

Russell Group priorities for the Office for Students (OfS) Regulatory Framework

1. Summary

- The creation of the Office for Students (OfS) presents an opportunity to develop a new risk-based regulatory framework, which meets the needs of students and the sector. Ahead of the detailed consultation expected in the autumn, this paper sets out our initial thinking regarding our priorities for the regulatory framework and how the OfS should operate.
- The protection and promotion of students' interests should be front and centre of the work of the regulator. In protecting the interests of students, consideration should be given to the role of students as partners in their own education. Similarly, the wider remit of universities beyond teaching and research – and the interconnectedness of activities – needs to be understood and factored into core OfS approaches.
- The UK has a world-leading, high-quality and highly regarded higher education (HE) system and the OfS has a key role to play in its future success.
- Bearing this in mind, the new OfS should:
 - (a) respect the autonomy of institutions, which underpins the provision of quality education
 - (b) take a risk-based and proportionate approach to regulatory design and implementation
 - (c) ensure regulation protects students and appropriate safeguards are in place to maintain a robust baseline on quality, good governance and financial sustainability
 - (d) preserve a genuine co-regulatory approach
 - (e) recognise the diversity and breadth of provision across the sector and ensure this is continued to promote student choice and market differentiation
 - (f) take an overarching view recognising the broader role of universities and the contribution they make to the UK's economy, society and culture, and their key relationships with business, industry, the public and voluntary sectors
 - (g) cooperate closely with other agencies, including UK Research and Innovation (UKRI), across a range of areas
 - (h) ensure efficiency is embedded into its operations and that it delivers value-for-money
 - (i) ensure the implications of any regulatory changes in England are fully considered in the context of arrangements in the devolved administrations.
- Alongside the above priorities, it would be helpful for the Government to commission or undertake research to identify successful models of regulation that have been used in other nations, as well as unsuccessful models to learn from them.

- In addition, the Government and the new leadership of the OfS should seek to work closely with the sector, drawing on expertise to inform the development of a robust regulatory framework and to minimise disruption as this is implemented.

2. Russell Group priorities for the new regulatory framework

2.1 The Higher Education and Research Act 2017 introduces significant reforms to the regulatory and funding infrastructure for HE, including through the creation of the OfS. The implementation of these changes presents an opportunity to develop a new risk-based regulatory framework, which meets the needs of students and the sector. The act sets out the statutory duties of the new regulator, including the requirement to protect institutional autonomy and to work with the sector to deliver its objectives and functions. This will be critical in delivering positive outcomes to students.

2.2 The protection and promotion of students' interests should be front and centre of the work of the regulator. In protecting the interests of students, consideration should be given to the role of students as partners in their own education. Interpreting the relationship between students and providers as a simple transactional one would lead to detrimental outcomes and would ignore the importance of students' own engagement in their studies through independent learning. This is fundamental to achieving successful outcomes. Recent research demonstrates that students value a personalised and collaborative relationship with their university based on high levels of trust.¹

2.3 Considering these issues, the new OfS must:

- (a) Respect the autonomy of institutions that underpins the provision of high-quality education.
 - This should be the founding principle of the OfS in line with the requirement in the act. The OfS should recognise and support the distinctive contribution and mission of different institutions.
 - Protecting institutional autonomy will underpin the provision of quality education and maintain the high degree of diversity across the sector, supporting greater student choice, competition, collaboration and the international competitiveness of UK higher education.
- (b) Take a risk-based and proportionate approach to the design and implementation of regulation.
 - A risk-based and proportionate approach to regulation must be delivered in practice across all areas including through the new QA system, TEF, designation and revocation of Degree Awarding Powers and University Title, setting of registration fees and access functions. The regulator should be transparent with regard to its interpretation and implementation of a risk-based approach.
 - Such an approach should involve recognising providers with a good track-record of quality and sustainability over many years. Where providers have robust internal governance processes in place, the need for external regulation is minimal. The regulator should avoid placing undue burden on providers with a good track record whilst protecting the hard-won international reputation of UK HE.
 - Institutions requiring more extensive regulatory oversight relating to sustainability and quality, for example, should be expected to pay for this rather than being cross-subsidised by others. The Government should continue to fund OfS costs related to TEF as previously committed.
- (c) Ensure regulation protects students and appropriate safeguards are in place to maintain a robust baseline on quality, good governance and financial sustainability.
 - The protection and promotion of students' interests should be at the heart of the new regulator. The OfS must put in place appropriate safeguards to maintain a robust baseline of

¹ UUK survey "Education, consumer rights and maintaining trust: What students want from their university" (June 2017)

quality in line with the UK's reputation for high-quality teaching and learning. The OfS should also engender public trust and accountability.

- The new regulator may be tasked with the further development of the TEF and will need to consider how to ensure that the exercise is truly reflective of the UK's excellent higher education sector. Opposition from student groups to the TEF has led to disengagement with the National Student Survey, which will have knock-on consequences for universities who interrogate the results to inform improvements in curriculum, teaching and learning quality, learning resources, and academic support. The expansion of TEF (as currently constructed) into subject-level granularity would create significant burdens for both providers and Government that are not justified (in cost-benefit terms) by the additional information generated, which would likely be of limited usefulness to students.
 - The new architecture for regulating the HE sector should include measures to protect students in the event of institutional failure or closure of courses. However, a risk-based and proportionate approach is required and universities should be able to make their own appropriate arrangements in terms of student protection as they do now.
 - In addition, the regulator should ensure that any new entrants are only enabled to enter the market if they can demonstrate their good governance and financial sustainability. This would prevent student protection plans being used to enable poor-quality or transient providers from entering the market.
- (d) Preserve the co-regulatory approach already established between the Higher Education Funding Council for England (HEFCE) and higher education institutions (HEIs).
- This should include active and genuine sector involvement in the design and implementation of regulation (for example, regarding the development of TEF and the QA operating model), not just consultation with the sector. In practice, this means active dialogue leading to intelligent regulation.
 - Badly targeted and heavy-handed regulation may impede innovation and competition rather than encouraging it. The regulator should avoid taking a mechanistic view towards processes such as quality assurance, but rather work with the sector and maintain a detailed understanding of institutional context. Maintaining expertise and institutional memory in the transition from HEFCE to OfS will be important in order to support effective and evidence-based policy making. There should be a well-managed transition retaining the trusted relationship between HEFCE and the sector.
 - The OfS should also consider how to continue the positive enhancement work that HEFCE has undertaken across various aspects of HE, including the student experience, innovation and business/industry connections, for example.
- (e) Recognise the diversity and breadth of provision across the sector and ensure this is continued to promote student choice and market differentiation.
- The OfS should provide institutions with the flexibility to make their own decisions based on their institutional mission and the wider context in which they are operating. Such an approach would recognise that institutional autonomy is a key element in the success of the HE sector and vital to the continued excellent performance of UK universities. This should apply across the work of the OfS, which should avoid mandating one-size-fits-all approaches and other restrictive conditions.
- (f) Take a holistic view across whole institutions and the sector recognising the broader role of universities, the contribution they make and their key relationships with business, industry, the public and voluntary sectors.
- The OfS should recognise the broader role that HEIs play across education, research innovation and knowledge exchange, and the contribution they make to the UK's economy,

society and culture. It should also recognise and enhance the international position of major universities.

- The OfS should avoid taking a narrow, literal approach to regulation and should consider how to promote the health of UK HE as a whole. A whole sector approach requires active collaboration with bodies such as UKRI, as below. In line with the Act, the OfS should also consider how to support collaboration between providers.
 - The needs of students cannot reasonably be separated from the needs of HEIs. Without a sustainable HE sector, with high-quality staff, excellent research, links to businesses and local communities, and international partnerships, students and staff, the quality of the education students receive will be diminished.
- (g) Cooperating closely with other agencies, particularly with UKRI, across a range of areas, including mitigating the potential for a split between research and teaching.
- The OfS should be aware of the broader regulatory and funding environment in which providers operate. In particular, it should work with UKRI to ensure students continue to benefit from teaching that is enhanced by world-class research and facilities.
 - Cooperation with UKRI should include (but not be limited to) research degree awarding powers, knowledge exchange funding and activity, and the health and sustainability of higher education providers. The division of responsibility for teaching and research across government departments as well as between UKRI and OfS makes it important these bodies maintain a comprehensive overview of the higher education landscape.
 - The OfS should also work with other relevant regulatory bodies, including but not limited to the Competition and Markets Authority, Office of the Independent Adjudicator and Information Commissioner's Office, to ensure a joined-up approach. Transparency will be important with regard to cooperation between the OfS and other agencies to underpin confidence within the sector.
- (h) Ensure efficiency is embedded into the operation of the regulator in line with the act and that it delivers value-for-money for the sector, which will now be paying for it.
- The OfS should seek to minimise the regulatory burden on institutions where possible. It must work on the principle of proportionality and based on risk as outlined above, and should avoid duplicating regulation and cost with other agencies. In order to avoid duplication, the OfS could produce a regulatory and data map on an annual basis detailing how its work fits with other agencies and outlining the costs to institutions across the piece. All new proposals could also be subject to an "environmental impact" analysis, identifying any clash or overlap with existing regulation or data recording. It could also identify reporting requirements on universities to justify the additional costs.
 - In line with Government commitments to business regulation, the OfS should seek to follow the same 'one in, two out' rule when new regulations are considered.
 - We would like to see an automatic annual efficiency factor in order to keep registration fees down over time. This should reflect the cost reductions that could be achieved through merging HEFCE and OFFA's back office functions and reducing duplication in communications and relationship management. Savings may also be realised through shared services and economies of scale.
 - The OfS should take account of the broader pressures on universities within any proposed registration fee model. The maximum annual increase in registration fees over time should be limited to inflation, given that increases in the tuition fees universities charge for undergraduate taught courses will also be limited to no more than inflation in current proposals relating to the TEF.

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- The OfS should report formally to the sector each year on the cost and burden of regulation. It should also commit to working with other regulators to ensure that the regulatory burden is minimised, proportionate, and properly considered.
- (i) Ensure the implications of any regulatory changes in England are fully considered in the context of arrangements in the devolved administrations.
- The OfS must have regard to the implications of its decisions in the devolved administrations. Whilst some divergence may be inevitable (or even preferable), it should recognise the extent to which the HE systems in the four nations remain interdependent, not least with regard to the need to protect the reputation of UK HE overall.
 - The act does include provisions around joint working with the Higher Education Funding Council for Wales, the Scottish Funding Council and the Department for the Economy in Northern Ireland to ensure that functions are delivered efficiently. This should be applied broadly to ensure there is a close working relationship between appropriate HE agencies across the four nations as now.
- 2.4 Alongside the above priorities, it would be helpful for the Government to commission or undertake research to identify successful models of regulation that have been used in other nations, as well as unsuccessful models, to learn from them. As a starting point, an assessment of whether there are aspects of the Scottish, Welsh and Northern Irish systems that could be replicated would be helpful. Looking further afield, the Government should seek to avoid the mistakes of other countries, such the US, in allowing for-profit providers into the market.
- 2.5 In addition, the Government and the new leadership of the OfS should seek to work closely with the sector, drawing on expertise within universities and representative bodies, such as the Russell Group, to inform the development of a robust regulatory framework. This is particularly important given the tight timeframe in which a complex new framework must be developed and disruption minimised during implementation.

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