**Securing student success: risk-based regulation for teaching excellence, student mobility and informed choice in higher education**

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

We agree that it is important for the OfS to safeguard key characteristics of higher education and would see these as being the quality of students’ education, providing a good range of choices to students, institutional diversity, promoting collaboration between all relevant stakeholders, and enhancing international competitiveness. These core elements of higher education all depend on the maintenance of institutional autonomy and this should be an overarching priority for the OfS. In undertaking its work, we believe the OfS should also:

- continue the approach and ethos of the Office for Fair Access in supporting and promoting access and participation.

- respect the many and varied relationships between institutions and their students which go beyond the provider/consumer model.

- enable appropriate and transparent reporting of senior staff pay without the need for disproportionate additional regulatory requirements.

- support the review of the TEF required by Parliament before making the participation in subject level TEF a condition of registration.

- ensure that the OfS requirement for greater transparency on institutional allocation of fee income does not lead to a narrow, reductionist interpretation of the way a student’s fee is spent.

- ensure that Student Protection Plans are of practical value by being made a requirement placed on those providers deemed to be of most risk of failing

In carrying out its work, the OfS should also be aiming to operate as efficiently as possible, so as to minimise the fees that it needs to take from providers and thereby reduce the extent to which resources are used for regulatory purposes rather than for delivering teaching and supporting students. In this context, it would be helpful if the scope of the OfS included the foundation provision of universities i.e. the programmes that many international students or students from a disadvantaged background undertake at universities prior to entry to Year 1 of a degree course. This would remove any necessity for foundation programmes to be subject to a different regulatory regime; a circumstance that would represent a considerable additional burden to providers and would clearly be inefficient.

*Question 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?*

Due recognition needs to be given to the spending on student access that takes place in many providers and the variability between providers; this spending is in the region of £1,000 per annum per student at Nottingham, in common with the position generally in Russell Group universities, but the figure is much lower in many other providers.

*Question 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?*

The University of Nottingham believes that GPA has the potential to supplement or even replace degree classification as a summative judgement of students’ achievements, given its advantages in terms of fairness and the granularity of information provided. To this extent, the OfS has a potential role in facilitating continuing sectoral consideration of GPA. The possible adoption of GPA is, however, irrelevant to the question of standards, which should remain a matter for individual institutions to define in conjunction with the QAA as a co-regulatory body.

*Question 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 fully agree that providers should adhere to consumer protection law with regard to students but disagree that this can best be effected, in the first instance, by requiring student contracts as a registration condition. Universities are working hard, in collaboration with their student bodies, to embed the CMA requirements in their practices, and are developing the best means of doing so without detracting from the student experience in other ways (e.g. by engaging in legalistic transactions with students that interfere with incorporating students as partners in a learning community). A formal requirement to have contracts with students should only be countenanced if, in the light of experience, the OfS comes to believe that this is the best way of protecting students’ interests.

*Question 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 the OfS should focus when highlighting good practice?*

We agree that meeting the concerns of stakeholders and the general public regarding senior staff remuneration is important but do not believe that this would be optimally effected by making it a registration condition to provide a rationale for salaries above £150,000. Providers will best serve students’ interests by ensuring the recruitment of staff to key position with the requisite skills and experience; the need to justify this action to the OfS and potentially to engage in protracted debates over individual appointments will undermine the smooth running of institutions to students’ detriment.

Providers are already clearly undertaking reviews and reforms of their remuneration processes to prevent any possible abuses and we would propose that this should be allowed to run its course, and be subject to future review by the OfS before becoming a registration condition.

*Question 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 do not believe that participation in TEF should, at this stage, be compulsory for Approved providers. It is clear from the public debate in this area that the benefits of TEF for students remain in dispute, with many doubting that it is a true measure of teaching excellence, at least in its current form. A major review of TEF is scheduled for 2018/19 and it would seem to be logical to await the outcomes of this review before deciding whether participation in TEF should be an ongoing registration condition.

*Question 17: Do you agree with the proposed approach for the benefits available to providers in the different registration categories?*

One aspect we do disagree with is the differential treatment of Basic providers compared to Approved providers. By their nature, higher education providers that do not have University title or degree awarding powers are likely to be a riskier option for students and yet the conditions for Basic registration will be very light compared to those of Approved providers. This does not appear to be in the student interest.

Overseas providers awarding degrees from other countries will also be able to register in this category, while avoiding most of the registration costs faced by UK Approved providers. It is difficult to see how the national interest is served by placing UK universities at a competitive disadvantage with respect to their overseas competitors.

*Question 18: Do you agree or disagree with the general ongoing registration conditions proposed for each category of provider?* [relates to paragraphs 206-210]

We would wish to argue against the approach taken in the document of adopting all the possible registration conditions in Section 13 of the Higher Education and Research Act and applying these to all Approved (or Approved with Fee Cap) providers, regardless of the risk posed by any given provider. We recognise the need for appropriate regulation but this approach does not strike us as being in accord with the principle of risk-based regulation nor proportionate within the meaning of Section 7 of the Act. More importantly, it does not serve students interests as it inevitably spreads the work of the OfS across a large number of areas in a large number of institutions, rather than allowing it to focus on particular areas and situations where students most need protecting. If these strains lead to a need to increase significantly the size of the OfS, the resources thereby consumed will be at the expense of the teaching and support of students.

We also note that several of the suggested registration conditions applying to all Approved providers are not mentioned in the Act. In the Guidance document forming part of the consultation, it is stated with regard to these conditions that Section 13 of the Act permits the OfS to create initial and ongoing registration conditions which are not specified in the Act. It is difficult in reading Section 13 to see where this is actually explicitly stated. In any case, we would seriously question whether it was the intention of Parliament that the OfS should have unfettered discretion to create any conditions it wants and apply them to all universities with the threat of deregistering, and therefore effectively closing, any university that did not wish to comply with all the conditions. Such a situation hardly seems in accordance with the protection of institutional autonomy that Parliament clearly desired and which is enshrined in the Act.

We believe that a better approach would be, at this stage, to limit the initial and ongoing registration conditions for all Approved providers to those that are mandated by the Act. The OfS could then exercise its judgement (based in some cases on the findings of thematic reviews) over time to determine what further conditions should be added. During this period, the sector would work voluntarily in collaboration with the OfS to attempt to rectify any current shortcomings (e.g. in relation to consumer protection legislation and senior staff pay), building on work that is already taking place in these areas, with a view to obviating the need for universal registration conditions to be added. None of this, of course, would prevent the OfS from imposing specific ongoing registration conditions on individual providers when the need arose e.g. requiring providers facing financial difficulties to put in place a fully comprehensive Student Protection Plan.

We have considerable concerns regarding the general ongoing registration conditions for the reasons stated in our responses to Questions 5, 7, 9, 13, and 17.

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

One element to the approach with which we disagree is the use of random sampling to reassess compliance with registration conditions. In a risk-based regulation system, the selection of providers for reassessment should be based on indications of students’ interests being at risk in particular institutions. Random sampling not only has the potential of diverting OfS resources from protecting those students most at risk, but could also create an unnecessary burden and cost for providers ( thus reducing their funds for teaching and supporting students) where there is no evidence of risk.

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

We note that there is no mention of Professional, Statutory and Regulatory Bodies (PSRBs) in the document. PSRBs are an important part of the regulatory landscape for universities, and effective cooperation between the OfS and PSRBs would have considerable value in ensuring a comprehensive regulatory framework.

*Question 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?*

We think it is entirely inappropriate for the OfS to validate degrees. We understand the concern that the inability to locate a validating partner could operate as a barrier to entry to the sector, but believe that this would best be addressed by encouraging Approved providers to undertake validation. This would be greatly preferable to placing the OfS in the peculiar and invidious position of being both a regulator and a provider of degrees and so therefore subject to regulation by itself; an entirely unsustainable position.