing reports of new providers who offer low quality courses offering level 4 and 5 courses in a narrow range of subjects, flooding the market with young people whose qualifications are not valued: the parallels with Trump University in the USA are clear.⁶ The OfS must zealously protect students from those with a purely commercial interest in higher education, who could exploit them, pocket the money from student loans, and provide worthless qualifications. Rather than lowering barriers, there needs to be stringent scrutiny of those wishing to enter the market.

3. 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?

5

□ See <https://lmhfoundationyear.com/>.

6

□ For a concise and thorough summary of experiences with private providers in the USA and elsewhere, see Stephen Hunt, Claire Callender, and Gareth Parry, *The entry and experience of private providers of higher education in six countries*, August 2016, at <http://www.researchcghe.org/perch/resources/publications/ppreport.pdf>, especially pp. 22-28.

Provided that the term 'outcome', as used here, carries the same meaning as it does in the revised table of expectations proposed by UKSCQA, we agree with this proposal.

4. 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 note that the issues to which this question relates are not discussed in the consultation document. The question of how student performance across the full range of degree subjects should be assessed, and how the results should be represented, is a very substantial one, and we recommend that it be made the subject of a separate consultation.

5. 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?

We agree that students have the right to have clear, accurate, specific and timely information at all stages, and should have access to a complaints-handling procedure. The degree courses for which students are effectively paying are not a straightforward equivalent of consumer goods, however, not least because, as the Competition and Markets Authority advised the government in March 2015, "HE can be characterised as an 'experience good', that is, one for which the quality cannot be observed prior to taking the programme and cannot be easily compared to other programmes on offer (as students only tend to take one undergraduate course in their lifetime). The quality the student experiences is also dependent on 'co-production' – the investment by the student, teachers and of wider resources."⁷ The National Audit Office report quoted above similarly emphasises that the outcomes students can expect to achieve on university courses "depend on the ability and commitment of the student as well as the quality of the provider".⁸

The OfS can play an important role in clarifying the relationship between students and institutions and setting up what the former can expect from the latter in terms of course content and teaching. But this needs careful handling, as institutions do need to retain some flexibility to adapt to changes in particular subject areas and in staffing. It would also be helpful to be specific about what students should *not* expect, in recognition of the differences between secondary and higher education. They must expect that the outcomes they achieve will be contingent on their effort and achievement, and on the academic judgements of those who assess their work. They must also expect to have their opinions and judgements challenged by their teachers. In short, they are not buying a degree, and we strongly advise against bringing 'value for money' into any statements about contractual relationships, for all the reasons mentioned above.

Use of more explicit student contracts is a potential minefield, and the OfS will need to approach this very carefully and take time to consult widely to avoid the numerous problems that can arise. The main danger is of a tsunami of litigation in the sector that would be of benefit to nobody except the lawyers.

Consider, for instance, the following scenarios that could arise. Would these lead to legal proceedings if there was a binding contract between student and provider?

7

□ See

https://assets.publishing.service.gov.uk/media/550bf3c740f0b6140400001/Policy_paper_on_higher_education.pdf, p. 17f, with further references.

8

□ <https://www.nao.org.uk/wp-content/uploads/2017/12/The-higher-education-market.pdf>, p. 6.

- a) The student raises a complaint because the tutor on the course is not as advertised because the tutor has moved/died/taken maternity leave
- b) A student takes a course in a subject such as physiotherapy/nursing/teacher training, only to find on graduation that the jobs market in this subject has changed radically – they complain because the statistics they were given on employability were misleading
- c) Having got a student loan, the student fails to attend lectures or submit coursework, failing to fulfil their side of the contract – should the institution, concerned about its reputation for completion rates, take the student to court?
- d) A biology student demands to be offered an alternative to a course on evolution, as this conflicts with her religious beliefs

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

As noted in our response to question 1, we have major concerns about the 'value for money' construct.

There are logical and conceptual difficulties here. If students pay only for the costs of running their course, STEM will be put at high risk, as it is currently cross-subsidised by other subjects. If overseas students pay the same as home students, this could have dramatic effects on the proportions of overseas/home students.

More generally, we are concerned that the 'value for money' idea implies that higher education can be reduced solely to an economic value. Once we move to view students solely as customers buying a product, we lose sight of the value of the mutual pursuit of learning and understanding as nurtured in an educational community, where students have a responsibility to engage with the material offered, as much as staff have a responsibility to provide it.

Consider contact hours: It is important that students have a level of contact with staff that is optimal for their learning, but an important part of higher education is making the student independent enough to manage their own learning. Clearly, we do not find it acceptable for tutors to neglect their responsibilities to engage with and support their students, and there will be a minimum level of contact that is necessary to ensure educational objectives are met. But the relationship between contact hours and excellence of teaching is nonlinear, and students should be encouraged to invest their own effort into engaging with reading and other material outside of class time. Independent learning and critical thinking requires this type of true engagement.

7. 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?

We agree that there are legitimate concerns about high staff pay, but it is unclear how this comes under the remit of the OfS, given that its remit is to protect and promote the interests of students. Involving the OfS in staff remuneration would constitute a significant challenge to university autonomy.

The media tend to present a caricature of this issue, whereby high VC pay is a direct consequence of the lavish income that universities are presumed to receive from the £9K fee. Of course, as noted above, matters are far more complicated than that, and it will not be helpful if the OfS buys in to the simple story. An independent review of the issue would be welcome, as the National Audit Office has suggested.

8. 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.

Part 2

9. 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?

We strongly disagree with this proposal. It is well known that the TEF commands very little confidence within the academic profession, and the claim that it will “incentivise excellent teaching” is regarded with deep scepticism. The metrics adopted for the TEF cannot be relied on, individually or collectively, to achieve that. Rather they seek to hold institutions accountable for outcomes that are subject to many other factors than the quality of teaching. Moreover, the problematic nature of the metrics will be further compounded by applying them at subject level because of the small numbers on which the statistics will then inevitably be based in many cases. It would therefore be quite inappropriate to use participation in the TEF as a general condition for any institution.

In addition, there are signs that the system of distinguishing between the perceived performance of institutions by means of the gold/silver/bronze categories is tending to undermine the market position of excellent institutions because it has been seen abroad as an indication that British higher education does not deserve its traditionally high reputation. There is also a real danger that the actions taken by institutions in response to the TEF (and their understandable proclamations of their own success at doing so) will mask and exacerbate the depredation of the employment security of academic staff, which is already known to be a serious problem, and thereby weaken staff morale and the sustainability of particular subject areas in the years ahead.

Rather than using flawed metrics as an incentive for institutions to direct more of their attention towards teaching, the OfS should turn its attention to the use of casual teaching staff in universities, which has grown substantially in recent years. While some of these staff may do a good job, anecdotal evidence indicates that students do less well when taught by someone who may cover only a small part of a course, does not know the students well, and is not integrated into the academic community of the institution.

10. 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?

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

Part 3

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

13. 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?

We would welcome clarification of how the OfS is intended to establish that new providers are of high quality if they are no longer required to demonstrate a track record (p. 60).

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

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

16. 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?

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

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

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

We welcome the approach that entails leaving providers that present lower risks to students to flourish (p. 25).

20. 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?

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

Part 4

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

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

24. 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?

25. 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?

Annex C

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

27. 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?