



Department for Education
HERA 2017 Consultations

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

Response to Government Consultation by Independent Higher Education – December 2017

Introduction

Independent Higher Education and our members welcome the opportunity to respond to the consultation *Securing student success: risk-based regulation for teaching excellence, social mobility and informed choice in higher education*. We believe a single system of regulation for all higher education providers will bring consistency and clarity for students, providers and other stakeholders. The proposed risk-based approach to regulation by the Office for Students (OfS) should encourage proportionality and, if properly implemented, reduce the burden of regulation for most providers. The framework outlined in this consultation represents the building blocks of a level playing field for providers which encourages innovation and expands student choice.

There is, however, much still to be done to enable the OfS to remove unnecessary barriers to entering the regulated higher education sector, and to ensure that institutional autonomy and innovative models of delivery can thrive in a single system still dominated, at least initially, by the traditional three-year undergraduate degree. The OfS must not allow itself to be distracted by political debates from its focus on the student interest and its use of professional judgement and proportionate regulation to ensure that students have high quality experiences and positive outcomes. Providers should feel encouraged to work collaboratively with their students to facilitate the best possible student experience unique to them, and the OfS can play a vital role in supporting this. We look forward to working with the OfS to ensure that our shared goal of a single, fair and transparent system of regulation can be achieved for the independent providers we represent and for their students.

Our consultation response sets out a number of recommendations to the OfS which reflect the great diversity of the part of the higher education sector that we represent. We believe that in taking forward these recommendations the OfS should set itself clear goals for what needs to be achieved during the transitional period of the next two years, as well as in the longer term.

Registration Year (2018-19)

- The OfS should as a priority work to facilitate entry to the register for all those currently reviewed by QAA as higher education providers, using an approach to risk assessment which is relevant to their delivery model and primary reason for joining the register.
- Franchised providers should be allowed (and encouraged) to enter the register in one of the Approved categories where, for example, they need their own Tier 4 licence. The OfS should prioritise developing a clear understanding of models of delivery which do not explicitly fit the franchise or validation definitions, and work to ensure these providers can be risk assessed as part of the Approved categories and maintain their Tier 4 licences.
- The OfS should ensure that all level 3 provision designed to articulate into a higher education qualification (for example 'foundation' or 'pathway' programmes) is included under OfS regulation and that information on these students is collected by the Designated Data Body.
- In building the regulatory architecture of the new system, the OfS must ensure that all co-regulatory elements feature meaningful and effective representation of the full range of higher education providers and their students.

- The OfS should use the registration process to identify areas in which providers cannot yet compete on a level playing field, and should offer flexibility and support where it is needed during the next two years in the transition to the new system. A level playing field must be secured in practice as well as in regulation in order for a truly competitive market to emerge. Particular attention should be paid to parts of the sector which have not previously been supported to provide student data, which have different models of governance not yet thoroughly understood by the OfS, and where engagement in formal access and participation regulation was previously restricted. In doing so, the OfS should draw extensively on the existing expertise and knowledge of this part of the sector to be found within the staff of the DfE/HEFCE AP Intelligence Unit.
- A clear priority must be to establish where the OfS will evaluate risk in collaborative provision, and where conditions will be shared across the two autonomous partners.
- The OfS must ensure that higher education providers in the devolved nations who currently apply to HEFCE for designation for student funding for English students can maintain equivalent arrangements. They should not be prohibited by geography from accessing loans, or participate in other activities such as TEF.
- The OfS should use the data collected through the registration process to publish clear information on validation opportunities, and support providers to find new partners.

Implementation Year (2019-20)

- The OfS should focus on establishing its credibility as the lead regulator of higher education across the sector. Its priority should be working with providers and students to establish trust in its judgements of risk and in the conditions it places on providers to mitigate that risk. Judgements in the regulation year must focus on the OfS's core statutory duties and prioritise student access and success, as well as the quality and standards of their higher education experience.
- To protect student choice and provider autonomy, the OfS must engage with the sector in a review of established benchmarks. There will be a greater diversity of providers submitting data into the overall picture of higher education who will not be served by indicators or benchmarks based on the existing dominant models. One clear priority of a review conducted after the submission of all new data will be to explore a benchmark based on delivery model.
- The OfS should work with the Department for Education to review paragraphs 7 and 8 of the student support regulations against the courses which are now found in registered providers, to ensure that where appropriate courses which reflect the intent of these paragraphs can attract student funding. This should be aligned with the Level 4/5 review which the government is undertaking in 2018.
- The OfS should review provision and initiate commissioning of validators for innovative provision, including accelerated degrees, and level 4/5 provision. These are the areas where there is the greatest gap currently in the validation available.

Beyond

- IHE recommends that an independent review of the OfS be conducted following two years of regulation (2021-2022) which should focus on the success of the transition to the new registration system and the future priorities for and development of the OfS.
- The OfS should conduct a review of the effectiveness of validation arrangements across the sector and their impact on expanding student choice and promoting innovation.
- The OfS should lead on bringing together the regulatory systems for tertiary education to reduce burden on institutions which operate across multiple levels in both academic and technical disciplines, and to provide clarity for students.

CONSULTATION QUESTIONS

PART 1: Overview

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

Slightly agree

- **It is right to mitigate risk using graduate outcomes but income and outdated definitions of 'graduate occupations' should never be the sole drivers.**
- **Student Protection should embed CMA guidance to ensure clarity of expectations across CMA and OfS – in particular in relation to collaborative provision.**
- **While students should receive value for money, assessing and mitigating risk around this as a specific outcome is too nebulous. A student will receive value for money if outcomes 1-3 are achieved and if providers are meeting the public interest principles.**
- **OfS must publish guidance for collaborative provision to ensure it is clear where they will evaluate risk in the teaching partnership.**
- **To ensure these risks can be mitigated for international students, changes will need to be made to the immigration rules.**

It is right that the OfS prioritise student experiences and outcomes, and that they ensure risk is mitigated for students of all backgrounds, not simply for the majority of students. The move to a system which encourages institutions to focus on these outcomes rather than processes is considered by our members to be a positive and progressive change. This focus should complement and facilitate student choice by encouraging a diversity of programmes offered by autonomous and independent higher education providers. The individual missions of providers will influence and even determine their delivery models, subject specialisms, industry engagement and often their ability to widen access to students who would not traditionally attend higher education. No institution should compromise on their mission and delivery to students because of the inadvertent or indirect consequences of regulation. We provide examples of specific concerns from our members below.

While a focus on the onward progression of students from higher education is welcome, the OfS must ensure that risks related to post-graduation employment are evaluated in an industry and delivery model context. There is concern amongst vocational providers that too much emphasis could be placed on outdated evaluations of "professional employment", and concern from creative education providers that LEO data will distort or underestimate the value a student holds in doing a job related to their degree and for which they have a passion. In mitigating risk related to graduate outcomes, salaries should never be the sole driver and risk should be contextualised by the industry the qualification supports students to enter. There are also providers who will need to join the register but teach courses which form part of, or articulate onto, another programme. For these providers, including study abroad and pathway providers, the relevant outcome is to successfully complete the course and progress to the next stage of their studies. Employment after graduation should not be considered an outcome of any relevance to this provision.

We welcome the role OfS will play in student protection, both in the clarity it will bring to CMA compliance and in ensuring that students are protected from course, campus or provider closure. It is right that, in a single system of regulation, the OfS should embed the guidance from CMA into their provider and sector level regulation to ensure it is applied consistently and appropriately for all providers. The OfS must ensure, however, that as an organisation it builds on its in-depth knowledge of providers with adequate knowledge of consumer protection law also. If it were to apply CMA guidance in a way which was then contradicted by the courts, this would be damaging to students, to providers and to the reputation of the OfS. The OfS should

also seek to build on CMA guidance to promote a better understanding of student contracts in the case of collaborative provision, and ensure that risk is applied appropriately between partners in this context.

IHE members are concerned that the OfS will find it impossible to assess in any meaningful way the risk associated with objective 4 – that students, from all backgrounds, should receive value for money. Value for money is essential but best assured through the effective assessment of the risks related to objectives 1-3, as this will already ascertain whether students are achieving the success which matters most to them, and whether providers are acting in the student and public interest. Any further tests specific to value for money would add burden for providers without any clear additional mitigation of risk for students.

IHE members do, however, recommend that the OfS undertake work to better understand what value wider society gains from higher education. This work would need to go further than existing evidence on the economic impact of higher education institutions to their local communities, regions and the UK. It would need to evaluate the additional value to the UK of having an educated workforce, and how the skills they have developed, such as critical thinking, self and global awareness, contribute to the individual and to the fabric of society.

For all of the outcomes identified in the consultation, the risks in collaborative provision are shared between a teaching institution and an awarding institution. The OfS must make clear where it will evaluate these risks and what it expects of each provider in a partnership. This will require activity at sector level to improve consistency of expectation for validation and franchise models, but most importantly it will require specific guidance which reflects collaborative teaching models.

The consultation makes clear that the OfS believes that both UK and international students “should expect and receive the same high quality education and experience.” Our members strongly agree that international students should be able to expect the same outcomes as home students and that where action is taken to support those outcomes it should be applied equally. There are aspects of the current immigration rules and guidance for international students which must be reviewed and changed to ensure that international students can in practice receive the same experience as home students. These include rules which make it more difficult for international students to transfer between courses, even within the same institution, and subjective processes such as credibility interviews which lead to certain personal characteristics (e.g. age, nationality and socioeconomic status) being associated with a higher risk of visa refusal. If these outcomes are to be achieved for all students, then the Department for Education and the Home Office must work together to find a way to treat all students equally under the rules required of providers who are listed on both the OfS and Tier 4 registers.

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?

- **The OfS should include in the regulatory framework and data collection level 3 or ‘year 0’ courses which expressly articulate into a higher education course to better monitor and support these vital lifelines to access for many students.**
- **The OfS must take steps to ensure flexible provision is not discouraged by a metrics-based system dominated by data from three-year degree students.**
- **The OfS should publish guidance on access and participation in collaborative arrangements.**
- **The OfS must prioritise student success and tackle differential outcomes.**

- **The OfS and Government must urgently review the student finance regulations with a view to reinstating maintenance and fee grants for students from widening participation backgrounds.**

The OfS must include within its regulatory oversight transition (or ‘pathway’) courses at level 3 which are taught in higher education providers for the express purpose of articulating onto higher education programmes. These include ‘Year 0’ and ‘foundation’ courses, as well as the ‘Access to HE Diploma’ offered under the licence of QAA. The OfS should require the Designated Data Body to collect data on these courses and students in order to better understand how successful they are and encourage providers to offer such programmes which facilitate access.

Transition courses are essential routes of entry for many students who are changing career or re-training, as well as students who were not able to achieve the A-level grades they needed in the right subjects for the higher education programme they want to study. They offer a lifeline to students who would otherwise not be able to access higher education, but have become detached from the access and participation conversation in the currently regulatory framework, as they are not considered to be part of the higher education system. Our members tell us that the student data from most of these programmes is not looked at by regulators in either FE or HE, although they are often reviewed as part of the wider institutional approval processes.

To facilitate the collection of this data, enhance the experience of students and maximise the impact of these important transition routes, these courses must be included in the Office for Students regulation. Providers could then be offered further support and guidance to support widening participation and social mobility through these courses. In a single, streamlined regulatory system, there should be no question of requiring providers to have specific articulation routes subject to a different regulator, as this significantly increases burden and cost through an unnecessary duplication of effort. These other possible regulators do not at any rate view these courses as their responsibility, when they are taught in and tailored to a higher education context. It would be far better to retain them within the higher education system as a tool for widening participation.

We support the principle that the OfS should regulate on a metrics-driven, risk-based approach. If, however, the data is not benchmarked by how courses are delivered and students learn, these metrics will push providers away from alternative models of provision such as flexible or part-time delivery, accelerated degrees and blended learning. Courses which allow students to progress at their own pace by level or the accumulation of credit, including 1+1+1 models where students can be awarded qualifications at levels 4 and 5 before choosing to progress to a level 6 top-up, are especially unsuited to a direct comparison with benchmarks from traditional three year full-time degree programmes. The OfS should encourage the sector to develop, and should itself adopt, benchmarks and indicators for mode of study, to ensure that such programmes which are attractive to widening participation students do not appear too risky in this regulatory framework.

A metrics-driven approach, particularly one which will facilitate more real-time data, will enable far more information to be collected on students who should be supported through widening participation initiatives. The OfS should look closely at data which can be shared when students declare a disability in-year, for example, and where intersectionality of factors might have an impact on outcomes. We would encourage the OfS to use this data constructively and, where students face multiple challenges, to be supportive of providers’ efforts to help them succeed. Metrics should be used intelligently and be sensitive to institutional context so that these types of students are not lost in the data and providers are not penalised due to misleading indicators.

We welcome the shift towards a focus on student success and tackling differential attainment gaps in access and participation plans. Many independent providers have high numbers of students from widening participation backgrounds, and high numbers of students who identify as black or minority ethnic (BME). 2017 HESA statistics for 'Alternative Providers' show that 56% of students identify as BME (compared to 25% in traditional universities) and 39% start their course after the age of 30 (compared to 6% in traditional universities). Our members are concerned that they may be asked to divert student fees from the very students who need support in achieving good outcomes, and put it into outreach activities instead. We welcome the proposal that access and participation plans will be agreed with individual providers on the basis of their mission, delivery model and local needs, and urge the Director for Fair Access and Participation (DFAP) to engage providers who already teach majority widening participation students in the development of guidance on supporting student success and addressing differential attainment and outcomes.

The OfS and DFAP should publish guidance designed specifically to support widening participation in 'micro' institutions. While many 'small and specialist' universities currently have Access Agreements with the Office for Fair Access (OFFA), most of these have between 2,000 and 5,000 students. The IHE Survey 2017 suggested that 73% of students at independent higher education providers (from a sample of 111) have less than 1,000 students, and 43% between 101 and 500 students. This guidance would help to ensure that access and participation is effectively undertaken and related risk properly assessed at the smallest and most specialist of institutions.

The OfS should also publish specific guidance on improving access and participation within collaborative partnerships. It should be clear to the DFAP where ultimate responsibility for areas such as admissions, progression and curriculum design sits within such a partnership. Providers should be encouraged to extend their collaborative partnership in the interests of access and participation, and the OfS should seek to encourage innovation in this area.

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?

Slightly agree

- **A focus on outcomes protects autonomy across different delivery models and encourages diverse provider models.**
- **The OfS must do more to support non-publicly funded providers with data capacity for the new Quality Review system to be a level playing field.**
- **Where student outcomes are not currently collected, for example graduate outcomes for international students, work must be undertaken to ensure that these students are being properly represented in quality review.**

A focus on student outcomes allows the OfS to direct its efforts in the best interests of students, stakeholders and government, while also respecting the autonomy of providers to implement processes which reflect their delivery model, qualifications and students. We expect this focus to apply equally to the development of the new quality gateway which is expected to be introduced in 2018. We would welcome the opportunity to work with the OfS and the DQB to help design a gateway for new providers which strikes the necessary balance between outcomes, processes and institutional autonomy.

The OfS should adopt a co-regulatory approach to defining the baseline for quality and standards, and do so in a way which reflects the UK-wide approach to standards and quality. While we recognise the important role of the UK Standing Committee for Quality Assessment

here in articulating sector-wide standards and the quality baseline, we note that this committee has no nominee from Independent Higher Education as the representative body for the independent sector. The OfS will need to ensure that any co-regulatory approach to quality and standards gives an equal voice to all the providers who will be held to these standards.

While we expect the OfS to apply this quality review system fairly across providers, existing inequalities between providers new to the use of data in quality review and those that were funded to develop with the data collection body must be addressed and providers must be supported to collect, store, manage and submit high quality student data. The OfS should take a strong role in facilitating data capabilities in providers without the established systems and processes to manage data. The additional resources required to implement such data systems and structures must also be recognised in the consideration of the additional cost and burden that some providers will face in joining the register.

There must be a recognition that the sector's approach to student data has been built on and paid for by public funding of structures and systems. Ongoing costs are also spread across large student bodies, making the model more cost effective. In order to ensure that smaller, specialist providers without previous government funding are not disadvantaged by the sudden burden of a data-based quality review system, efforts must be made to support these providers to the same level as others have already been supported.

No quality review system should penalise providers for insufficient data where the system has designed the data collection and indicators with the knowledge that some may not be able to contribute the data needed. This would include providers where numbers are too small to have published data each year. It would also include providers who teach primarily or exclusively international students, including study abroad providers and pathway providers, where specific data will not be collected, such as graduate outcomes. The OfS should recognise this in the initial risk assessment and take action which does not penalise or overburden these providers. In future, the OfS should look at identifying methods of data analysis which will allow smaller providers to publish data. They should also develop collectors which can include international students so that the outcomes for these students can be included in quality review and also the Teaching Excellence and Student Outcomes Framework.

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?

No

- **Alternative methods of assessment and indicators of standards have proved popular in some industries and learning can be achieved from these results, however this learning must go beyond simply degree algorithms.**
- **GPA can be a useful tool for some but is an ill fit for others.**
- **It is not clear what the alternative method of assessment is intending to achieve.**

Alternative methods of assessment and indicators of standards have proved popular in some industries and learning can be achieved from these results, however this learning must go beyond simply degree algorithms.

The challenge for HE sector-recognised standards is that they can be a poor fit for stakeholders in specific industries. For some specialist providers, a GPA model, for example, would provide less clarity to their industry employers than something reflecting the practice-based approach they take to delivery and assessment. Many of our members have already worked within their

industries to design assessment which can provide much more contextual outcomes. There has often been a challenge attaching these outcomes to transcripts of degrees awarded by their partner universities where they might apply a far more standardised model.

If the OfS were to take a role in exploring alternative methods of assessment it should do so on a subject-specific basis to better incorporate the views of industry stakeholders. It must also be clear about the intended purpose of the alternative method of assessment. Members suggested that they did not see an added value in the GPA model other than its value for the international mobility of graduates, but they were happy to explore options alongside others in the sector and would welcome an invitation to join in any ongoing activity.

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?

Slightly disagree

- **The student contracts condition does and should reflect CMA guidance but the OfS must clarify its relationship with CMA and whether it will draw on CMA advice as well as independent legal advice in assessing the compliance of registered providers.**
- **As CMA guidance extends to all higher education providers, the expectation that the provider should comply with CMA guidance should be extended to Registered Basic providers.**
- **It is unclear how risk will be identified for the research and application, and offer stages of the contract, as OIA will only hear complaints from enrolled students on issues primarily post-enrolment. The question remains – when does a student become a student under the contract?**
- **The OfS should use sector level regulation to clarify student contracts in collaborative partnerships.**

The proposed student contracts condition reflects the guidance issued by CMA and the examples given are consistent with what providers are already expected to do under its auspices. It gives providers the flexibility to create contracts specific to them, while maintaining a consistency of approach as it relates to CMA. The OfS is right to expect providers to comply with existing guidance in this area but it must take steps to maintain consistency with CMA and should seek advice from CMA before taking action against any provider.

The OfS should not seek to impose a standard student contract, as this would undermine the specific relationship between the autonomous institution and their students. It should also ensure that it keeps this condition under review to ensure that its activity in this area is needed.

As CMA guidance extends to all higher education providers, we would expect those in the Registered Basic category to make sure that their student contracts meet CMA guidance in the same way. This would ensure that CMA guidance is applied consistently and fairly across providers and provide clarity for students at Registered Basic providers. It would also help to avoid CMA guidance having a distorting effect on competition in the sector.

Our members are concerned, however, that it is unclear at what stage of the student application process the OfS would be assessing risk. Until enrolment, prospective students are not granted access to the OIA, making risk assessment for these students difficult. The OfS should make clear in guidance at what point in the student application process risk will be assessed in this area, and ensure that this meets the expectations of CMA and is legally enforceable.

This condition provides an opportunity to clarify student contracts in validated and franchised provision. While both parties are currently subject to CMA guidance, CMA does not have the in-depth knowledge of validation or ability to work across the partner institutions to ensure that actions based on adherence to consumer protection law is directed at the appropriate partner. There is a need to clearly differentiate parts of the student contracts provision between the teaching and the awarding body and this could be done by the OfS with a greater understanding of the relationships and responsibilities.

In addition is it not clear how study abroad providers would meet the student contracts condition, where their contract is often with the overseas institution sending the student, as well as with the student for the provision which they design and deliver. The OfS should seek CMA advice and independent legal advice on how the student contracts condition would apply to the full diversity of providers and students in the sector. We would expect the student contracts condition to be evaluated in a risk-based way, allowing for modification relating to the specific risks that institutions such as study abroad providers are expected to moderate.

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

- **Value for money should not solely focus on salary and must be industry-aware.**
- **VAT on tuition fees does not represent value for money for students or the taxpayer.**
- **Transparency requirements will require validation costs to be made public to students, and the OfS must ensure that these represent value for money.**

We expect the OfS to prioritise a high quality student experience and outcomes as the primary way of assuring 'value for money' as this a far more attainable strategic objective for both the OfS and providers. Value for money goes far beyond simple transactions and must reflect industry expectations as well as the value that education adds to a student's life. Degree outcomes are often considerably more than just the classification, and each institution must be free to respond to their own students' perceptions of what they should get from their study experience.

The OfS should recognise different students' and stakeholders' perceptions of value for money, relative to the course, its intended outcome and the student's wider experience. It should not use narrow or selective interpretations of value to justify action against a provider.

IHE members considered carefully the requirements for transparency on student fees and expenditure. There are a number of costs that some providers will need to display on their transparency statements about the use of resources and income, that others will not. The OfS and Government will need to take steps to ensure that all students receive value for money in the fees that they pay and are not disadvantaged because of the registered provider they choose:

- The government must ensure that students are not paying VAT on their tuition fees for higher education courses. VAT on tuition fees does not represent value for money for students or the taxpayer.
- The OfS must ensure that validated and franchised provision offers value for money for students. If providers must publicly account for income and resources, validation and franchise costs will be expected by the OfS and students to be included as they form a substantial part of the costs for validated or franchised providers. The OfS must also act where an awarding body increases costs in a collaborative partnership, and these costs no longer represent value for money for the student.
- OfS registration fees must also represent value for money for students. Students must be able to see the portion of their tuition fees which will go directly to the OfS as necessary and proportionate to the protection of their interests. The OfS must ensure that students

at smaller providers do not see disproportionate amounts of their money go to fund the OfS than students at larger providers, as this would make for uncomfortable reading when spelled out on value for money statements.

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?

Slightly disagree

- **Publication of staff data should protect the anonymity of staff using the principles of data publication.**
- **The OfS should not apply the senior staff remuneration condition to transnational corporations with jurisdictions outside of OfS regulation where the staff work across jurisdictions.**

Most IHE members do not highlight any concerns with senior staff remuneration outlined in the consultation, as most do not have staff who are paid at the rates outlined. However, some expressed concern that in small institutions, the role descriptors may unfairly identify single staff salaries, as these roles are unlikely to have more than one staff member undertaking them. Common approaches to publishing data which protects the identity of those included should be applied where minimum thresholds for the number of staff in each descriptor are established.

We also support the guidance which suggests that the OfS can decide not to apply the senior staff remuneration condition to specific providers, where the provider has staff who work across functions which extend beyond higher education. The independent higher education sector has many providers which form part of a larger group with more diverse business interests. We would encourage the same principle to apply where staff members work across transnational parent corporations with jurisdictions outside of OfS regulation.

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.

- **There is a real risk that poor indicators and current benchmarks could force providers to limit recruitment of specific students in the interests of maintaining their position on the register.**
- **Where providers have high numbers of widening participation students, access and participation agreements must focus on student success and differential outcomes.**

The proposed regulatory framework places considerable emphasis on students from widening participation backgrounds but it is not yet clear how the indicators used will promote rather than discourage providers to recruit and, where appropriate for the student, retain these students. Members remain concerned that the current UKPI benchmarks and, where proposed, the use of absolute values will encourage some providers to discriminate against students from certain backgrounds and with certain protected characteristics. Existing attainment and graduate pay gaps will require a sector approach to solve but risk is assessed at provider level through these metrics. Providers are rightly worried that existing benchmarks do not reflect the reality for many of these students, and can be particularly damaging for institutions which recruit high numbers of students from backgrounds with high attainment and graduate pay gaps. The benchmarks are also not adequate for measuring intersectionality in students and any use of absolutes in metrics would clearly discriminate against providers teaching high numbers of students with intersecting

protected characteristics. More appropriate benchmarks must be developed and used as part of the OfS regulation.

In particular members expressed concern over any use of POLAR as a factor in identifying widening participation students in London. Work by the Centre for Widening Participation Policy Studies suggested that POLAR data in London was greatly affected by the rate of regeneration and gentrification of wards, making information quickly out of date and masking the levels of participation from some estates within wards.

<https://wideningparticipation.wordpress.com/2017/09/19/revisualising-he-participation-in-london/>

Members were also concerned that an emphasis on metrics would have a negative impact on students with protected characteristics who are more likely to face differential outcomes in their attainment and graduate employment. The OfS must consider if its metrics based approach can be applied in a way which facilitates student success without penalising institutions for a labour market which perpetuates pay gaps based on gender, ethnicity, disability and other protected characteristics. The OfS should also ensure that the DFAP engages with indicators related to students with protected characteristics to ensure that there is no conflict between an institution's access and participation commitments and their indicators for student success.

PART 2: Sector-level regulation

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?

Slightly agree

- **Yes but this must be FTE**
- **TEF must be independently reviewed before becoming mandatory for any provider.**
- **TEF must move towards using commendations in TEF assessments in order to truly drive enhancement.**
- **TEF should not rely on absolute 10% flags for specialist providers.**
- **Franchised providers should be able to participate in TEF if they choose.**
- **The TEF model must become more inclusive for the diverse range of providers. Where specific metrics become a barrier for certain providers they must be reviewed and a solution found to allow the provider to enter.**

TEF is still undergoing a series of pilots, and annual changes are extensive. Until TEF has been independently reviewed and a stable model has been established, TEF should remain voluntary.

Providers with less than 500 students would not engage with TEF as an enhancement exercise as intended by the consultation due to challenges with the data. The 500 threshold should be based on FTE and not headcount as there are already issues identified with TEF data where students don't follow full-time, on-campus courses. Using headcount in this condition would exacerbate this issue. This will also ensure that providers who teach shorter courses, for whom graduate outcomes and NSS would not be a useful tool, are not required to enter TEF, as it is unlikely their FTE, if calculated properly, would exceed 500. We would urge the independent reviewer to consider recommending a system of commendations which can be made by TEF panels. Commendations encourage enhancement in providers, especially where the provider has already achieved their desired TEF award. Commendations are also vital tools for students seeking providers who excel in certain areas and/or have specific missions. For example, commendations in research-led teaching would be a useful tool for students looking to go into

research as a career, and commendations for industry partnerships or employability might help inform students with specific graduate career aims in industry.

TEF must never rely on absolute values in assessment. The proposed use of top and bottom absolute 10% flags will have an unfair impact on small and specialist providers, particularly those with widening participation missions or who attract high levels of students with protected characteristics. Absolute values in a mandatory TEF would pose considerable equality and diversity implications.

TEF should be open to providers in franchise arrangements where there is a distinct brand as students are likely to associate with the teaching provider as much as the awarding provider. It has been made clear in existing TEF guidance that where there is mixed provision in a provider (validated and franchised) the provider can have their franchised data pulled to the teaching institutions data for TEF. If this data transfer is possible, it should be extended to all teaching providers with franchise provision.

TEF should also seek to avoid a structure which actively excludes providers from participating. For example, the inclusion of graduate outcomes data which is not collected for international students, effectively excludes providers who teach exclusively or almost exclusively international students from TEF Bronze, Silver or Gold. Providers should never be subject to a perpetual TEF Provisional and TEF must become more flexible to accommodate those who meet the baseline quality and wish to enter.

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?

Strongly agree

- **The OfS needs to have clear guidance and conditions which are specific to student transfer in collaborative provision.**
- **Improvements must be made in admission and continuation data to ensure that transfer does not penalise providers.**
- **We support a centralised service for module mapping in which providers can voluntarily participate.**
- **Student transfer relies on flexible timetabling. Providers and the OfS must work collaboratively to achieve this.**
- **Providers must supply reliable and accessible information quickly to students to facilitate transfer.**
- **All providers must be treated equally under the immigration rules to ensure international students can transfer. DfE and the Home Office will need to collaborate to better support international students to transfer.**
- **The OfS must produce clear guidance on how it expects assessment of prior employment to be treated in transfer.**
- **Transfer arrangements must include 'Year 0' provision to ensure these students are not disadvantaged.**

The OfS needs to have clear guidance and conditions which are specific to student transfer in collaborative provision. Where a partner body also has a say in admissions, the OfS must ensure that risk is assessed against the most appropriate provider in the partnership and that as a sector-wide regulator they support best practice in student transfer for providers with collaborate provision. A similar exercise has been undertaken by the OIA which we would

recommend: www.oiahe.org.uk/providers-and-good-practice/delivering-learning-opportunities-with-others.aspx

This guidance should go further than the OIA existing guidance above and make clear what is expected in providers who have less control over their admissions such as study abroad providers.

Providers expressed they do not have confidence in existing continuation metrics because receiving providers are not consistent in using the same HESA ID for a student when they transfer. This means that transferring students are not always counted as continuing as these errors are not found until after data is analysed for risk and take time to rectify. The OfS, in partnership with the Designated Data Body, must ensure that transferring students are entered correctly in data submissions and errors in reporting will not lead the OfS to alter a provider's risk profile.

As stated in our previous responses to calls for evidence on student transfer, we encourage module mapping against modules of key competitors and a centralised approach to communicating the mapped results to students.

Another barrier to student transfer which needs to be encouraged through a sector approach to the publication of transfer arrangements is encouraging flexibility in timetabling. Funding models and data requirements on continuation and progression should not pose a barrier to student transfer.

As part of the student transfer arrangements, providers should give students access to their module descriptors and grades in an easily accessible and printable format. The often two-week or more wait for documents makes student transfer a lengthy and difficult process which students commonly abandon despite a strong desire to complete the transfer.

Particular attention needs to be paid to how student transfer information will apply to international students who will need a new visa to transfer to another institution, or even to another course within the institution. The Home Office must remove the restrictions around in-country transfer as a minimum and should work with the DfE to improve the visa process to facilitate student transfer more quickly and efficiently.

Clear guidance on how assessment of prior employment will be expected to be considered in student transfer arrangements is needed to ensure that these students can have the same expectations of student transfer as those who applied with purely with academic qualifications.

A better understanding of Year 0 and foundation programmes is need on a sector level to ensure that students on these programmes, integrated with their level 6 provision or not, are able to access student transfer. The collection of data on Year 0 or foundation programme will be key to supporting student transfer and will need to be a priority for the OfS in its responsibly to improve social mobility through widening access and participation.

Lead indicators on recruitment need to reflect that if provisions to encourage student transfer are successful, this may cause issues with recruitment as students 'trade-up'. Providers should not be penalised where student transfer is successful and students move from one institution to another more frequently than previous data would indicate.

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

Slightly agree

- **While we support the approach to sector level regulation, this process must also recognise where specific delivery models of providers might have an impact on their ability to participate, for example providers who teach exclusively Study Abroad courses or exclusively articulation courses.**
- **Public information for prospective students should be extended to include all registered higher education providers.**
- **Public information metrics should be reviewed once data is available for the wider higher education sector.**
- **Registration fees and other regulatory costs must not be a cause of provider failure**
- **Gateways to regulation and degree awarding powers must be accessible to those without a track record, especially as it is currently defined in relation to validation.**
- **Students should be able to access the full tuition fee funding for a three-year degree in an accelerated model of two years or less.**
- **The OfS must focus initial sector level support at ensuring providers have an equal footing to participate in the regulatory framework including in student data, governance and staff development.**
- **The OfS should set a transitional period of three to five years in which resources should be reserved for activities to facilitate registration with the OfS by small and independent providers and to give them targeted support during this time.**

The sector level regulatory approach accurately reflects what students and stakeholders should expect from higher education institutions. It must be applied in a way which facilitates diversity and innovation and should not create homogeneity or indirect impacts which would apply risk to a provider where it is inappropriate to do so. The OfS must identify where the sector level conditions do not serve the interests of students and stakeholders in specific delivery models such as study abroad providers, international only providers or postgraduate only providers and ensure they work with these providers to ensure they are not penalised for failing to meet inappropriate conditions.

We strongly support the extension of public information to the wider higher education sector. For too long providers who did not receive public funding were excluded from this information which meant students were restricted in their choices. However, we feel that the metrics used in this public information must reflect provision and so would recommend a review of these metrics once independent providers data is included to see how students interact with data from small, specialist and industry-focused provision.

Market failure has been a reality in the independent sector since before the introduction of mass publicly funded higher education. While we agree that the OfS should not prop up failing providers, especially at the expense of others, we do fear that the costs of regulation could become the driving factor in provider failure. Students should not be put at risk because they have chosen smaller and more specialist providers and OfS fees need to be set to ensure providers can meet these costs without sacrificing their provision.

We welcome the role the OfS will play to explore sector level themes which can improve the OfS's approach to monitoring and more importantly encourage sector wide collaboration to create new and innovative approaches to higher education.

The OfS must be clear with the Designated Quality Body on its expectations around new providers. While we agree that providers should be able to register with no prior track record, as it is currently defined, and to access new Degree Awarding Powers, the current structures for assessing quality are based on processes which are proven with track record.

While we welcome the government's recent consultation on accelerated degrees, we are concerned that the proposed maximum tuition fee for Approved (Fee Cap) Providers of £11,100 per year, and maximum fee loan cap for Approved Providers of £7,398 will restrict the number of independent providers able to offer accelerated degrees. As the consultation correctly notes, more students currently undertake accelerated degrees at independent providers than at publicly funded universities. Independent providers tend to be smaller and more specialist, the precise qualities which allow them to deliver successfully in this innovative model, but which also mean that to remain financially sustainable they must pass on the full cost of delivery. Most of these providers do not have additional courses or income streams from which to subsidise accelerated degrees, and many do not offer three-year degrees alongside. Limiting the amount of loan that students can access means that students who cannot afford an upfront fee are pushed out of the model. Students should be able to access the full tuition fee funding for a three-year degree model, over two years or less. This must be in place for August 2019 to meet student demand for these courses and ensure that more widening participation students can access them.

The OfS must have a sector-wide approach to supporting providers in the transition to the new regulatory framework. While we value sector level themes, we feel strongly that the OfS must first focus on creating a level playing field. In the past public funding has been spent to support publicly funded providers in developing student information systems and processes, develop a consistent form of governance (corporate and academic) and facilitate staff development, this has created an unequal footing for transition into the new regulatory framework. The OfS must focus its initial sector level activity at ensuring that they minimize the impact of this already unequal system. Simply because regulation is applied equally does not mean the system creates equality.

The transition to the OfS at a sector level presupposes a level of experience in the regulated sector and familiarity with models of regulation which were developed exclusively by and for the publicly funded higher education sector. The OfS must set a transition period in which it will support providers who have not had access to years of sustained public funding which has enabled the public sector to develop systems, processes and practices which will meet the criteria of registration and will support them to meet the ongoing conditions of registration. Significant public funding has gone into student data systems and structures, for example, which place publicly funded providers at a competitive advantage in this area. Other areas of concern include the resources and support to effectively develop Codes of Practice for Freedom of Speech, Public Interest Principles, and Access and Participation Plans. Our members have the full intention of meeting these conditions, but they will need to invest considerable resources to ensure this is done properly and to expected standard – resource that publicly funded providers will not require. The timetable for registration means that the cost of this activity could have a considerable impact on the amount of resource available for the student experience. As such the OfS should act to support these providers through a transition period of three to five years to allow them to develop practices and processes effectively without affecting the student experience at their institution.

PART 3: Provider-level regulation

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

- **All providers currently reviewed by QAA in England for Tier 4 purposes should be able to enter the register at Approved or Approved (Fee Cap).**
- **Research grant should be clearly available to postgraduate providers without any requirement for an Access and Participation Plan.**
- **Providers with a ‘Collaborative Venture’ focused on articulation should be able to enter the register under conditions which match Home Office requirements.**
- **Franchise Providers which require their own Tier 4 licence should be able to enter the register at Approved or Approved (Fee Cap).**

The Independent Higher Education Survey 2017 asked providers which category they would apply for under the proposals from the White Paper and why. 39% of respondents remained unsure at that time, with 34% opting for the ‘Approved’ category, 14% opting for Approved (Fee Cap), 11% opting for Registered Basic and 3% indicating they will not register with the Office for Students at all.

From our survey and consultation results we have developed a picture of the types of providers who will enter each category:

Approved (Fee Cap)

There are two main characteristics of the providers who would enter the Register at Approved (Fee Cap):

- Providers currently charging fees of less than £9000 and are financially able to cap fees at less than the higher fee amount. Some of these providers have an interest in teaching or research grant funding.
- Providers teaching mainly postgraduate students with a strong interest in research funding.

Approved

There are four main characteristics of providers who have indicated they would enter the Register at Approved:

- Providers currently or intending to access student loan funding for their students but are unable to cap their fees at the higher fee cap or who are postgraduate only provision
- Providers who are entering primarily to secure a Tier 4 licence – although some of these providers have indicated a strong interest in applying to access student loan funding for their UK students
- Study Abroad providers who primarily teach short courses which are accepted by the ‘Home’ institution as part of their level 6 qualification. While most students do not require a Tier 4 visa, any student taking an internship or a study abroad course of more than 6 months does. This is the primary reason study abroad providers would join the register.
- Providers currently not on either the Tier 4 sponsor register or with Designation who will be entering regulation for the first time. This is a growing group, some of whom are new to UK provision, and some who have been operating for a long time. The possibility of Brexit and EU students being required to have some sort of visa process for which a version of a Tier 4 licence would be required is a driving factor for those who have been operating outside of regulation but are looking to join.

Registered Basic

Providers were sceptical about the Registered Basic category and remain so with the new detail from the consultation. Most providers who suggest they may enter at Registered Basic feel so because they don't feel they would be able to register in the other categories despite expressing desire to. They include providers who teach their own qualifications or qualifications not eligible for student funding, providers with franchise provision only and providers who do not want student funding or a Tier 4 licence.

Access to research funding

Many providers who are either exclusively or predominantly delivering postgraduate courses and who would naturally register in the Approved category have expressed an interest in research grant funding. While the fee cap would not apply to postgraduate courses, they remain concerned about the suitability of the Approved (Fee Cap) category and its additional condition of an Access and Participation Plan as the prerequisite for access to research grant, when such an agreement is aimed at undergraduate students, of which they have few or none at all.

The Office for Students should consider whether the requirement of an Access and Participation Plan represents an appropriate condition for access to research funding, or whether an alternative condition around compliance with "an additional principle in relation to regularity, propriety and value for money" (as mentioned in the consultation document) would be more suitable in a risk-based approach. The OfS should clarify where Access and Participation Plans are not required due to the exclusively postgraduate courses offered by a provider.

Partnership models and 'Collaborative Ventures'

We encourage the Office for Students to expand the example models for collaborative provision to include a 'Collaborative Venture' model which would be eligible for the Approved or Approved (Fee Cap) levels of the register. This would reflect the current guidance from the Home Office on "Approved qualifications", and ensure that those currently approved for Tier 4 licences do not have to change what is a successful model with their partner institutions.

The Collaborative Venture model would encompass provision which meets the Home Office approved qualifications (4.8 c and g) from the Tier 4 sponsor guidance:

Approved qualification

4.8 The course that you assign a CAS to a student to take must lead to an 'approved qualification'. An approved qualification is one of the following:

c. Recognised by one or more recognised bodies through a formal articulation agreement with the awarding body.

g. Covered by a formal legal agreement between a recognised body and another education provider or awarding body. (For additional information please see paragraph 4.10 below).

4.9 For the purposes of subsection (c) above, an articulation agreement is a process whereby all students who satisfy academic criteria on one programme are automatically entitled (on academic grounds) to be admitted with advanced standing to a subsequent part or year of a programme of a degree-awarding body. Arrangements, which are subject to formal agreements between the parties, normally involve credit accumulation and transfer schemes.

4.10 If the approved qualification is covered by subsection (g) above, an authorised signatory for institutional agreements within the recognised body must sign this. The agreement must confirm the recognised body's own independent assessment of the level of your or the awarding body's programme compared to the RQF (or its equivalents). It must also state that the UK recognised

body would admit any student who successfully completes your or the awarding body's named course onto a specific or a range of degree-level courses it offers.

These models are largely based on courses delivered between two providers as part of a clear articulation pathway. Pathway providers may teach 'Year 0' or 'Year 1' of an undergraduate course, or 'Year 0' of a year Master's degree for example. As per Home Office Guidance, these courses must be either "recognised by one or more recognised bodies through a formal articulation agreement with the awarding body" (c) or they must be "covered by a formal legal agreement between a recognised body and another education provider or awarding body" (g). In the case of (g) the awarding body must assess the programme against the RQF or its equivalents and must agree to admit any student who completes the qualification. Neither of these arrangements are clearly validated or franchised, however they play a key role in both international education and widening participation as they are also used to facilitate access to higher education for domestic students.

Study Abroad providers would also fall into this model as the course a student undertakes is recognised in a formal agreement with their awarding body, usually overseas. Study Abroad providers require a Tier 4 licence primarily for courses where they design and deliver a work-based learning module which includes an internship. These courses are approved by the student's 'Home' institution abroad and articulate into an award overseas. Study Abroad providers with current Tier 4 licence are reviewed by QAA and so have courses which match the standards of the Quality Code for Higher Education.

Providers in this category would work with the Office for Students to identify where they take responsibility for their students and the quality of provision they receive, and where this passes to their partner in the venture. This category would be open to providers where the courses can be matched at higher education or where courses match the existing 'Year 0' model, being taught in a higher education environment at standards which meet the Quality Code. It would not be acceptable to require providers with a clear collaborative venture based on articulation to fit either the validated or franchised models at the risk of their Tier 4 licences or to place widening participation students at risk.

This change is vital for Embedded Pathway Colleges, where the guidance suggests they should consider whether their contracts fit into either the validation or franchised model. These articulating agreements are complex and designed specifically to fit the model students have chosen, alongside the requirements the Home Office have clearly set out. We do not anticipate that the time allotted between the publication of guidance and the application window for registration is simply not sufficient for the Home Office to make changes to their guidance and it is unreasonable to ask Embedded Pathway Colleges to change their model of delivery to fit two very narrow representations of the types of collaborative teaching arrangements which exist in higher education.

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?

Slightly agree

- **We welcome a gateway process to allow providers to be matched against the FHEQ.**
- **Student Protection plans must reflect the equal rights of international students to be protected and must also reflect collaborative provision.**
- **We support the condition for an Access and Participation Plan only at Approved (Fee Cap) level and an Access and Participation Statement at Approved where appropriate.**

- **The OfS should work with providers, particularly in the transition years, to ensure that they are registering in the right category. Providers who apply for Approved (Fee Cap), who do not meet the conditions, but who meet the conditions of Approved, should not have to reapply in the other category.**

We welcome the decision to ensure that the test of initial conditions for Approved and Approved (Fee Cap) and the evidence process for Registered Basic should match courses against the academic standards as they are described in the FHEQ to ensure the course is 'higher education'. We believe it is right that this activity is conducted by the Designated Quality Body if one is appointed, to allow this matching to be integrated into the gateway test of baseline quality and to ensure a consistency of approach between levels of the register.

While we support the condition for a student protection plan, we would welcome clear guidance from the OfS in three areas:

- How will international students be supported to find an alternative course of study? In the past exit from the market has resulted in not only a lack of consistency in approach to this question, but tremendous damage to the reputation of UK Higher Education. There needs to be further agreement between the Department for Education and the Home Office to address the barriers to students transferring their visa to another provider. Continuity should be the priority for both domestic and international students.
- At what point does a student protection apply? Would it apply to applicants as well as existing students? How would risk be assessed for applicants?
- How will student protection plans reflect collaborative provision? What role do existing continuity protections play in student protection?

The OfS must seek to support providers in the transition years to enter the register at the appropriate level. Where so much of the guidance is new to many providers and it will not be available until a month before application for the OfS open, it is important that the OfS not put up unnecessary barriers to entry. We believe that the condition which requires providers who do not meet the conditions of Approved (Fee Cap), to reapply for Approved as a barrier to entry. We feel the OfS should create a constructive engagement with providers in these first years of operation, to support them to enter the most appropriate category within one application.

Initial conditions must be applied with a risk-based approach. Where a provider has no relevant risk to mitigate, a condition should be modified to be appropriate. For example, study abroad providers have little control over their admissions processes, but should be expected to ensure that students from different backgrounds have success with their courses. Their application of the Transparency condition should reflect this.

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

Neutral

- **The condition for Freedom of Speech should be developed further with providers as part of the transition to the OfS and should not prevent providers from being registered in the first instance.**
- **We agree that the majority of the public interest principles are appropriate in their application, will support good governance and will enhance trust in the higher education sector.**

Members remain concerned that they will not have enough time to fully implement provisions on Freedom of Speech. Up until HERA there was no legal requirement for independent providers to protect free speech and while some did so under the Prevent Agenda, none feel they have sufficient codes of practice related to Freedom of Speech and feel there is limited time to develop them or to demonstrate them ahead of registration. The OfS should also be certain that it has a legislative basis for intervening in this area before any further action.

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

Slightly agree

- **We strongly support the Home Office proposal that all providers registered in the Approved categories who have a track record of immigration compliance will benefit from the full privileges of Tier 4.**
- **The OfS should take steps to ensure that all provision currently reviewed by QAA in England as higher education for the purpose of a Tier 4 licence will be included on the new register.**
- **Where there is higher education provision delivered by independent providers in the devolved nations, the Home Office should work to ensure these providers are able to access the same immigration rules as those on the register.**
- **Where an independent provider teaches higher education and is reviewed by QAA currently, their level 3 provision which meets the same standard as the Level 0 or foundation courses delivered by universities should not require additional regulation.**
- **We feel strongly that provision which is considered at level 4 & 5 on the FHEQ should be required to meet the same conditions for a Tier 4 licence.**
- **Some lead indicators identified for assessing risk may not be able to address risk for Tier 4 students.**

We strongly support the Home Office proposal that all providers registered in the Approved categories who have a track record of immigration compliance will benefit from the full privileges of Tier 4. Indeed this is a necessary step to ensure that providers can continue to meet ongoing conditions which include data from Tier 4 students. We strongly recommend that the Home Office remove the restrictions on in-country transfer for all providers in the Approved and Approved (Fee Cap) categories as these restrictions in particular could have a detrimental impact on continuation data, and already greatly limit the choice of provision available to international students. Any conditions imposed as a result of immigration compliance should be evaluated for their impact on the provider's ongoing registration conditions.

We feel there are several conditions, as outlined elsewhere in our consultation response, which would prohibit existing providers offering courses under a Tier 4 licence from entering the register. The OfS should take steps to ensure that all provision currently reviewed by QAA in England as higher education for the purpose of a Tier 4 licence will be included in the new register. In particular, OfS should ensure those offering articulation courses, approved by the Home Office for Tier 4 visas by providers currently reviewed by QAA, are able to maintain their Tier 4 licence with educational oversight provided through joining the OfS register at Approved or Approved (Fee Cap). To do this, the OfS should expand the example models for collaborative provision listed in the consultation as 'validated' and 'franchised' to include a 'Collaborative Venture' model which would be eligible for the Approved or Approved (Fee Cap) levels of the register. This would reflect the current guidance from the Home Office on "Approved qualifications", and ensure that those currently approved for Tier 4 licences do not have to change what is a successful model with their partner institutions.

For franchised providers the decision to enter the register will be largely based on the requirements to maintain a Tier 4 licence where this is applicable. The OfS must ensure that any approach to franchise provision is fully compatible with the Home Office Tier 4 sites and partnerships guidance which may require a provider who appears to be offering franchise provision, to have their own Tier 4 licence and this their own educational oversight.

The Home Office holds the premise that:

“An institution which teaches Tier 4 students must take responsibility for sponsoring them;”

To this end they have made clear that:

Where- “An HEI has entered into a partnership with a publicly funded college or a private provider to teach a course to Tier 4 students, - Both the HEI and the partner institution must hold a Tier 4 licence with Tier 4 Sponsor status. Where a Tier 4 student is taught by the HEI at one of its sites for over half the duration of the course, the HEI must sponsor the student. In all other circumstances, the publicly funded college or private provider must sponsor the student.”

And where - An HEI has entered into a partnership with another HEI to teach a course to Tier 4 students, - Both HEIs must hold a Tier 4 licence with Tier 4 Sponsor status. The HEI teaching the majority of the course (i.e. over half its duration) at one of its sites must sponsor the student. If teaching is shared equally, the HEIs must decide which of them will sponsor all of the students being taught that course under the partnership. Where the partnership is with an overseas HEI, the HEI and overseas HEI may decide which of them will sponsor all of the students being taught that course under the partnership.

Our members feel strongly that the OfS and the Department for Education should make rules and guidance for the OfS on the basis of their own legislation and policy decisions. However, it is important for the OfS to recognise and understand the regulations which prompt a provider to apply for a Tier 4 licence, and thus need educational oversight from the OfS. We are eager to ensure that where an English Higher Education Provider requires a Tier 4 licence, their educational oversight can be provided by the OfS. However, as you can see from the above description, there will be providers who would fit the description of ‘franchise’ in the consultation, and thus would be expected to not register at Approved or Approved (Fee Cap) but would need to do so to maintain their Tier 4 licence. The OfS must create appropriate conditions to allow these providers to register in the Approved categories to maintain their Tier 4 licence.

Where higher education provision is delivered by independent providers in the devolved nations, the Home Office should work to ensure these providers are able to access the same immigration rules as those on the register.

Like many universities, independent providers offer ‘Level 0’ or foundation courses to support students in their transition into level 6 qualifications. While some of these are integrated, some are separate and this supports the choice students make to study this delivery model. Where an independent provider teaches higher education and is reviewed by QAA currently, their level 3 provision which meets the same standard as the Level 0 or foundation courses delivered by universities should not require additional regulation. This will reduce regulatory burden and increase the OfS oversight and understanding of these vital courses.

We feel strongly that provision which is considered at level 4 & 5 on the FHEQ should be required to meet the same conditions for a Tier 4 licence. We believe that some level 4 & 5 provision which is currently regulated by the Independent Schools Inspectorate should be reviewed with the view to these providers joining the register. This will ensure that the same

conditions are met by all higher education providers with a Tier 4 licence, and that no provider can gain a competitive advantage over another.

While we agree that students should be assured of the same high quality education and experience, the lead indicators identified for assessing risk may not be able to address risk for Tier 4 students. For example, value for money indicators include LEO and graduate outcomes data which will not be collected for international students. We feel that guidance should make clear where risk will be assessed when there is no applicable date for a given indicator.

It is also likely to be the case that an international student may not be able to continue in higher education for reasons outside of the control of the provider but directly related to Tier 4 rules. Tier 4 rules requiring students to apply for a new visa if switching course or provider, apply for an extension outside of the UK to complete re-sits and re-takes, and which prohibit course choices available to UK students such as multiple courses at the same level, will have an impact on retention statistics for these students. It is important that the application of lead indicators around this recognise that for international students the immigration rules are likely to have an impact and that the OfS recognises that this risk is outside of their or the providers control to mitigate. In this case, the same standards cannot be upheld for both home and international students.

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?

Strongly disagree

- **These paragraphs should not be removed. They should be amended after the ongoing review of levels 4 and 5 is complete to ensure that courses which could be eligible can be identified.**

These paragraphs should not be removed until after DfE concludes the review of levels 4 and 5, as this will support a better understanding of qualifications which fit the criteria in paragraphs 7 and 8.

We feel a number of qualifications currently offered outside of regulation but reviewed by QAA could be justifiably eligible for student support through these paragraphs with minor clarification. These will be of particular interest to part-time students, career changers and widening participation students.

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

Strongly agree

- **We strongly support the proposal from the Home Office to apply the same immigration rules across all providers in the Approved categories.**
- **There is no logical reason for research grant to be limited to Approved (Fee Cap) as this additional regulation in this category is primarily about teaching.**
- **We strongly support automatic designation.**

- **We strongly support access to the higher loan amount where fees are capped at the higher limit but encourage the OfS to explore if this can be done on a course by course basis.**
- **We remain concerned that the limited benefits of Registered Basic will not be enough to attract providers to join the register at this level.**

We strongly support the proposal from the Home Office to apply the same immigration rules across all providers in the Approved categories.

There is no logical reason for research grant to be limited to Approved (Fee Cap) as this additional regulation in this category is primarily about teaching.

We strongly support automatic designation as standard across the Approved categories and the removal of student number controls as a blanket provision based on provider form instead of risk.

We strongly support access to the higher loan amount where fees are capped at the higher limit but we encourage OfS to explore if this can be done on a course by course basis to support smaller providers with provision that cannot be feasibly offered capped at the higher limit and so they may choose not to make eligible for student funding or to make eligible at the lower loan limit.

We remain concerned that the limited benefits of Registered Basic will not be enough to attract providers to join the register at this level, and that assurances before entry may need to be strengthened.

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

Slightly agree

- **General ongoing conditions should be evaluated using the risk assessment and should not seek to create additional requirements where no risk is identified.**
- **A3 (Transparency) should be applied with caution to smaller providers with limited data and for providers with audition or interview requirements in their admissions processes.**

We support the application on the same general ongoing registration conditions for each category of provider within a risk-based system. Where there is no risk attributed, the indicators matched to each condition should be appropriate. For example, a provider who primarily offers courses which articulate into further study and are not intended to support students into graduate employment, should not need to undertake a graduate outcomes survey but instead OfS should use the continuation metrics to indicate risk as a far more appropriate indicator.

We remain concerned that condition A3 (Transparency) will be difficult for smaller providers to meet due to the small numbers of data which will expected to be published. We feel this condition would only be appropriate to risk assess larger providers.

We also feel this condition would unfairly disadvantage providers with an interview or audition process as part of admissions. Where admissions rely on additional activity from students, failure to make an offer may be attributed to a student not completing the interview or audition process. This won't be reflected in a data based exercise and will produce misleading information for students.

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

Strongly agree

- **The existing Alternative Provider Intelligence Unit should be moved into the OfS.**
- **We fear that the OfS's approach to interaction with providers assumes that a level playing field exists or will exist when the OfS opens its doors to applications.**
- **Where data cannot be published due to sample sizes it should not be used to assess risk.**
- **Monitoring of financial sustainability must take a provider level approach.**

The existing Alternative Provider Intelligence Unit should be moved into the OfS with the aim of supporting providers who have a more limited experience of regulation into the new structures and frameworks. The diversity of the independent provider sector requires a more considered approach than what has become a much more homogenous publicly funded sector.

We fear that the OfS's approach to interaction with providers assumes that a level playing field exists or will exist when the OfS opens its doors to applications. In particular statements such as "seeking 'permission' for decisions, unless required by a specific condition, will be taken as a sign of weak governance" (page 38), are unhelpful in the transition phase.

Where data cannot be published due to sample sizes it should not be used to assess risk. The OfS should use only appropriate indicators to the provider's delivery. Providers with high numbers of international students should not be disadvantaged when using LEO and graduate outcomes data to assess risk or in ongoing monitoring.

Monitoring of financial sustainability must take a provider level approach and should not require providers to continually justify a distinct corporate or financial model which has been assessed as low or medium risk in a previous assessment.

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?

Strongly agree

The OfS should adopt an approach of open and honest dialogue with providers to manage risk. It should also choose interventions which are specific to the risk posed by the provider, rather than on the basis of corporate form or funding status, as is the case under the current regulation.

The proposed approach to supporting providers where they have identified a risk is welcome, but we would encourage the OfS to adopt a flexible approach to this engagement while providers transition into the OfS. This will help to address the existing imbalances between large publicly funded providers who have already developed the data systems and governance structures on which the new regulatory framework largely relies, and those providers who are relatively new to this type of regulation and operate distinctly different models. Providers who have never received public funding which could be used to purchase data systems or develop staff capacity and student support mechanisms, should be supported to develop in the same way publicly funded providers have been to ensure a level playing field at the end of the transitional period.

IHE would welcome the opportunity to be a source of support for new and independent providers through membership and our specific 'Launchpad' service for providers who are new to regulation, and would be happy for the OfS to direct providers to us when specific support is needed.

We support the use of enhanced monitoring and specific ongoing conditions where these systems will be applied to all providers equally with a clear understanding that institutions will transition into OfS regulation with different capabilities based on their historical funding status and regulation.

The OfS must establish a transparent and effective appeals process which is clearly articulated in guidance. An appeals process is integral to building trust in the OfS processes and in the reputation of providers on the register. The purpose of this process must be to provide an opportunity to re-examine critical decisions made by the OfS, and to offer an avenue for redress.

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

Slightly disagree

- **Independent providers in the nations should not lose their current privileges or be ineligible to receive the same benefits. They should also be eligible for TEF.**
- **More thought needs to be given to providers with an element of corporate or academic governance outside of the UK and an appropriate balance found.**

Our members in the devolved nations who currently apply directly to the Department for Education to access student support for their English students remain very concerned that they will not be able to register with the OfS and access the benefits of that registration. In particular they are concerned that any system proposed as an alternative to the OfS Register would not give them access to the higher loan amount and so would disadvantage their students.

The Office for Students must also address the problem of TEF eligibility for non-authority funded providers in the devolved nations, who are currently unable to produce an Access and Participation Statement to meet this criterion due solely to their geographical location.

Providers with a corporate presence in the UK, but where some of the activity related to course design and academic governance is conducted overseas, remain unsure if they will fit the criteria to join the OfS register. Where a provider teaches higher education in the UK and needs to apply for or maintain a Tier 4 sponsor licence for international students, the OfS should be the provider of educational oversight where this is required by the Home Office.

We feel strongly that where a provider is currently deemed to need UK educational oversight to access a Tier 4 licence, and is currently reviewed by QAA for this purpose as an English higher education provider, the OfS should work with them to create conditions under which they can join the register at Approved or Approved (Fee Cap).

PART 4: The OfS as an institution

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

Slightly agree

- **We welcome the inclusion of the Tier 4 sponsor licence link to the register.**
- **We strongly agree with the proposal that access to the student support system should operate on either a course by course basis or by allowing all eligible courses offered by a provider to have access to the system.**
- **We also agree that a provider’s entry on the register should include where the provider is regulated or monitored by another regulator or funding body.**
- **The OfS must act to incentivise and support data capabilities in providers to ensure that information published and used by the OfS is a high quality.**

We welcome the inclusion of the Tier 4 sponsor licence link to the register. The Tier 4 sponsor list has been largely inaccessible to students due to the way it is published and the vast amount of information contained within it. The register will make clear to international students which English higher education providers have a Tier 4 licence.

We strongly agree with the proposal that access to the student support system should operate on either a course-by-course basis or by allowing all eligible courses offered by a provider to be accessible on the system. It is important that providers remain able to choose the courses which, so long as they meet the eligibility requirements, can attract student support.

We also agree that a provider’s entry on the register should include where the provider is regulated or monitored by another regulator or funding body. In particular we welcome the concept that some conditions of registration could be met through regulation by another body. This is a step in the right direction to supporting students with a clear, streamlined tertiary funding system but the OfS should go further to develop deep and effective partnerships with other regulatory bodies.

The OfS must act to incentivise and support data capabilities in providers to ensure that information published and used by the OfS is of high quality. There is a considerable amount of activity that must be conducted during the transitional period to support all independent providers to attain the level of data readiness that will be required under the new regulatory system.

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

Slightly agree

- **We call on the OfS to take the lead in bringing together the regulatory systems for tertiary education to reduce burden on institutions and provide clarity for students.**
- **We would welcome an approach that includes bodies involved in educational oversight for Tier 4 purposes where they may overlap with the activities of the OfS.**

We strongly support the OfS’s proposed engagement with other bodies, in particular other regulatory bodies in the tertiary education sector. We note however that while the consultation mentions bodies currently engaged in quality regulation in the publicly funded sector, it fails to mention independent sector bodies such as the Independent Schools Inspectorate (ISI). The OfS should include in its proposed engagement all bodies involved in educational oversight for Tier 4 purposes where they may overlap with the activities of the OfS.

We strongly agree with the principles for engaging with other bodies, and in particular the principles of cooperation, clarity, appropriate burden, and mutual understanding. It is vital that the OfS takes the lead in bringing together the regulatory systems for tertiary education in order to reduce burden on institutions and provide clarity for students. The OfS should engage in

particular with the Home Office, the ESFA and Ofsted to generate “confidence in and reliance on each other’s processes and oversight”.

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?

- **The OfS should assume a role in improving and supporting validation as a priority.**
- **If a better-supported market for validation cannot provide validation when it is needed and for courses which enhance student choice and support government initiatives, commissioning arrangements should be sought by the OfS.**
- **These commissioning arrangements must meet strict guidelines including the principles outlined in the IHE/OU/QAA project on piloting a streamlined approach to validation.**
- **The OfS should immediately seek commissioning arrangements for validation at levels 4 and 5.**
- **The OfS should prioritise a number of activities to improve validation:**
 - **Responsibility to review validation**
 - **Alignment of processes**
 - **Supporting validation relationships**
 - **A register of validators**
 - **Arbitration role**

The OfS should assume a role in improving and supporting validation as a matter of priority, and should focus first on establishing a regulatory environment where validating institutions feel better able to assure themselves of a provider’s good standing and to mitigate risk. If a better-supported market for validation still cannot provide timely validation when it is needed and for a diversity of courses which enhance student choice and support government initiatives, the OfS should make arrangements to commission a validator to fill the gap.

These commissioning arrangements must meet strict guidelines which should incorporate the principles outlined in the joint IHE/OU/QAA project ‘Piloting a streamlined approach to validation’. These describe a transparent, clear, proportionate and risk-based validation process which is blind to issues of competition or exclusivity, and is subject to a long-term contract in order to protect continuity for students.

It is clear to us that the current market offers too limited an opportunity for validation of flexible provision, and in particular levels 4 and 5. Our members experience great difficulty in achieving validation for this provision, which tends to be lower cost and less profitable, but critical in supporting widening participation students. The OfS should therefore immediately seek to implement commissioning arrangements for validation of provision at levels 4 and 5.

The OfS should prioritise a number of activities to improve validation in addition to those outlined in the DfE fact sheet published last year:

- **Responsibility to review validation** – the OfS should have the responsibility to review validation across the sector on a periodic basis to ensure that it continues to meet the aims of the Higher Education and Research Act and associated government policy to increase innovation in higher education, enhance student choice and most importantly to widen access to higher education.
- **Alignment of processes** – in addition to publishing guidance on best practice in validation the OfS should look towards developing an integrated or aligned process between the

designated quality body and validating institutions to reduce duplication in processes and ease the burden on providers.

- Supporting validation relationships – the OfS could play a vital role in supporting the establishment of new validation partnerships. This could be particularly helpful in scenarios where a validating university is withdrawing from validation activity at short notice, and the OfS could intervene in a supporting role to protect students and ensure the continuity of programmes.
- A register of validators – the proposed accessible list of providers offering validation services should be developed as a tool for validation.
- Arbitration role – the OfS could appoint a body to provide arbitration for validation partnerships, where partnerships are placed at risk.

In addition to commissioning validation itself, the OfS could also contract its commissioned validators to conduct developmental, facilitative visits to providers who are struggling to secure a validator.

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?

No

- **There remains the lack of clarity where providers feel they may have to make substantial changes to their operating models to meet both Home Office and DfE requirements.**
- **More clarity is needed for independent providers in the devolved nations who previously applied to DfE for access to student support.**
- **More clarity is needed for providers who will be submitting data to the Designated Data Body for the first time.**
- **Members have considerable concern of the enormous cost and burden of preparing for registration in such a short period of time.**
- **We disagree with the transition arrangements for providers with Tier 4 licences as outlined on page 25 of the transition document.**

Our main concern remains the lack of clarity where providers feel they may have to make substantial changes to their operating models to meet both Home Office and DfE requirements. The OfS should prioritise ensuring that there are no conflicts between their guidance and that of the Home Office for Tier 4 purposes before publishing. They should work with providers affected by this change to ensure that changes are minimal and appropriate.

Providers who are operating in one of the devolved nations have previously applied directly to DfE for designation of their courses for English student support. It is unclear how this would work now if these providers do not meet the conditions of an English Higher Education Provider which would enable them to register. We do not want to endanger the existing funding for students at these providers or their well-established position as a choice for English students.

More clarity is needed for providers who will be submitting data to the Designated Data Body for the first time, and for those who have only been required to submit limited data under the HEAPS provision, on what data they will be required to submit on their students in 2019. Some will need to start collecting this data as soon as this year's recruitment cycle to ensure that they have the data to submit in the next academic year. The short timescales for information on the data processes presents serious complications for GDPR compliance, as some of this data will need to be collected before it is officially 'required by regulation.'

Members have major concerns of the enormous cost and burden of preparing for registration in such a short period of time between the publication of guidance and the closing of the registration window to secure their continued funding and Tier 4 licences for 2019. While this process might be less of a burden for publicly funded providers, independent providers are still required to submit to QAA annual monitoring, QAA monitoring for changes to provision such as new premises or courses, and DfE annual re-designation. The scale of the challenge and cost of completing these activities while also preparing for new requirements over such a short period of time is prohibitive for many providers and may prove impossible for some.

We disagree with the transition arrangements for providers with Tier 4 licences as outlined on page 25 of the transition document. The requirements of registration for the OfS should be sufficient to replace most existing educational oversight checks and, in the interest of reducing cost and burden, there should be no requirement for QAA annual monitoring or a new Higher Education Review where one has already been successfully undertaken. Crucially:

- There should be no QAA annual monitoring in 2018/19 unless it is directly related to requirements from an HER which is to be relied upon in registration with the OfS.
- Providers with a successful HER already and scheduled for another after 1 April 2018 should not have to complete this HER, as the registration checks should be sufficient.
- QAA should work closely with DfE and the Home Office to ensure that processes which cover the same activities are not repeated for both QAA and the OfS.

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?

No

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?

Yes. There are providers across the independent higher education sector who have charitable status or are linked to a body with charitable status. In the interests of a level playing field, these providers should be eligible for exempt charity status.

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?

We would welcome a further consultation directly with those providers with charitable status to explore where they or the OfS must make changes to ensure that, where appropriate, their charitable status can be regulated by the OfS.