

Higher Education Policy Institute

**Private Providers in UK Higher Education:
Some Policy Options**

By

Professor Robin Middlehurst and John Fielden

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1. Global Trends in Private Higher Education

This paper describes the present role of private providers in UK higher education, compares the position with that in the United States and then discusses some policy questions and policy options relating to their regulation and funding. This is made as a contribution to the debate that will lead up to and follow the Education White Paper. We start with a brief summary of the scale of private education throughout the world and describe the various ways in which the providers are being classified. This section also summarises some of the criticisms of private provision and some of the claims made by the providers about what they offer.

The global picture

The growth of a private higher education sector in the UK is part of a global trend. Throughout the world, the number of students in private institutions is growing faster than in publicly-owned and funded ones. The reasons are simple; governments simply cannot afford to pay for the higher education that is required; thus, the private sector is expanding to meet the demand. It is what Dan Levy has called “demand absorbing”¹. As Table 1 shows, private provision is highest in those regions where the expansion of higher education is the greatest and governments are overwhelmed by the financial implications.

Table 1. PROPHE data by Region

Region	Private % of total enrolment	Numbers of students in private HEIs	Private HEIs as % of the total	Numbers of private HEIs
Africa	14.6	0.7m	59.2	434
Asia	36.4	18m	57.8	18,206
Latin America	48.6	7.6m	71.3	7,090
Europe	16.0	3.7m	25.7	2,136
USA	26.1	4.7m	61.3	2,667
World totals	31.3	35m	55.7	30,555

Source: PROPHE (2010). Public and private higher education shares for 117 countries, 2001-2009. (updated November 2010)

Note: These figures are amalgams of differently defined data for different years (2001-2009) and are intended to give an approximate feel for the scale of provision.

The Table shows that the scale of the private sector is lowest in Africa and Europe – for two very different reasons. In Africa there is certainly unmet demand for higher education as the continent’s gross enrolment ratio hovers around 6%, but the issue is the ability to pay private tuition fees. In most of Western Europe, on the other hand, there has been a long tradition of publicly provided higher education and so the private sector has nibbled away at the edges of

¹ Levy, D (2009). In Bjarnason, S et al in *A New Dynamic: Private Higher Education*. Paris, UNESCO.p 8

the market offering specialist provision (except in the case of religious foundations which are older, with wide-ranging provision). This contrasts with Eastern Europe where the withdrawal of the Soviet Union was met with a dramatic growth in private providers offering courses close to market needs.

Contrary to conventional wisdom, most private higher education is not-for-profit and is not at degree level; but, this has many facets in different countries. There is the dominant picture of the non-profit sector in the USA (1,127 out of 1,905 institutions in 2005)² and in Africa, an equally dominant role for institutions with a religious mission. In other countries, there are the institutions established by charitable or benevolent proprietors such as Grameen University in Bangladesh. In some countries, such as Indonesia or Japan, the private sector has provided the bulk of higher education for many years.

As the Table shows, private institutions outnumber public ones. This is due to their size and their age profile; there are a large number of small institutions that have just started up, but even when fully developed, they are usually not large, with a few notable exceptions in Japan, India, Indonesia and the USA. In the UK, the profile of private colleges offering degrees is very similar and we believe there are no more than 5 or 6 with more than 2,000 students.

The other key feature of private providers is their predominant focus on disciplines such as business, law, computing, hospitality and tourism and management. Again, the colleges in the UK are at this stage of their development with their courses almost entirely in those subjects. From this base, many private institutions later branch out into social sciences or health-care programmes. There are some notable exceptions such as Manipal University in India (see below); and in India, generally, the majority of engineers receive their degree from private providers.

Manipal University

Manipal University claims to be the leading higher education provider in India with over 20,000 students on its main campus and with other campuses in Dubai, Nepal, Malaysia and Sikkim. Its largest provision is in medicine and engineering and it claims that one quarter of the doctors in Malaysia and over 3,000 in the USA have been trained at Manipal. The University is the first private institution in India to have been classified as a “deemed university”. The Times of India has ranked Manipal as the second best medical university in India and its dental school has been ranked as number 1.

Source: Manipal University website.

Classifications of private providers

² Kinser, K (2010). *Access in US Higher Education: What does the For-Profit Sector Contribute?* Available on the website of PROPPHE at <http://www.albany.edu/dept/eaps/prophe/>

The private ‘sector’ of higher education in many respects defies classification, or at least, simple classification. In the first instance, it can hardly be described as ‘a sector’ as there are few elements among the varied providers that cause them to coalesce together in one country or to cohere across countries through sharing common features and patterns of provision. Secondly, the range of providers is very heterogeneous and, while some of this variety has existed for a century or more, other developments are more recent. Thirdly, the landscape of private providers continues to be dynamic, as new entrants emerge and existing providers change their shape or their owners. Fourthly, and perhaps most significantly for classification purposes, the boundary between what is described as a ‘public’ or ‘private’ provider has become increasingly blurred as funding streams for both types come from public and private sources³, as public-private partnerships increase in scale and scope and as both types of provider can lay claim to delivering ‘private’ and ‘public good’ outcomes. Finally, and of particular relevance to this report, different countries include providers offering different levels of qualification in their categorisation of ‘the private (HE or tertiary) sector’. This makes direct comparisons with the UK sometimes difficult, since our post-secondary sector is subdivided into HE and FE (as many private providers are offering FE-level provision). In the present paper, our focus is on degree-level HE providers and provision.

Despite the difficulties, classifications exist, although none is perfect. There are overlaps between categories and different providers may be located in more than one category. Terminology can also change over time; for example, the term ‘proprietary’ is often-used interchangeably with ‘for-profit’ in the literature and in US debates today, yet the latter term was rarely used before the 1980s. Levy and his colleagues⁴ discuss classifications that cover roles (such as increasing access) and mission (for-profit, not-for-profit, and religious). This classification may also include ownership: family-run, other proprietary, and business-owned, including corporate universities, publicly-traded and international chains.

Another common three-way classification is based around elite, religious or demand-absorbing private HE provision⁵. In his overview report for the UNESCO World Conference on Higher Education in 2009, Levy argues for some reconfiguration of these three commonly-used categories into elite/semi-elite; religious/cultural and non-elite/demand-absorbing. He notes that there is cross-over between the categories and that all three can function within countries. In addition, for-profit higher education and private-public

³ In this report, we often refer to traditional universities and higher education institutions as ‘publicly-funded’ to differentiate them from our discussion of private (not-for-profit and for-profit) providers. However, this descriptor is not accurate since most traditional UK universities are technically ‘private institutions’ and the Treasury has for some time described UK HEIs as in ‘the private sector’. Forthcoming changes to teaching funding in England will reduce levels of public funding to these institutions significantly, making the public-private descriptor based on funding sources increasingly redundant.

⁴ Levy, D. (2009). “Growth and Typology” in Bjarnason, S., Cheng, K-M., Fielden, J., Lemaitre, M-J., Levy, D., & Varghese, N.V. (2009). *A New Dynamic: Private Higher Education*. Paris, UNESCO

⁵ Geiger, R.L. (1996). “Diversification in US higher education: historical patterns and current trends”. In Meek, V.L., Goedegebuure, L., Kivinen, O. & Rinne, R. (eds). *The Mockers and the Mocked: Comparative Perspectives on Diversity, Differentiation and Convergence in Higher Education*. Oxford, Pergamon Press; Marginson, S. (1997). *Markets in Education*. St Leonards, New South Wales, Allen and Unwin

partnerships represent emerging and growing categories; and for-profit providers tend to overlap with the 'non-elite' category of private provider. For-profit providers may also exhibit multi-faceted international dimensions; for example, the Apollo Group and Laureate Education are international businesses operating in several countries. Public-private partnerships can also be sub-divided into partnerships between publicly-funded HEIs and private colleges (not-for-profit and for-profit non-elite institutions) as well as partnerships involving 'private students' studying in publicly-funded institutions⁶.

A recent empirical and historical study of the for-profit providers in the US⁷ notes the 'huge amount of institutional diversity' in this type of private provider. The author traces early classification systems for the for-profit 'sector' and seeks to build on a classification proposed by the Education Commission of the States (ECS) that was designed to highlight the changing environment of for-profit higher education in the 1990s. The ECS classification divided for-profit providers into enterprise colleges (locally-oriented institutions, owned and managed by an individual, family or small corporation); super-systems (multi-state, multi-campus institutions with stock that trades on Wall Street) and internet institutions (the virtual universities of the for-profit sector). Kinser's new classification concentrates on two and four-year degree-granting, accredited and US-based institutions since these types of institution form the main part of 'higher education' in the US. He does not include non-degree granting institutions, but recognises that these are very numerous among the for-profit providers. The first element of Kinser's classification covers 'location', ie. the number and geographic scope of campuses associated with the institution: neighbourhood, regional or national institutions. The second element is 'ownership' (the management structure of the institution). This includes enterprise institutions owned by a family or individual entrepreneur, venture institutions owned by private corporations, and shareholder institutions owned by publicly traded corporations. The third element covers 'highest degree awarded' and includes institutes which offer at most two-year degrees, colleges that offer a four-year degree and universities that offer programmes that lead to graduate or professional degrees. Kinser's classification has a number of features that are relevant to the UK's private for-profit provider landscape.

Other approaches to classification of private providers have been suggested by Dima⁸, separating private organizations by funding, by control, by mission, by size and by disciplinary structure. Knight⁹ in her analysis of cross-border providers (which are usually considered to be private entities in the country they move into) separates these providers into recognised higher education institutions, non-recognised HEIs, corporate HEIs, commercial company HEIs, cross-border collaborative networks and affiliations, and virtual HEIs.

There are clearly differences between researchers in how they choose to dissect the field. However, there are two areas of broad agreement: the private sector is heterogeneous and it is

⁶ Levy, D. (2009). Op cit; pp21-22

⁷ Kinser, K. (2006). *From Main Street to Wall Street: The Transformation of For-Profit Higher Education*. ASHe Higher Education Report, Vol 31, No. 5. San Francisco, Jossey Bass

⁸ Dima A-M. (2004). "Organisational typologies in private higher education" Paper presented at Consortium of Higher Education Researchers (CHER) 17th annual conference, 17-19 September 2004

⁹ Knight, J. (2005). "New typologies for cross-border higher education". *International Higher Education*. 38, Winter 2005

becoming increasingly difficult to draw clear distinctions such as public and private or for-profit and not-for-profit, as Tight suggests¹⁰. The concept of ‘borderless higher education’ has been used to capture the breaking down or blurring of previously secure boundaries between organisations and sectors and the configuration of new boundaries.¹¹ Private providers and public-private partnerships fit within this concept.

A key question for the UK is what classification system is most appropriate, accurate and useful with regard to the framing of regulations, as a basis for data collection at institutional and national levels, and as a foundation for policy analysis and research.

Claims for and against private providers

A context for current debates

Debates about the presence, contribution, value and motivations of private providers in the UK higher education sector typically demonstrate more rhetoric and ideological positioning than rational and evidence-based argument. There are several reasons for this including the dominance of a non-profit, publicly-funded system in public policy - and public experience - in the UK over decades, the diversity of the private ‘sector’ and associated difficulties in classifying providers, a lack of national-level data collected on the private sector of higher education and, until recently, a relative lack of academic and policy interest in studying and analysing this part of higher (and further) education. The situation is not so different in the US as regards for-profit provision. The author of a recent authoritative study on the for-profit sector in the US¹² notes:

“For nearly the entire 350-year history of higher education in the United States, non profit status has importantly defined colleges and universities. Rather than operating for private gain, higher education institutions were created to serve the public good. The two ways that institutions are funded in service to society has been simply classified into either public or private higher education...adoption of this classification based on non profit status has proved useful for public policy analyses, historical treatises, and reform theses...[but] it unfortunately is incomplete”.

The Series Editor for this 2006 report makes a further comment about the for-profit sector that resonates with the UK scene:

“Despite their long-standing presence in the landscape of American higher education, for-profit institutions tend to be dropped from mainstream conversations about higher education

¹⁰ Tight, M. (2006). “Changing Understandings of ‘Public’ and ‘Private’ in Higher Education: the United Kingdom case”. *Higher Education Quarterly*. 60:3, 242-256

¹¹ Cunningham, S., Ryan, Y., Stedman, L., Tapsall, S., Bagdon, K., Flew, T., Coaldrave, P. (2000). *The Business of Borderless Education*. Canberra, Department of Education, Training and Youth Affairs; CVCP (2000). *The Business of Borderless Education: UK Perspectives*. Vols 1-3. London, CVCP (now Universities UK)

¹² Kinser, K. (2006). *From Main Street to Wall Street: The Transformation of For-Profit Higher Education*. ASHE Higher Education Report: Vol. 31, No. 5. San Francisco, Wiley Periodicals, Inc. P1

policy and research. For-profit institutions operate on the fringe of higher education, and those who work in and study traditional forms of higher education – the public and private research universities, liberal arts colleges, and community colleges – tend to view them suspiciously.”¹³

Other contextual factors relevant both to the US and UK also influence the debate. On the publicly-funded side, there is accumulating evidence – as well as substantial controversy – about how these universities have entered the marketplace¹⁴ as government funding has declined. A growing reliance on tuition fees and other private income sources makes the ‘public-private’ divide much less clear. In the US private sector, a continuing rise in tuition fees for private colleges coupled with a decline in needs-based student support has also raised critical questions about whether these higher education institutions are operating for the public good or for their own aggrandisement. In the UK, the growth of public-private partnerships¹⁵ has added to the increasingly blurred and overlapping relationships, roles and motivations of public and private providers; and in both countries, the emergence of for-profit providers, particularly the large corporate providers (or ‘shareholder institutions’) is further changing the landscape. Claims for and against private providers need to be viewed against this changing context. They also need to be nuanced by recognising distinctions, similarities and overlaps between publicly-funded universities and colleges (with private enterprise components); private non-profit institutions (making public value contributions) and for-profit-institutions that are in joint ventures with publicly-funded institutions for declared mutual benefit. Finally, it is not wise to ignore history, however incomplete the record.

Claims in favour of private providers

Government claims made in favour of the presence of private providers in higher education are principally centred on economic arguments: they cater for unmet demand for student places, they operate efficiently and so provide value-for-money for any tax-payer (and private) investment and they offer competition for publicly-funded providers which will serve to increase efficiency in these institutions as well as driving up quality across the system. Claims that they widen access to higher education are heard less frequently from governments in the UK and US, but more often in other regions such as Africa where in most countries the State struggles to fund an average of 6% of the age group in higher education.¹⁶

Private providers echo some of the claims made by governments, in relation to efficiency in their own business models and in their ability to meet unmet demand for higher education, particularly among the working-adult population. They also claim to widen and increase

¹³ Foreword by Kelly Ward, Series Editor, p.xi in Kinser, K. (2006). Op cit.

¹⁴ Bok, D. (2003). *Universities in the Marketplace: The Commercialization of Higher Education*. Princeton and Oxford, Princeton University Press; Newman, F., Couturier, L., & Scurry, J. (2004) *The future of higher education: Rhetoric, reality and the risks of the market*. San Francisco, Jossey-Bass.; Slaughter, S. & Rhoades, G. (2004) *Academic capitalism in the new economy*. Baltimore, Johns Hopkins University Press.; Brown, R (ed). (2010). *Higher Education and the Market*. London, Routledge

¹⁵ The recent growth in, for example, partnerships with foundation-level private providers in the UK was highlighted in Fielden, J., Middlehurst, R. & Woodfield, S. (2010). *The Growth of Privat and For-profit higher education providers in the UK*. London, UK

¹⁶ Two exceptions to this rule are Ethiopia and South Africa.

access to higher education through flexible modes of study and accelerated routes to qualifications. Private providers claim that they can deliver as good, if not higher quality (and value-for-money) services for students because of their focus on teaching and a student-centred approach to learning. Students are also reported to be well-served by curricula that are largely vocational and focused on the professions, that draw in practitioners as teachers, that are closely integrated with industry sectors and that are designed to fit the needs of employers and employees. The large corporate providers can also claim that they are able to grow their business by attracting more and more students, by expanding within and across countries and by achieving economies of scale; these features make them attractive to both public and private investors.

Critiques of private providers

Claims made against private providers (in general) include their often narrow curricula in terms of subject spread and breadth and depth of student experience; high tuition fees that limit access to the elite; and the absence of teaching linked to research which purportedly lowers the standard as well as the quality of education provided. These claims mask important distinctions between private providers that must add caveats; for example, the 'elite' private providers in the US offer broad curricula and depth of student experience and their staff engage in teaching and research. High fees are charged, but many scholarships are available. At the other end of the spectrum, 'demand-absorbing' private providers may offer a narrow curriculum and more limited student experience, with staff focused on teaching rather than research, but tuition fees are not necessarily high and may be lower than those charged in publicly-funded institutions.

Claims against for-profit providers tend to be more wide-ranging. They may include the above, but also a critique of sharp practice such as pressure to recruit students without due regard to their potential to succeed, false or over-inflated claims concerning graduate success and employability, pressure on staff to perform to corporate standards of efficiency in teaching to the detriment of student learning, and the siphoning off of resources that could or should be devoted to the business of education into the pockets of shareholders. Critics have become more vocal about this last point as the size of profits in the large corporations has grown and as these profits are linked (in the US) to the providers' ability to access federal aid for students. Some parts of this sector have also had a record of fraud and abuse of federal aid as well as a record of students defaulting on loans and these have added weight to the critique. They have also led to increasing regulatory responses.

Other factors such as developments in ICT, internet access and e-learning, in parallel (and in combination) with potentially lucrative returns from 'trade in higher education services' have added other claims against the growing commercialisation and 'privatization' of higher education. The arguments against such 'privatization' claim that it can lead to unethical – and at worst – fraudulent and unlawful practices as profit motives and private returns outweigh or eclipse a focus on the public benefits of higher education. At the fraudulent end of the spectrum, students as well as governments are the losers and the overall reputation of higher education is potentially sullied. Warnings have gone out, for example, from accreditation and quality assurance agencies in the US, the UK and elsewhere about the rise

of so-called ‘degree mills’. These bogus providers have been described by the Council for Higher Education Accreditation in the US (CHEA) as offering a credential in exchange for payment. Other features of degree mills include: a lack of legal authority to operate as higher education institutions or to award degrees, requiring little if any attendance or coursework from students, providing no information about location of incorporation, ownership or governance, and publishing false or exaggerated claims of external quality review (accreditation or quality assurance).¹⁷

Further blots on the landscape that affect public and policy debates, particularly in the UK at present, are concerns raised by the Home Office that international student recruitment is a potential route to illegal immigration; and national security issues linked to radicalised students have also been voiced in connection with international student recruitment. Private providers, some of which are solely focused on recruiting international students, are notably in the frame with regard to such claims and concerns, even though they could apply to either publicly-funded or private providers.

Advantages and disadvantages of a growth in private sector provision

For some governments, the growth of the private sector is a godsend. If they provide no funding for the sector (or for the students within it), they are relieved of some of the financial burden arising from the demand for higher education. At the same time, the national economy will benefit from the addition of more educated young people and the cost will have been borne by the private purse. A government that is seeking to gain from the knowledge economy will bless the private sector, particularly if its graduates have skills that employers want and do not join the ranks of the unemployed, as sometimes happens to the graduates from public universities in many developing countries.

However, these benefits come at a price. The criticisms listed above will all be aired. In addition, the private sector is not usually sensitive to public policy concerns; it does not readily take on board issues of fair access; it cannot typically afford (apart from the well-endowed US not-for-profits) to make many scholarships available¹⁸ and the selection criteria in admissions policies will be dominated by the ability to pay. No government can force the private sector to start a new academic programme; institutions will do so only on the basis of their own assessments of market demand and the ability to pay. Thus, private providers can easily be open to charges of “cherry picking” only those professional and vocational courses that are profitable and where students will see personal benefit from their studies. In general, therefore, the larger the share that the private sector has of higher education provision, the less control a government has over what is delivered, unless it decides to provide public funds to all those that enrol in private institutions or incentivise private institutions for doing certain things. Where this is not the case, higher education policy goals can be set for the

¹⁷ Note – we do not deal in this paper with the issues arising from degree mills and other fraudulent practices.

¹⁸ There are examples in the emerging UK private sector of a few of the more established providers creating scholarship schemes.

national higher education sector, but will only be followed by the publicly funded part of it.¹⁹

Another concern expressed by governments is the consistency of the quality of what is offered by private providers in comparison with the publicly-funded sector. Assuming that the public sector is regarded favourably, will the existence of some private providers offering low quality programmes damage the national reputation? In order to avoid this risk, the standard response by governments is to subject private providers to a quality assurance regime (often not applied to the public sector) that takes the public sector's academic standards and norms as being the benchmark for 'best practice'. This approach may satisfy the public wish to see some control, but does not necessarily result in high quality provision as it may build in outdated or uninspiring public sector practices. It can also dampen innovation which is one of the potential benefits of having a prosperous private sector.

It is hard to generalise about the students' perspective on the private sector, since their views differ according to the circumstances of each country. Typically, where there is unmet demand, the students view the private sector as a second best after state-funded education. They would prefer to go to public universities where tuition fees are low, but when these are full they have no choice and reluctantly they and their parents accept the financial consequences. In countries where the level of higher education provision nearly matches demand, the student decision to go to a private institution will be based on a reputation for quality, a view that the subject is better taught or that there are better chances of getting employment because of employers' links with the provider. However, student choice decisions are not always very sophisticated. Recent research by the British Council in Hong Kong, SE Asia and Malaysia confirmed that the most important criterion influencing the choice of a private institution was the quality of their buildings and library facilities.²⁰

2. The current position in the UK and the USA – What are the policy messages?

The UK position

In this section we provide a brief description of the present position as far as we know it, based on our previous research and on some interviews with leading providers in the sector.²¹ We then compare the UK picture with that in the United States and finally, we discuss what lessons we can derive from the US experience.

¹⁹ This assumes that government does not seek to regulate private providers on academic matters. There are very few examples globally of this happening. The farthest that some go is to set entry criteria for students, to set caps or racial quotas on numbers in the private sector; in a few cases (eg; Vietnam and Malaysia) governments have specified that certain subject modules must be part of any student's curriculum.

²⁰ See the Research projects at <http://www.britishcouncil.org/tne-emi.htm>

²¹ Universities UK (2010) *The growth of private and for profit higher education providers in the UK*. By CHEMS Consulting.

In the UK, there is a small but growing private sector which is located predominantly in London and in England. Nobody knows the exact number of students from home or overseas who are studying for degrees in the sector, as no statistics are routinely collected²². If we define private providers as those organisations offering degree-level programmes and receiving no public funds,²³ we can identify the following categories of provider:

- UK campuses or branches of foreign universities. There are estimated to be between 50 and 90 branch campuses of American universities, but they do not enrol UK or EU students. However, there are exceptions, since the American InterContinental University and Richmond, the American University in London subscribe to QAA and UCAS and do seek to enrol UK/EU students. In addition, campuses have been established by universities from Iran, Malaysia, Poland and India.
- The five organisations that have been granted degree-awarding powers (DAPs) under the Higher Education Act 2004. With one exception, they are not-for-profit organisations; :
 1. The University of Buckingham, a not-for-profit company incorporated in 1973
 2. BPP Ltd, a for-profit company that began in 1976 and is now a subsidiary of the Apollo Group in the USA
 3. The College of Law, a charity created by the Law Society in 1967
 4. Ashridge Business School, a charitable educational trust established in 1959
 5. IFS School of Finance, a charity established over 130 years ago as the Institute of Bankers.
- The largest group of private providers are those colleges that have been validated by UK HEIs to award their degrees (or which offer their franchised programmes). These are almost all based in London and until recently have been targeting international students. The number of such colleges is hard to specify, since using a UNESCO definition of “degree level” education would bring in many organisations offering only professional qualifications such as those offered by the ACCA, BCS and the Confederation of Tourism and Hospitality. However, the British Accreditation Council (BAC), one of the two bodies authorised to accredit these providers for the purposes of UKBA recognition as entitled to receive a Tier 4 licence, told us in March 2010 that it had accredited 177 colleges to offer higher education qualifications. BAC estimated at that time that some 25,880 students were studying in these colleges for HEI-validated awards. The Accreditation Service for International Colleges (ASIC), the second body authorised to accredit private colleges, currently lists 427 organisations that it has accredited; some of these will be offering higher education.

²² In 2011, at a request by the Department for Business, Innovation and Skills, HESA has undertaken a survey of private providers in the UK but only 65 organisations responded. These reported about 38,000 students on higher education courses.

²³ This definition may not survive the withdrawal of HEFCE funding from many English HEIs that are currently in the publicly funded sector.

- The analytical categories adopted in our recent study of the growth of private providers of higher education in the UK (for UUK) were based on ‘unbundling’ the higher education process to identify the different ways that the private sector played a part. In this way, private provider ‘activities’ and ‘functions’ were used to create four broad headings with some subsidiary classifications, as in Table 2 below. However, as with other classification systems, this one was not water-tight, since some providers straddle several categories. Kaplan, for example, is an educational conglomerate with activities in several of the subsidiary areas.

Table 2: Classification of UK private providers by function

Function	Sub function
Delivery of academic content	Offering own degree (using UK degree awarding powers)
	Offering own non-UK degree (with accreditation overseas)
	Offering own award in partnership with a UK institution
	Offering an award from a UK partner institution
	Offering own certificated module within (or alongside) a partner university’s degree programme
	Offering own (overseas) online awards (with no UK face-to-face support)
	Partnership in online course delivery
Pathway providers	English language and study skills training
	Foundation year programmes
	First year programmes
	Pre-Master’s programmes
Partnership in providing content	Production of course materials under subcontract
	Provision of online learning modules to fit within an institution’s virtual learning environment
Other types of relationship	Partnerships with the private sector in continuing professional development design and delivery for third party clients
	Contracted tutorial support in the UK and overseas
	Educational testing and assessment services in specialist fields
	Granting of accreditation or quality assurance services in professional or technical fields
	Agreed articulation into a university’s degree programmes from qualifications awarded by a private provider

Our report concluded that the provision described in the Table could be further analysed into those where a UK HEI was in control of the relationship (such as contracting with a pathway

provider for English language or foundation courses) and those where there was potential competition. We suggested that all the five categories delivering academic content could be competitors for the publicly-funded sector.

One of the key reasons why public providers have concerns about private providers is their pricing policy. In the majority of cases, they recruit only international students and set their fees at levels well below those charged to international students by their validating institutions. In the light of the proposed increase in tuition fees in the public sector, some colleges are now actively targeting UK/EU students and offering them programmes at fees lower than those for international students. The price differential between public and private providers could be attributed to the different experiences and facilities that private sector students receive. Table 3 shows examples of these different rates.

Table 3. Some tuition fees charged by private providers

College	Course	Award by	UK/EU fee	International fee
Greenwich School of Management	BSc Business Management	University of Plymouth	£4,400 pa	£10,425 pa
EThames Graduate School	MBA	University of Sunderland	£4,750 over 18 months	£6,950 over 18 months
Amity Global Business School	BA Business Management	Anglia Ruskin University	£2,800 pa	£4,500 pa
London School of Business and Finance	MBA	University of Wales	£11,500	£14,500

Source: College websites, 2011

Most colleges are not yet marketing themselves to UK students, although this is very likely to change, particularly if UKBA restrictions on visa numbers reduce their intake of international students.

Although almost all the private colleges are small with none exceeding 5,000 students, they have been expanding rapidly both in the UK and overseas, since some are establishing campuses abroad to feed in flows of students for top-up degrees. The two colleges offering postgraduate law qualifications are also growing and spreading their networks of campuses into cities outside London.

The overall numbers of students in the private sector (which have been estimated at least as 50,000) are insignificant compared with the figure of 2 million UK/EU students in the publicly-funded HE sector; however, since most of them are international students, a better comparison is with the 230,000 international students in publicly-funded HEIs in the UK. Since most of the private colleges provide no statistics to HESA, their students may well need to be added to this figure. What is important for policy makers, however, is the fact that these students can raise issues about the UK's reputation for quality (since, while some providers are excellent, there are undoubtedly others of poor quality).

The regulatory environment in the UK

A broad definition of a regulatory framework for private higher education suggests that there are seven elements to regulation:²⁴

- Legislation that provides a statutory basis for the private sector to enter the national market and clarifies providers' rights and obligations.
- Policy statements on the role that the private sector is expected to play in meeting national goals for higher education.
- Clear procedures for the establishment and licensing of new private providers.
- A quality assurance framework that gives the public confidence that the quality of the teaching and research delivered by private providers is at least as good as that provided by publicly-funded institutions.
- Policies on the financial support that private providers can expect and their access to any financial incentives.
- A policy on their students' entitlement to access the grants and loan schemes available to students at publicly-funded institutions as well as policies on the institutions' ability to access the UK HE academic resources' infrastructure (eg in the UK's case, JANET, JISC, SCONUL Access schemes).²⁵
- A statement of providers' obligations to report and publish information on their activities.

The current position in the UK is that most of these seven elements are missing or unclear, although some of the omissions may well be corrected by pending legislation. The regulations and rules concerning private providers are very complex and are scattered in various Acts and instruments; this is not the place to try to explain them.²⁶ The net effect is that for an educational investor or entrepreneur the regulatory framework is confusing. For example:

- Any foreign organisation with "university" in its title can establish itself in the UK with no checks on its status, whereas any UK-based organisation has to apply for a university title and meet certain criteria.
- A foreigner could be forgiven for thinking that the accreditation rules for private providers were written and applied by the Home Office rather than the Education Ministry, since the UK Border Agency currently approves two accrediting bodies (BAC and ACIS)²⁷ to carry out comprehensive checks on those wishing to enrol international students in higher education. If a provider fails to gain accreditation, it

²⁴ Fielden, J and Varghese, N V (2009) *Regulatory Issues* in Bjarnason, S et al , op cit

²⁵ JANET is the Joint Academic Network, JISC is the Joint Information Systems Committee and SCONUL is the Society of College, National and University Libraries which manages a scheme allowing publicly funded students to use all higher education libraries.

²⁶ For a useful summary see the UniversitiesUK (2009) publication by Glynne Stanfield of Eversheds *Developing future university structures: new funding and legal models*.

²⁷ In March 2011, further changes to UKBA approved accreditation arrangements were announced

- cannot apply for a licence to sponsor international students under Tier 4 and would effectively lose its source of income.²⁸
- The Quality Assurance Agency, following an application to award taught degrees, reviews whether a provider (public or private) is competent to award such degrees and makes a recommendation on the grant of DAPs to the Privy Council. The issues that are examined in these reviews are different from those used to review publicly-funded universities in the current programme of Integrated Quality and Enhancement Reviews (IQER)²⁹.
 - If a private provider does obtain DAPs, these are subject to review by the QAA after six years, whereas there is no such check for public organisations gaining DAPs.³⁰
 - Some private providers - but not all - have been able to use the .ac.uk prefix in their internet domain name. After a certain date, UKERNA stopped allowing other private providers to have the designation.
 - Private providers are not formally reviewed by the QAA, but seven subscribe to the QAA's review processes and one private provider is voluntarily undergoing an IQER at present.
 - There is no obligation on private providers to report on their statistics (eg staff and student numbers) or finances except through financial accounts lodged at Companies House (and these are usually the very abbreviated and uninformative versions).
 - At present, the rules concerning which UK/EU students attending "designated courses" at private institutions are eligible to apply for student loans or grants are extremely opaque and hard to access.

It is clear that the UK's regulatory framework for private providers is overdue for clarification and codification; there remains the question as to whether the same regulations should apply to all HE providers regardless of their ownership, motive and designation.

Current claims and counter-claims in the UK

In the UK, media reports on private sector developments often give rise to a variety of claims and counter-claims; these can be instructive in highlighting key issues and fault lines in debates about private providers. The announcement of BPP's university college title in July 2010³¹ in the Times Higher Education Supplement (THE) gives a flavour of the debate. The following comments looked favourably on the entry of private providers into UK HE:

²⁸ In April 2011 this regime was changed as regards those private colleges wishing to acquire Highly Trusted Sponsor status. Before they can become a sponsor they will now need to complete a successful review by the Quality Assurance Agency.

²⁹ There are changes pending to the external QA review system organised by QAA with respect to the publicly-funded HEIs and a new Institutional Review process will begin in the academic year 2011-12.

³⁰ . In Scotland, it is technically possible for DAPs to be withdrawn. During the Dearing Review there was discussion of making this the case for all HEIs with DAPs but the idea was not supported.

³¹ See article by Simon Baker on 26 July 2010: "BPP wins university college status as David Willetts acts on pledge to boost private providers" and Readers' Comments - <http://www.timeshighereducation.co.uk/story.asp?storycode=412737&encCode=8256>; accessed 28.7.10

- Private sector contributions to HE are to be welcomed as they widen access to a range of providers, meet unmet demand and add flexibility and greater dynamic into the HE system;
- Private providers can inject ‘business sense’ into the HE sector; these providers could take over financially-failing institutions;
- Private providers fulfil a valuable niche offering qualifications in professional subjects;
- Private sector providers with degree-awarding powers are more accountable than those in the publicly-funded sector as these powers are only granted for six years following inspection;
- High quality private providers are recognised by both students and employers.

Critics raise the following issues:

- Private providers are not as accountable as publicly-funded providers as they are not obliged to publish as much information about their business;
- Private providers rely on staff with part-time rather than full-time contracts;
- Private providers do not take in the same calibre of students as ‘traditional universities’;
- In the pressure to acquire tuition fees, over-recruiting (and pressurised recruiting practices) occur in the private sector;
- Private providers do not engage in research and this is detrimental to the quality of teaching and learning;
- The private sector is dependent on the research knowledge and intellectual property (IP) generated in the publicly-funded universities; the business model is ‘parasitic’ on public resources;
- Academic research and teaching should be public goods.

The University and College Union (UCU) in the UK has published two recent reports relating to private providers which focus mainly on for-profit providers.³² In the first of these, key arguments focused on the apparent growing political consensus in the UK concerning the ‘privatisation’ of publicly-funded institutions and political encouragement to for-profit providers to offer their own degrees. The authors warned that the following consequences will emerge: an increasingly unaffordable HE system that fails to widen participation and prevents access to high quality education for the poorest; and a growing

³² UCU (2010). *Privatising our Universities: A UCU report on the new cross-party consensus and the Americanisation of UK higher education*. London, UCU, February 2010; UCU (2010). *Subprime Education? A report on the growth of private providers and the crisis of UK higher education*. London, UCU, September 2010

private sector marketing a poorer product at high prices to vulnerable people to satisfy shareholders.

The second UCU report notes current heavy lobbying of Ministers by for-profit providers in the UK to bring in changes that would help them to compete with traditional universities on ‘a level playing field’. This raises UCU concerns that the outcome of successful lobbying would bring to the UK the same “de-regulated conditions and system of public subsidies that have enabled the growth of the for-profit sector in the USA”.³³ Other concerns raised by the authors include for-profit providers’ treatment of staff, the absence of academic freedom, a lack of transparency and accountability among the providers, and prioritization of shareholder interests. In support of their arguments, the UCU reports on recent scandals and regulatory debates in the US and warns against relaxing regulation for fear of replicating these conditions with the prospect of similar scandals occurring in the UK. The UCU predicts that there would be consequent damage to the reputation of UK higher education as a whole. In contrast to these reports, a recent Policy Exchange paper³⁴ argues for greater private sector involvement in UK higher education and recommends creating a ‘level playing field’ to encourage this development.

A historical perspective from the US

A study of the history of the for-profit sector in the US is necessary and useful in several ways: it can hold a mirror up to UK developments, provide an explanation and rationale for visible trends on both sides of the Atlantic, serve as a reminder that some arguments are not new, and provide evidence of where claims and counter-claims have substance and need to be taken seriously in policy developments. Kinser’s analysis of the origins and growth of the for-profit sector fulfils these purposes and we draw on it below.

Today’s for-profit providers in the US include relative newcomers to the scene with origins in the 1970s such as the Apollo Group or Laureate Education (both entrants to the UK) as well as providers with a history dating back to the 19th century. The historical roots of these providers vary. They can be traced back through different pathways to the development of business courses in the 18th century; the emergence of non-degree level private trade, professional and career education colleges in the 19th century; and the development of distance education in the International Correspondence Schools founded in 1901 (now operating as Thompson Education Direct).³⁵ Kinser suggests that the 19th century private business college provides the most direct connection to the for-profit sector of the twenty-first century, with more than one hundred such providers still in operation in the US³⁶.

Drawing on several sources, the author identifies distinct eras of for-profit higher education. The story in the US has several parallels with that in the UK. The first era, associated with a waning apprenticeship system and increasing scale of businesses, is described as a formative era lasting (from 18th century or earlier beginnings) until the early 1850s. During this period,

³³ UCU. (September 2010). Op cit, p4

³⁴ Policy Exchange (2010). *Higher education in the age of austerity: the role of private providers*

³⁵ Note: these different historical roots do not include the non-profit private sector. Religious and philanthropic origins can be seen within this group.

³⁶ Kinser, K. (2006). Op cit. P17

individual entrepreneurs established private business colleges. The second era of ‘organization and monopoly’ (1850s-1890s) saw the growth and expansion of these business schools to become a significant institutional presence in US higher education. There followed in the first part of the 20th century a period of growth and competition for these private colleges from public institutions as the latter developed new models of practical and vocational education and as federally subsidized vocational programmes expanded in the public sector. The waning fortunes of the private colleges were given a boost in 1944 with the passage of the GI bill. Previous legislation had focused on supporting and developing public education, but after heavy lobbying, for-profit higher education providers were included in federal student aid programmes; and after 1952 requirements for maintaining eligibility in subsequent federal aid programmes shifted towards institutional accreditation. This fourth era marked a change in the relationship between government and the for-profit sector; it also meant that the for-profit sector lost independence so that by the early 1990s, it had become ‘a regulated industry as a result of its participation in federal aid programs’.³⁷ The current phase and fifth era is described as the Wall Street era, heralded by the growth and visibility of publicly-owned corporate providers of higher education. This corporate expansion was also linked with parallel developments: the rise of degree-granting for-profit higher education providers and the evolution of Internet-based distance education. The rapid growth and scale of some of these corporate providers (such as the Apollo Group) have doubtless contributed to their prominence in the higher education landscape and in public debates; however, it is worth remembering that both in the UK and the US, these large corporations represent a small proportion of the for-profit (and overall numbers) of private providers in each country.

The current position regarding for-profit and not-for-profit private providers in the USA

Data on the US private sector institutions can be found in a federal source called the Integrated Postsecondary Education Data System (IPEDS) which provides comprehensive information on all those institutions participating in federal student aid programmes. Kinser (2010)³⁸ has analysed the 2006 returns and provides some illuminating insights relating to the for-profit institutions. His analysis of all university level institutions in the USA gives the following numbers, using the classification of the for-profit sector that we referred to earlier:

Public institutions	594
Private Not-for-profit institutions	1,127
Private For profit institutions	
Enterprise	41
Venture	31
Shareholder	<u>112</u>
	<u>184</u>
Total	1,905

³⁷ Kinser, K. (2006). Op cit. P 22

³⁸ Kinser, K. (2010) op cit.

It is notable that by far the largest category is that of the not-for-profit universities, a category that includes the Ivy League universities, some religious-based universities and a large number of small, elite institutions.

Kinser’s analysis produces some interesting findings which give us a picture of US private for-profit higher education that we might not have anticipated:

- The student enrolments in for-profits can be small (averaging 1,000 per institution) and even in “shareholder” institutions the average is only 1,596.
- In 2006, the private providers enrolled about 3.5m students of whom only half a million were in the for-profits.
- Three out of four students in for-profit higher education were women.
- At university-level shareholder institutions 80% of the students were over 25 years old.
- The difference between revenue per FTE and expenses per FTE is highest in the non-profit sector at 25%. For for-profits it is about 20%.
- In the private for-profit institutions, as one might expect, tuition accounts for 90% of revenue compared to just under 60% in the private non-profits. (In contrast, tuition is a mere 24% of total revenue in public institutions.)
- Analysis of the expenditure of for-profits shows that they spend only about one quarter of their tuition income on instruction.
- For-profit institutions take in a disproportionate share of Pell grants available to students from low income backgrounds and have higher default rates compared to public and not-for-profit institutions. (This may reflect, Kinser suggests, the types of student who enrol in for-profit institutions).
- The for-profits offer a relatively narrow range of programmes and are usually focusing on subjects that are not common at public and not-for-profit institutions, except for business studies.

Kinser refers to the “shareholder” category of for-profit higher education providers and here we find the names that are most well-known on this side of the Atlantic. This is likely to be the area where new incomers to the UK will be found. Not all the large shareholder companies can be analysed easily; two of them can hide their data; Kaplan as a subsidiary of the Washington Post and Laureate Education which is privately owned. However, for ten of the large companies, substantial information is available due to the SEC’s reporting requirements. JPMorgan watches them and reports at quarterly intervals on their progress. Table 4 highlights some of the key performance data of interest to investors from the big players:

Table 4. Education Services Databook. March 2011.

Name	Return on Investment 2010	Bad Debt as % of revenues	Pell and Title IV income as % of total FY 2010	Cohort Default Rates (CDR) on loans (3 years)	Graduate Completion Rate
Apollo Group	42%	5.5%	88%	12.8%	35%
Bridgepoint Education	62%	5.6%	85%	13.3%	c.40%

Capella Education	28%	2.1%	78%	3.3%	49%
Career Education	24%	5.0%	80% (FY 2009)	10.6%	42%
Devry	25%	2.6%	75% (FY 2009)	10.2%	31%
Strayer Education	65%	3.8%	78% (FY 2009)a	6.7%	40-78%

Source: JP Morgan. Education Services Databook.

This table immediately highlights some of the problems relating to for-profit providers that are facing the US administration and which have been under review by the US Congress in 2010. Critics argue (and the table lends weight to some of the points) that:

- The for-profits are making excessive profits from the delivery of higher education.
- They are being kept alive by the fact that their business model relies on the fact that almost all their students are entitled to either Pell grants or Title IV loans from the federal government.
- They may well be encouraging poorer students who cannot afford it to take up loans, as the CDR for for-profits as a whole is 21% compared with the equivalent of 9.7% in the public sector and 6.5% for all the private sector.
- They are failing to retain students; completion rates demonstrate an unacceptably high level of drop-outs.
- The state sector could offer a better quality of education, if funded to do so.
- They “cherry pick” profitable programmes which cannot then be offered by publicly funded colleges, thus denying them the benefit of cross-subsidy to less popular programmes.

These statistics are leading to serious political concerns about the operations of some of the larger for-profit providers; some of this concern has its origins in the history of the private sector.

Concerns, investigations and regulatory issues in the US

Concerns about for-profit providers in the US have been present within different periods and relate to a range of issues³⁹. Some concerns recur over time and several resonate with issues arising in the UK. The consequences for the providers have included government investigations, published taxonomies of abusive and fraudulent practices, periodic purges of institutions and new or re-drafted legislation and regulations.

In the early 1900s, concerns were raised about the nature of claims made in advertising material and several states passed restrictive legislation. After the passing of the 1944 GI bill that gave for-profit providers access to federal aid, fraud became an issue with consequent clamp-downs on fraudulent institutions in the 1950s. Investigations of student loan abuses occurred in subsequent decades with more institutional closures arising, reaching a peak in the 1980s. In the 1970s, a consumer protection campaign focused on for-profit correspondence schools based on these institutions’ low completion rates, aggressive

³⁹ The historical analysis is taken from Kinser, K. (2006). Op. cit.

advertising and high loan default rates. Investigations were led by the Federal Trade Commission (FTC) and further closures of institutions followed. In the 1980s, the US Department of Education's investigations again identified questionable recruitment and admissions' practices and uncovered other issues including awarding aid to ineligible students and high drop-out and loan default rates. The reauthorization of the Higher Education Act in 1992 established new rules to tackle these high default rates and new guidelines were issued to address high-pressure recruitment practices.

For those for-profit institutions that are publicly-traded corporations (see Table 4), the Securities and Exchange Commission (SEC) is another source of regulation. Since the 1980s, SEC investigations have reportedly been 'a regular feature' of the for-profit education industry,⁴⁰ with the focus typically being on misleading statements to investors regarding enrolment or the financial viability of expansion plans. In the more recent past (2003 and 2004) the SEC has investigated several of the current publicly-owned education corporations including the Career Education Corporation that has a campus in London and the Apollo Group that now owns BPP University College. In 2004, ITT Educational Services was also investigated for alleged falsification of records on student grades and attendance.

In the 'Wall Street era', critics and analysts have raised a wider range of concerns associated with the growth of the for-profit sector, and particularly the development and expansion of shareholder-owned for-profit companies. These include criticisms of the enormous public subsidies that are supporting the profit-making enterprise, the lobbying power and influence exerted on federal policy-making by for-profit corporations and the decision to use and manipulate accreditation status as part of a business plan.⁴¹ A further issue worth noting (with regard to the publicly-traded educational corporations) is that they must meet quarterly financial targets. As Kinser points out, "because SEC is charged with protecting investors' interests in the market, the sector is largely measured in terms of its profitability and market penetration rather than its contributions to the postsecondary system. In other words, SEC regulatory authority does little to ensure that students or society are getting their money's worth".⁴²

Current issues in the US

In the US, two sets of issues are confronting regulators with regard to the for-profit sector. The first is the continuing challenge of dealing with diploma mills (and also cross-state institutions and distance education institutions); the second involves reauthorisation of the federal Higher Education Act (HEA). The growth of multi-state institutions such as the University of Phoenix poses issues in a country where an important part of the regulatory infrastructure is at state level. The issue with regard to distance learning lies in distinguishing legitimate providers (many of which are in the publicly-funded or non-profit elite private sector) from low quality for-profit providers. Dealing with diploma mills is more difficult because they often move from state to state, they are not accredited, and award qualifications requiring little or no academic work. In most cases, their activities are illegal.

⁴⁰ Kinser, K. (2006) op cit. P118

⁴¹ See Kinser, K. (2005).

⁴² Kinser, K. (2006). Op cit, p119

The Federal Trade Commission in its role of protecting consumers is the leading federal body dealing with the growth and spread of diploma mills, but state regulators and the accreditation community are also active.

The reauthorization of the Higher Education Act *inter alia* includes regulations that relate to the award of Title IV grants to students. Representatives of the for-profit sector are involved in lobbying to extend institutional eligibility for additional aid and remove restrictions that limit their ability to participate in other federal aid programmes. Two general issues have been disputed by for-profit providers: the first concerns the restriction that these providers can receive no more than 90% of their revenue from federal student aid programmes, the second concerns the definitions of post-secondary institutions used in the HEA since for-profit providers are treated separately and this affects their eligibility for other federal aid programmes. Debates about whether the playing field is or should be level are as strident in the US as they are becoming in the UK.

More specifically, in 2010, there have been fourteen points under review by the US Department of Education. Several are of potential interest in a UK context:

- A regulation forbidding colleges to pay commission to those who successfully recruit or enrol students and achieve the award of financial aid (the ‘incentive compensation ban’)
- Revised rules intended to prevent abuses of federal financial aid programmes by ensuring that only eligible students receive financial aid and clarifying the course and programmes for which students can use federal aid. Institutions are asked to provide data on students’ debt levels, job placement and graduation rates to the Department and for public disclosure on their own websites. The minimum information requirements for each programme include⁴³:
 - The occupations that it prepares students to enter (with links to the Department of Labor’s website)
 - The time it takes students to graduate from the programme
 - The cost of the programme including tuition, fees, room, board and other institutional costs
 - The placement rate for students completing the programme (by June 30 2013)
 - The median debt load incurred by students who completed the programme in the previous three years, broken down into debt from federal student loans, from private educational loans, and from institutional financing.
- The tightening of rules relating to the debt/income ratio (‘gainful employment’) under which the amount of debt students owe must not exceed 8% of their salaries on graduation.

⁴³ <http://www.insidehighered.com/news/2010/06/16/regs>

- Defining, for the first time in federal policy, what constitutes a ‘credit hour.’ The expressed purpose of the policy is to clarify the obligations of accreditors and state agencies to ensure that colleges are requiring sufficient academic work from students in exchange for course credit.
- Tightening consumer protection through misrepresentation rules that give the Department greater authority to take action against institutions that appear to be deploying deceptive advertising and sales’ practices.
- Defining a high school diploma and requiring institutions to develop a means for determining whether a student’s high school diploma was valid if either the institution or the Secretary of Education had reason to think it was invalid or awarded by a ‘diploma mill’.
- Rules on satisfactory academic progress; institutions would be required to develop processes for monitoring academic progress more closely and warning students who are in danger of losing their Title IV eligibility.

At the time of writing this report, 11 of these points had been finalised and agreed with industry representatives; three were still to be resolved.

What policy lessons are there for the UK from the US experience?

The main differences between the US and UK private sectors are those of scale and funding. The make up of the sectors is broadly similar, since the UK has some small colleges that are not-for-profit and some in the for-profit sector. If we follow Kinser’s classification, we have representatives of the venture, the enterprise and the shareholder categories. Since no-one knows the details of the ownership and constitutions of the UK’s small private colleges, we cannot compare them more exactly. As yet, the shareholder for-profit part of the sector is only represented by two entities – BPP University College Ltd and Holborn College, part of Kaplan. The shareholder category is also represented in public-private partnerships with UK universities.

The key difference from the US, is how the UK private sector is funded. Few public funds flow to most of the colleges, although some UK/EU students in the College of Law, BPP and a few private colleges are entitled to apply for student loans and grants. We do not know the numbers. Since many of the UK private sector colleges are targeting international students, they receive no public funding. It is unlikely that any of these students are supported by any DfID or publicly-funded scholarships.

Since the UK state provides little funding, there has been no financial motive to drive the introduction of regulation or monitoring of the private sector. The lesson from the USA is that the scope and design of the regulatory framework will be crucial. It must not provide any perverse incentives and it should seek to endorse national objectives for higher education such as:

- The delivery of a quality higher education product that equals or exceeds the UK's reputation internationally.
- Ethical recruitment and enrolment of international candidates and students from the UK and EU.
- Protection of students and the public from fraudulent providers and from institutional failure.
- Transparency in the operation of higher education providers so that information is publicly available for potential students to choose the programmes and institutions that serve them best (and information that enables partners and investors in the private sector to be able to exercise choice and judgement).

The regulatory framework should be designed to meet these objectives and, as suggested earlier in this section of the paper, will therefore need the seven elements that we have outlined.

Given the UK's interest in widening access to higher education, it is also worth noting that the private sector in the USA claims to contribute to widening access since it offers flexible delivery and appeals to a mostly female clientele from lower income levels.⁴⁴ This is not currently the picture in the UK, where the market is largely young professionals and international students.

3. Academic Issues

One of the big questions raised by policy makers concerns the quality of what the private sector offers. In this section, we look at the academic issues behind the question –what subjects are offered and how academic staff are deployed.

Scope of curricula and subjects offered by private providers

The curricula of private providers (for-profit and not-for-profit) tend to be narrower and more vocationally focused than at traditional universities. However, this generalisation needs to be nuanced given the diversity of private providers in the UK and the diversity of traditional universities and colleges. For example, in the traditional sector, universities such as Leeds or Kingston offer a comprehensive range of subjects, while universities such as Chester or Surrey offer a more selective range. Specialist institutions such as the LSE, the Institute of Education or University of the Arts are also clearly more focused than comprehensive.

In the US, recent detailed analysis and comparisons of access routes and opportunities across all sectors: for-profit, not-for-profit private and public sector institutions, shows that at each degree-level, public institutions offer the greatest number of programmes and for-profit institutions the fewest.⁴⁵ The number of programmes at not-for-profit private institutions is approximately the same as at for-profit institutions at lower degree levels and similar to

⁴⁴ Kinser, K (2010). *Op cit.*

⁴⁵ Kinser, K. (2009).

public institutions at higher degree levels. In terms of the top five subjects across all types of institution, business-related subjects are most common (topping the list in public and not-for-profit institutions and third in the list in for-profit institutions). Health-related professional subjects are most common in the for-profit sector, and second and third among public and not-for-profit institutions respectively. Education and social sciences are in the top five at public and not-for-profit private institutions. Liberal arts and sciences, general studies and humanities is third in the list of top five subjects for public institutions and does not feature in the list for either not-for-profit private or for-profit institutions; however, visual and performing arts does appear in fifth place in the programmes offered at not-for-profit private institutions (and does not appear in the top five lists for for-profit or public. institutions). Other than business and health related studies, the for-profit sector provides three subject areas that do not appear in the top five for other types of institutions: personal and culinary services (2nd place after health) computer and information sciences and support services (4th place) and mechanic and repair technologies/technicians (5th place)⁴⁶.

Detailed comparative data of the kind available in the US are not at present available in the UK. However, different sources including college web-sites provide information on the subjects offered. Our own analysis of colleges in membership of two of the Associations of private providers⁴⁷ as well as some additional non-affiliated colleges (30 institutions in total offering degree-level provision) suggests a similar pattern to the US. Business-related studies are most common; health and social care also feature along with computing and IT. Tourism, travel and hospitality management are quite widespread and a number of colleges offer digital media and design, creative and film studies. Social sciences are barely represented (psychology is most common) and humanities subjects are rare. However, the one (not-for-profit) private university in the UK, the University of Buckingham, does offer a wider subject range. This university offers 145 programmes from Foundation degree to PhD level. Humanities subjects are offered including history, biography, decorative arts, interior design, European languages, English literature and international studies. Education, Politics and Economics also feature. Healthcare subjects extend into clinical medicine, social work, bioinformatics and paramedical services; while other specialist areas include offshore Engineering, Leisure Management and Contemporary Crafts and Products. Liberal arts curricula are also evident in US private universities and colleges operating in the UK. Beyond these subjects at different degree-levels, the British Accreditation Council accredits a large number of colleges offering sub-degree level qualifications that would fit into the US category of ‘personal and culinary services’.

If the private providers continue to focus their offerings principally on business and other popular subjects, there is a risk that, as in the USA, this will divert students from the publicly funded institutions. Since these subjects are usually those where the best surpluses can be made, this will in time deprive publicly-funded institutions of the ability to cross-subsidise their less popular courses. The effect of this will be less choice for students.

⁴⁶ It should be noted that Kinser’s analysis, based on IPEDS data collected in the US includes under ‘degree level’ the highest award granted by the institution, ie non degree certificate, associate’s degree, bachelor’s degree, or graduate degree. These categories are not directly comparable to the UK as some of this provision (and these subjects) would be found in Further Education colleges rather than in Higher Education institutions

⁴⁷ Ie AIHEP and Study UK members with UK HEI validations at degree level

Students and their experiences

Once again, US data⁴⁸ provide a fuller picture of the types of students that choose to study and gain access to different types of provider. In general, at degree level, private sector institutions tend to have smaller enrolments, although the for-profit (shareholder) institutions are larger. This pattern is also evident in the UK and in other countries.⁴⁹ In terms of total enrolment in the US, the for-profit sector enrolls the largest number of students at non-degree levels and proportionately more students from minority backgrounds. At university level, for example, the for-profit sector has 56% minority enrolment compared to 34% in the public and 35% in the not-for-profit private institutions. Students also tend to be older in the for-profit sector compared to the other two sectors, but gender patterns are more mixed across types of provider. Of interest in the context of UK policy debates is that financial aid information in the US suggests that the for-profit sector serves a disproportionately large population of low income students.

There are no data available as yet on patterns of enrolment across types of institutions in the UK. However, given the evidence collected to date for this and earlier reports, the picture in the UK is at present different. This is firstly because of the traditional dominance of the publicly-funded institutions in the HE sector at degree level and secondly because of a focus in several parts of the private sector on international rather than domestic or EU students. The ‘foundation pathway providers,’ for example, recruit only international students. In some cases, for example, Richmond American International University and Regent’s College, the intention is to offer a truly international student experience in a campus location in a global city (London). In other cases, such as the London School of Business and Finance, the aim is to develop a network of city campuses in different countries, for both international and domestic students as well as online provision. In the UK, at present, LSBF reportedly has 30% domestic and EU students and 70% international students. Other institutions such as BPP University College and the College of Law recruit predominantly domestic students and compete directly with publicly-funded and private sector institutions in certain professional subjects such as Business Studies, Accountancy and Law. Policy changes under discussion in BIS and the UKBA could affect the patterns of enrolment in different types of institutions in the UK for domestic, EU and international students.

Information and data about students’ experiences in different types of institution is generally absent in both the US and the UK although claims made about the kind of teaching and learning environment experienced by students are similar in the two countries: small classes, self-directed and active learning, acquisition of practical knowledge and employment-related skills are features that purportedly characterise private sector provision. Information about extra-curricular activities and access to learning resources is less obvious and more likely to be provider-specific. From our interviews with private providers in England for this and our previous study, it is clear that access to facilities such as libraries, social spaces or sports’ grounds and sports’ facilities differs widely across types of provider. In some cases, wholly-owned campuses offer such facilities, in other cases partnerships with universities offer

⁴⁸ Kinser, K. (2009).

⁴⁹ Fielden, J., Middlehurst, R & Woodfield, S. (2010) op cit

access to university facilities for students, and in still other cases, students are able to access publicly available facilities in the local community. In the US, the majority of student services in for-profit institutions are directed at the academic support of students rather than social activities⁵⁰ and it is likely that this pattern also applies in the UK.

Publicly available comparative data on student outcomes is needed in the UK as well as in the US. Indicative data⁵¹ from the US suggest, for example, that for-profit institutions are successful in helping students to earn an associate degree or certificate, but less successful at the level of bachelors' degrees, but this does not take account of students' motivations, educational background or financial circumstances. In the UK, private sector providers make considerable claim to successful employment outcomes as well as progression to further study, pointing to growth in enrolments and their closeness to their industry and professions. However, independent verification of such claims is not available and these claims are only relevant for the few UK students they enrol.

An intriguing study in the US⁵² sought to investigate for-profit providers' success in 'civic engagement' finding that students in this sector were less likely to vote, less likely to participate in political activities and less likely to become involved in their communities than students in comparator public community colleges. The authors argue that for-profit education potentially reduces the societal benefits of attending college. There is no comparable study in the UK⁵³, although similar arguments might be put for a variety of reasons including the typically narrower student experience, a focus on vocationally specific curricula and a pedagogical approach that does not necessarily prioritise a traditional academic focus on critical thinking, intellectual development and general education. Empirical evidence is needed to support or refute such arguments. However, for a more diverse range of students as well as providers, the issue may be one of choice and opportunity.

Academic models and academic quality.

Various US studies of the degree-granting for-profit sector suggest an academic model among the large corporate providers that has the following elements⁵⁴ according to Kinser. These findings parallel earlier work done in the UK and Australia on 'borderless education'⁵⁵:

- Narrow mission (few subject fields, focused on employment and practical skills)
- Limited faculty role (academic staff are hired to be teachers, not researchers)

⁵⁰ Kinser, K. (2005).

⁵¹ Kinser, K. (2006) op cit

⁵² Persell, C.H. & Wenglinsky, H. (2004). "For profit postsecondary education and civic engagement." *Higher Education*, 47, pp337-359.

⁵³ Note that a comparable study in the UK would need to include HE and FE institutions

⁵⁴ Kinser, K. (2006) op cit

⁵⁵ CVCP (now UUK) (2000); Cunningham et al (2000)

- Centrally designed curriculum (managers decide what is to be taught and how programmes are organised, usually with external advisory boards and subject experts as consultants)
- Standardisation (programme variability is kept to a minimum; the curriculum is mapped to specific outcomes and students have limited choice)
- Economies of scale (once designed, programmes are replicated and rolled out across campuses or on-line).

While some of these features are also evident in the UK, there is also more diversity and less rigid standardisation than this model implies. For example, even where the model applies in the US within the Apollo Group, it has not been imposed on the Group's UK acquisition of BPP. Our interviews suggest that validation arrangements with universities allow private sector partners the freedom to design their own programmes (usually in close association with professions and industry panels) and that Degree Awarding Powers give even greater freedom. The most constraining in terms of curriculum design and teaching approaches appear to be franchising arrangements.

From analysis of job and role descriptors from a sample of private providers, it is clear that the role of lecturers is more limited than in traditional universities, with teaching, exam preparation and student guidance and support predominating. Providers vary in their balance of full-time to part-time staff, with those who claim to be 'elite' or 'high quality institutions' employing a core of full-time staff as programme designers and teachers as well as a number of part-time professionals as teachers. Qualifications required of academic staff (for example in accountancy programmes) include professional qualifications, lecturing, course facilitation or training skills and experience, and business experience. While it is the case that private providers typically do not require their academic staff to do research, those with degree-awarding powers or aspiring to this status do support or encourage research in applied and niche areas. The rationale articulated for doing research includes development of specialist knowledge and skills, legitimacy in the wider UK higher education sector and ability to attract and retain key staff, including staff from the traditional universities.

Where publicly accessible, analysis of a sample of the backgrounds of staff in private sector institutions suggest that they often have extensive experience as academics in traditional universities (and some work in both sectors) and as practitioners in a variety of professional fields in different sectors and countries. Amongst the most open providers, websites allow one to view the backgrounds of specific tutors and to view them in action. At least one provider has also made course material available online as a taster to students before enrolling.

Public information about private providers' quality and standards is difficult to obtain in the UK. At present, those private providers that have DAPs have not yet been subject to the six year QAA review and they are not obliged to make their DAPs reports public, albeit the College of Law has done so. QAA is being invited by private providers to undertake external reviews at their own expense, independent of the DAPs process and such reviews are

beginning for some of the seven private providers who subscribe to the QAA (and for one – St Patrick’s College – that does not). In interviews, we also heard a willingness to be subject to QAA scrutiny, to undertake student-focused surveys such as those offered by i-Graduate and to publish information about students’ views and graduate outcomes.

Private providers are likely to come under scrutiny as part of collaborative audits where they are in partnership with traditional providers. In discussing internal quality assurance and enhancement arrangements, those providers with DAPs or aspiring to DAPs, typically seek to mirror the arrangements of traditional universities with Academic Boards and processes for approving and reviewing programmes, for assessing teaching quality and for assuring the standards of degrees. External advisory panels and external examiners are used. Many providers offering professional qualifications and recruiting international students are subject to multiple types of accreditation and review, from professional bodies, different partner universities, the QAA as well as accreditation agencies approved by the UK Border Agency. For one private provider, 39 different accrediting bodies are involved and accreditation visits take place every week. The ‘Compliance Department’ in this private provider has reportedly grown by 200% in 2 years, largely as a consequence of UKBA requirements linked to ‘Highly Trusted Sponsor Status’.

US data suggest another way of assessing quality: by analysing the extent to which profits are spent on ‘instructional expenses.’⁵⁶ From this analysis, Kinser notes that on a proportional basis, not-for-profit private colleges and universities spend between 56% and 60% of their tuition fees on instruction, while for-profit colleges and universities only spend about a quarter of their tuition on instruction. This is an indirect measure and begs a range of questions; it is also necessary, of course, to look beyond inputs to outputs. Since no UK private providers publish financial accounts that are full enough to give us this kind of information, we can make no comparisons with the USA. A perhaps related issue, arising from our interview evidence, is that a larger amount of revenue appears to be devoted to marketing and recruitment activities in the private sector than in the traditional university sector (at present) but empirical evidence is needed to support this contention and to assess any implications arising for the quality of teaching and learning offered.

Section 4 – Key policy questions in the UK HE system

Having described the UK and US positions fully in an earlier section, we now discuss five key policy issues as they affect the UK, making reference to the US experience where it is relevant.

1. Is current provision in the UK demand absorbing or widening choice?

In different countries around the world, there is a clear focus at government and policy levels on the ways in which the private sector can provide additional and alternative access paths to higher education. The evidence suggests that in most countries the private sector does

⁵⁶ Kinser, K. (2009) op cit

expand access by creating niche offerings, by entering new geographic locations (urban, rural and virtual), by offering alternative delivery models and by serving specific student populations. This is the case both where publicly-funded provision is not available and where it is.

The detailed evidence that we have considered from the US⁵⁷ concludes – with particular reference to the US for-profit providers – that they are successful in terms of enrolling minority and adult students at a greater proportion than traditional public and private not-for-profit providers. They are also a major supplier of non-degree level education and have offered new routes to degrees and to certain programmes. However, there are also some important caveats. First, given the typically narrow programme range, access paths are narrower than in other parts of the system. Second, the access provided does not come cheap with tuition fees substantially higher than at public sector institutions and students receive less institutional aid to assist them in paying fees than at not-for-profit private institutions. However they may gain financially by studying for a shorter period of time and either remaining in employment or transferring to it more quickly. Third, the small size of most institutions in this sector, excepting the small number of larger shareholder institutions, offers limited extra capacity within the whole system. Perhaps the most important point arises from an analysis of financial aid data, namely that the for-profit sector in the US relies heavily on the availability of publicly-supported student aid. The author states: “without the framework of federal grants and loans, the for-profit sector in its current formulation would be untenable as a business and fail as an access path....[for-profit institutions] exist in essentially the same regulatory environment as public and non-profit institutions, and rely on public subsidies for their survival.”⁵⁸

How does this picture compare with the UK context and what implications might the US evidence and analysis have for the UK? Firstly, as we have noted elsewhere, there are important differences between the US and the UK. The regulatory context is different and government subsidies are not generally available in the same way to private and for-profit providers. However, several types of private sector providers do have access to public resources through their partnerships with traditional universities and they are all, to an extent, dependent on the knowledge resources created in the publicly-funded system.

The pattern of private sector provision in the UK differs significantly from that in the US in that a large proportion of the providers are serving the international rather than the domestic student market and many of them are in various forms of partnership with traditional institutions. Our interviews do suggest that this picture may change as a consequence of new policy directions in England and likely constraints on access for domestic students to traditional HE institutions. Some of those private providers that only recruited international students are now actively marketing to domestic and EU students, perhaps also because of the pressures arising on the international side from UKBA restrictions on students entering the UK. Given the emphasis and actions to widen access in the traditional HE and FE sectors, it is unlikely that the private sector contribution is currently significant, but until we have demographic evidence about UK student enrolments in the private sector we cannot be sure.

⁵⁷ Kinser, K. (2009) op cit

⁵⁸ Kinser, K. (2009) op cit p19

There are some parallels with the US. The small size of most institutions in the UK (as in the US) means that institutional capacity is limited, although several providers have plans for growth – to new geographical locations and through distance learning. The curriculum is narrower than in traditional institutions, in most cases, and tuition fees can be high. However, tuition can also be less in some colleges than in the traditional universities (including in partner institutions) and programmes are often shorter, thus offering quicker routes to employment or to additional qualifications for students. Given changes to fee structures in traditional universities and colleges in England, there may also be less differentiation in tuition rates than in the past. Private sector providers do offer new routes to qualifications and in many cases are close to their professions and industries. This may offer students good employment prospects, but such prospects may not be very different from the employment success for graduates reported from traditional universities and colleges; again comparative and comparable output data is needed.

Our answer to the question of whether the private and for-profit providers in the UK are demand absorbing is that this is likely to be the case over the next five years, given policy changes, particularly in England. On the question of whether choice for students is widened by opening up the market to private and for-profit providers, we believe that this is likely to be marginal in reality because the UK already offers a wide range of choice to students in terms of access routes, accessibility of provision and choice of programmes. Where choice may indeed be widened is in terms of flexibility of study times and approaches. Private providers typically offer multiple entry points in a year, quicker routes to qualification and choice of study mode; they may also offer smaller class-sizes and more focused attention on student needs and graduate employability. In this sense, students will have a wider choice to fit their particular motivations and personal circumstances. Further regulatory changes may enhance this picture. The implications of this conclusion are that some UK/EU students who would otherwise have gone to publicly-funded institutions will now choose to go to private ones. The impact of this could, in the longer term and only in a few professional subjects, be as significant as it has been in postgraduate legal education where the two private providers (BPP and the College of Law) have made major inroads into the student numbers of publicly-funded institutions.

2. *Is the playing field level with regard to the State's relationship with private and publicly funded providers?*

As discussed above, the majority of private providers in the UK do not have – and do not choose to have - direct access to state-funding contributions for teaching, research or student support⁵⁹. This contrasts with some other countries, including the US and the Netherlands where students in recognised accredited institutions can receive state support. This is also the case in Germany where state recognition of 69 private higher education institutions, excluding church-maintained institutions, allows students to access public grants and loans and institutions to access infrastructure and research funding. Poland has a large private higher education sector and since 2001, all full and part-time students have been eligible for

⁵⁹ There is some debate as to whether this is absolutely true at present (see Massey, A & Munro, G. (2010). *Higher Education in the Age of Austerity*. London, Policy Exchange, p45 & p57).

state-subsidised loans;⁶⁰ Australia also allows private students to access government loan schemes.

In the UK, many private sector partners of traditional universities are able to access public resources such as JISC, JANET and SCOUNL using help from their partner institution. However, this is not always the case since some university partners block such access. Some universities in partnership with private providers have complained about their partner's reliance on the university's facilities and resources for the privately-funded students, arguing that they are 'free-wheeling' since they have paid nothing towards these publicly-funded services; on the other side, private providers argue for access to shared educational services and to student loans on the same basis as traditional providers. A recent 'Policy Exchange' report has addressed the question of private sector access to student financial support for full and part-time students studying in private sector institutions⁶¹. The authors recommend that the Government should provide loans to students regardless of the nature of the provider (for-profit, not-for-profit or public) provided they are legitimate and are monitored to ensure a high quality of teaching. We would agree on the basis that tests of legitimacy and ways of monitoring quality are addressed first (discussed below). The same report also addresses the question of whether there is and should be wider eligibility for access to public resources for teaching. The authors argue that eligibility criteria should not be unduly restrictive (with due regard to quality and value-for-money for tax payers) and that where state subsidy for teaching is available, it should be open to all who meet the criteria set. We support this idea, but only if the regulatory system that underpins such eligibility is changed accordingly.

The question of whether 'the playing field' - in regulatory and funding terms is level - has been addressed in different reports.⁶² We have also asked this question in interviews with private providers and traditional institutions. The answer is clearly that the 'playing field' is not level at present, with different restrictions and opportunities applying. Private sector providers do not have access to Funding Council grants, but they are not subject to oversight and accountability requirements that are associated with receipt of such funds, notably with regard to publicly available data and information about performance. Traditional institutions in receipt of public funds have been able to build wide-ranging provision and opportunities for students, but they are also subject to policy direction on, for example, widening access and participation as part of their contract with the State. A more relevant question for future policy is whether the playing field should be made level – or more level – and in what ways? A preliminary issue to resolve is whether treatment of all types of provider should be equal (the same) or whether it should be equitable (fair) so that differences are recognised, but unfair restrictions or penalties are avoided.

Some of the elements of the playing field that are considered by some to be “not level” in the UK include:

- Access to public funding and resources (discussed above)

⁶⁰ See Fielden, J., Middlehurst, R. & Woodfield, S. (2010) op cit p62

⁶¹ See Massey A. & Munro, G (2010) op cit;

⁶² Fielden, J, Middlehurst, R. & Woodfield, S. (2010) op cit

- Treatment with regard to Degree Awarding Powers which have to be reviewed only for private sector providers after 6 years.
- Some differences in the processes used to approve private providers from those used for public applications.⁶³
- Treatment with regard to University title.
- Requirements associated with widening participation.
- Requirements concerning data collection, public information and public reporting (with regard to finance and quality).
- UKBA ‘mindset’ regarding the automatic award of Highly Trusted Sponsor Status to publicly funded institutions, while private providers have to follow a lengthy application process.

There is an argument for levelling the playing field with *equitable* treatment. However, the private sector, as we have shown, is very diverse and there is every reason for a cautious approach. A key concern, as in the USA, is the existence of a number of private institutions of questionable legitimacy or very poor quality. While the various purges that the UKBA and others have carried out in 2010 have helped to protect the UK’s reputation with foreign students, they have not necessarily done anything to help UK/EU students, since they were focussed on processes for handling immigrants and ensuring their attendance. Thus, an essential preliminary to a levelling of the playing field is a clear definition of a reputable private provider and an agreed designation of acceptability. Only those private institutions with this recognition would be entitled to benefits from ‘the levelling’. Even then, however, there may well need to be some regulatory and financial burdens placed on private providers to balance the benefits they receive. It would, for example, seem reasonable for them to be charged a higher tariff for use of the SCONUL Access scheme than is levied in the public sector.

Policy makers are largely in the dark at present about the size and shape of the private sector. Several steps are needed. Firstly, distinctions between types of providers in terms of their offer and their status must be clear and accurate. Although categorisation is difficult for the reasons we discussed earlier, it is needed both to improve public information and to facilitate policy-making. More data needs to be collected nationally (and shared internationally) and more publicly available and verifiable information needs to be provided by all providers.

Secondly, legitimacy as a provider of qualifications (pre-degree and degree-level) needs to be established both for the present and into the future. Current accreditation and approval routes through BAC and ASIC do confirm legitimacy (albeit they are subject to changes arising

⁶³ Those private providers wishing to achieve Highly Trusted Status (HTS) will now be subject to review by the QAA, but some colleges which recruit only UK students do not need to seek HTS and will not have their quality reviewed in this way unless they seek it voluntarily.

from political imperatives linked to immigration). The QAA offers legitimacy through the DAP process⁶⁴. The requirement to be subject to review within a defined period (currently six years for DAPs, for example, or ten years for institutional accreditation in the US) is also useful given the potential for changes of institutional ownership, of scale and scope of provision and financial position to occur - with unforeseen consequences. This requirement could be subject to a test of maturity as well as satisfactory performance over time (eg the review period could lengthen after a cycle of three to five satisfactory reviews, but should still not be longer than 6-10 years given the volatility of education markets and funding). The question then arises as to whether all providers should be subject to such reviews. Our answer would not be to impose an additional review system on traditional universities, but to adapt the nature of the existing institutional review process so that there is closer alignment between this process and the Degree Awarding Powers' system (as it evolves). This is important because of the inclusion of governance and financial management within the DAPs process (something which is currently absent in quality audit reviews). If these changes were made, then they would also go some way towards assessing sustainability of provision as well as quality.

Third and finally, assessment of quality and wider comparative evaluations would be assisted by requiring data returns for those accessing public resources in any form, whether through partnerships or through access to student loans or teaching funding. Better information would not only benefit students but would also help to improve policy debates and decisions as the present lack of data and evidence merely fuels unsubstantiated claims or suspicion and prejudice.

3. Is the for-profit and not-for-profit distinction significant?

Development of the for-profit sector in the US – particularly in the ‘Wall Street’ era of growth of shareholder institutions - suggests that the distinction between for profit providers and not-for-profit providers is significant, but unfortunately too simplistic without further classification to provide a full picture of the complex reality that exists in higher education. In the US the distinction is important as it has served to highlight financial pressures and irregularities and has served to alert regulatory authorities to the need for enhanced consumer protection. The US experience also highlights the conflict between the SEC’s expectation of continual growth in student numbers and profitability from the for-profit corporations and quality enhancement agendas. Can the for-profit (shareholder) providers maintain or improve quality of what is delivered and outcomes for students, if they are always seeking to expand?

In the UK, there is a very small visible for-profit sector with BPP University College Ltd as the only representative of that category with DAPs. However, many of the colleges, such as the London School of Business and Finance, the London School of Commerce and the EThames Graduate School do operate for profit, but their accounts are not openly available. Some of these will acquire DAPs in due course, but, as we have no data on the numbers and motives of the college sector, we cannot predict the likely size of the for-profit sector.

⁶⁴ Changes to accreditation with regard to the UKBA’s processes may give the QAA a wider role in accreditation of private providers in the future.

Nonetheless, it is unlikely that the Apollo Group will remain the only major for-profit provider in the UK and overall, we believe that the for-profit sector will grow.

So, is the for-profit/not-for-profit distinction relevant? One argument suggests not: the public interest lies in education of high quality being provided and consumer interests being protected – whatever the status of provider. The DAP and quality assurance processes should ensure these outcomes. Beyond that, whether a profit arises from providing higher education is not of public concern. The main counter-argument is that, where public funds are used to generate profits for shareholders, there are legitimate grounds for public concern and scrutiny. A second and more complex point that is sometimes made is that whereas in the case of public institutions surpluses income is re-invested fully in the educational business this is not the case with for-profit institutions; but national QA systems will find it hard to disentangle evidence on the use of profits in multi-national or multi-mode for-profit education businesses and then to exercise any influence on how they are used. If this is a concern careful scrutiny of the evidence concerning the deployment of profits and any potential impact on students and their education would be needed. Care will also be needed in shaping a new and comprehensive regulatory framework. If an equitable and broadly comparable regulatory framework is developed for all institutions in the sector, it may need some mechanisms for monitoring surpluses and alerting a regulator where the amount given to shareholders might be considered excessive.

4. Does the absence of research matter for the credibility of the private sector?

In some countries, undertaking research and the linking of research to teaching in degree level providers is a pre-requisite for the title of ‘university’ and a hallmark of a ‘higher education.’ In other cases, these activities are more closely linked to type of institution, for example, 2-year or four-year degree-granting institutions. In England the legal and regulatory framework has gradually uncoupled the linkages between teaching and research⁶⁵, first in the differentiation of degree-awarding powers into teaching and research degrees (and more recently adding foundation degrees as another distinction) and second, in the granting of university title. The recent acquisition of the status of ‘university college’ by BPP through the business names’ route rather than the QAA route adds a further twist in the English context (Scotland has a different regulatory context).

Despite these changes, in traditional universities, the links between teaching and research remain in the culture and practice of most institutions, reinforced by quality assurance arrangements and academic status as well as external market, funding and reputational pressures. As mission differentiation and positioning has become more important, the balance of emphasis between teaching and research has also become a marker of difference between institutions and a spectrum has emerged from teaching intensive to research intensive; although few traditional universities would claim to do no research. Staff contracts may also show increasing differentiation across a spectrum of researchers and teachers (and

⁶⁵ This was applied to the post 1992 institutions in their applications for taught DAPs, although staff are expected to have “knowledge and understanding of current research and advanced scholarship in their discipline”.

hybrid roles)⁶⁶ as the pressures to combine both activities to the levels of excellence needed to compete globally become ever stronger.

The absence of research, then, matters as an issue of public information. If the provider is an academic institution, it will undertake research; if it is an educational business, it typically will not. The question therefore concerns the type and level of education on offer from providers that do not do research. In this case, judgements need to be related to the use of research in teaching (rather than the production of research per se) as a measure of quality⁶⁷, as a means of enhancing quality and as a specific skill that students need to acquire as part of a degree. We would argue that providers with degree-awarding powers have to demonstrate these features of their provision. Indeed, in examining recent QAA quality audit reports of private providers, there is some evidence that this is already being tested in relation to academic standards and levels of award.

Another relevant point is the significance of the discipline offered by the private provider and, in the case of professional programmes, the depth of reliance of the college on professional practitioners as teachers and case study leaders. Postgraduate students in law have shown that they are willing to pay private providers higher fees than public universities in order to have access to leading practitioners – who are most unlikely to do any academic research - but who may well be pre-eminent in their legal field. Since many of the colleges focus heavily on professional and business subjects, the value of academic research may be less important as far as the student market is concerned, but the staff concerned should have a high level of professional experience.

5. Are changes to the regulatory environment (including quality) required and what other models are relevant?

In an earlier section and in another publication, we have criticised the UK's regulatory environment for the private providers as being confusing and incomplete.⁶⁸ This is not surprising as the present mix of regulations has developed over time from ad hoc responses to particular political or educational drivers. Like so much in the UK, it has not been consolidated into a comprehensive framework.

Some countries have enacted legislation specifically relating to private higher education.⁶⁹ Their main aim has usually been to protect internal customers from poor quality private providers both those in the country and those international entities wishing to enter the local market. In consequence, the legislation usually focuses on the registration and licensing

⁶⁶ Gordon, G. & Whitchurch, C. (eds) (2010). *Academic and Professional Identities in Higher Education: The Challenges of a Diversifying Workforce*. London, Routledge

⁶⁷ Although it is worth noting that the literature on whether research (and what kind of research) improves the quality of teaching remains inconclusive

⁶⁸ Fielden, J., Middlehurst, R and Woodfield, S (2010) op cit

⁶⁹ See the data base of such Acts on the web site of PROPHE at <http://www.albany.edu/dept/eaps/prophe/data/countrylaw.html>

systems as well as quality assurance processes. However, many Acts are much wider than this. In the Chinese legislation of 2003, for example, there are clauses covering:⁷⁰

- The rationale for the legislation, eg: “to promote the healthy development of non-governmental education”.
- The need for each entity to have a Board of Trustees containing staff and student representatives.
- Academic staff and students to have the same status and rights as those in the public sector.
- Regulations on finances and reporting.
- Powers for provincial governments to subsidise or give grants or awards of land to private entities, as well as tax incentives.
- Procedures in the event of a change of owner.

All these provisions could well have a place in any comprehensive legislative solution in England. The principal aim is for an umbrella act of this kind to outline the obligations and benefits that the private sector can expect as part of its contribution to a national higher education strategy. Whether the UK as a whole is yet ready to consider the private sector in this light is a moot point.

⁷⁰ See http://www.albany.edu/dept/eaps/prophe/data/Country_Law/ChinaPromotionLaw.doc for a translation

Section 5. Some policy options to consider

Introduction

This section considers some policy options for the future, since 2011 is likely to be the year in which the Coalition Government's policy on higher education (at least in England) touches on the private sector for the first time.

This section begins with a short consideration of where the present changes might take the UK in five year's time, since some of them will include a significant contribution from the private sector and have an impact on it. We then analyse the options for policy makers under two headings: those relating to regulation and control of the sector and those relating to its organisation and funding. Finally, we pull together our thinking with some tentative suggestions for action by the Coalition government.

The UK higher education system in five year's time (2016)

While the UK's higher education system is currently undergoing significant upheaval and transformation⁷¹, it may be instructive to think about what will emerge in five year's time. We have identified 7 possible scenarios (not mutually exclusive) which contain the following elements:

- A diverse but segregated world in which different regulatory models are applied to different categories of university.
- A higher education system driven principally by a competitive market ethos.
- Private funding flowing into expanding the private sector as opposed to improving the public sector.
- Government funding used to incentivise private providers or to fill in gaps in publicly funded provision.
- Failure of some public institutions leading to the State relying on the private sector more.
- Involvement of government to provide locally relevant or specialist HE in areas where the private sector has not penetrated.
- International providers playing a bigger role by establishing campuses through a "UK higher education hub".

⁷¹ While change will affect all parts of the UK over the five-year period, it may be more or less transformational in the different countries and regions of the UK.

A common feature of these changes could be that private providers are acknowledged as players in the national system. This may well be the position only in England, however, due to the traditional ideological differences on the topic in Scotland and Wales.⁷²

In considering the range of future options we suggest some general points or principles to bear in mind:

- Any new policies ought to cover all private providers – those based in the UK as well as the international universities or corporations choosing to operate in the UK.
- There should be no distinction between the treatment of for-profit and not-for-profit providers.
- A prime objective of all regulation – and particularly of an external quality assurance regime - is consumer protection. As important for maintaining a globally competitive higher education system is attention to quality and reputation.
- The approach to regulation and funding needs to stand up over time, otherwise it will be liable to alteration following political agendas, changing attitudes to the private sector or the limitations of any funding pot available.
- The approach to regulating public and private institutions could either be ‘equal’ (same for both categories) or ‘equitable’ (not the same but fair to each). However, wherever possible the playing field should be level – for example the accreditation and quality assurance regimes and evaluation criteria should be the same.
- Any regulatory approach should balance controls and responsibilities with benefits or incentives – ie. access to public funding in return for certain outcomes from the private providers.
- Regulatory policy could be a way of getting more income into the public purse (eg. by charging full-cost prices to private providers for access to public resources so that the private sector is actively supporting public HE).
- The compulsory reporting of information by providers is a *sine qua non*. No regulation can be effective without it.
- Another vital *sine qua non* before a new policy regime is in place is to agree suitable definitions of higher education (as opposed to further and professional education), a “university”, “a private provider”, “a diploma” and “a certificate” compatible with the European qualifications framework. The boundaries with further education provision will need to be clear.

⁷² For example, the private sector receives only a brief mention in an otherwise wide-ranging strategy paper from Scotland in December 2010. See *Building a smarter future: towards a sustainable Scottish solution for the future of higher education*. <http://www.scotland.gov.uk/Publications/2010/12/15125810/0>

Possible policy options related to the regulation and control of the private sector:

- One starting point could be a Private Higher Education Act bringing together all the elements of a regulatory framework and applying it to all those organisations delivering higher education in the UK (or England) that were not publicly funded. Such an Act would cover many of the options that follow. One of its subsidiary aims would be to make clear the role that private higher education is expected to play in contributing to national policy goals.
- For corporate providers, a useful approach (in the UK, the US and other countries) is to combine company legislation with education legislation and to require first a licence to operate as an educational business (or an interim licence for a trial period). This comes under Fair Trade & company legislation (competition law etc). A second step is to require approval to operate as an education provider – typically this is called institutional accreditation; it can be split into candidate/applicant status and then full status depending on experience or length of operation.
- In the UK there is no formal process of educational accreditation (at institutional level) for publicly-funded institutions. BAC does have such a process for private providers and the DAP's process is a form of accreditation, though not in name. One option would be to introduce a system of accreditation to cover both sub-degree and degree level provision (thus, replacing the DAP review in the latter case). It could take on board the special interests of the UKBA in order to avoid overlapping on checks. The agency, or agencies, undertaking such a process could also continue to operate external quality assurance reviews, along the lines of the QAA's IQER (or its replacement, now under review). The policy question is whether to have one or several accreditation/quality agencies, and furthermore, whether and how far to extend current remits (for example, of the QAA).⁷³
- All educational accreditations for both public and private institutions could be time limited and subject to review after a fixed period.
- Existing campuses of foreign universities and any foreign university or HEI wishing to establish itself in the UK should be required to register and obtain a license to operate. Thereafter, they should be subject to exactly the same accreditation and review processes as domestic providers if they plan to enrol UK/EU citizens. However, this would be subject to liaison with their national quality assurance agency (or equivalent) if they were only offering their home country's qualifications. If that agency did not review the quality of what was being delivered in the UK, then either a new overarching UK agency (or one of a number of designated agencies) would carry out external IQERs.
- A system of 'candidature' (similar to that formerly applied by the CNAA to polytechnics moving from validated to degree-awarding status) could be applied to

⁷³ The process of focussing on one agency is starting with the announcement in April 2011 of the QAA's role in reviewing colleges seeking Highly Trusted Status.

private providers wishing to acquire DAPs or full accreditation. The BAC operates a similar system at present.

- Private providers are a ready target for criticisms for ignoring access considerations in their recruitment of UK students; and only the biggest and most well-established are able to fund scholarship schemes from their own resources and these are usually on a small scale.⁷⁴ One option for inclusion in a regulatory package is a requirement on private providers to promote access by setting aside a proportion of their UK/EU generated income to provide funding for scholarships for needy UK students. This could be reported in their annual reports and possibly monitored by OFFA. Such regulation could go even further and seek to bring the access requirements into line with those in the publicly-funded sector.
- BIS could undertake to organise/commission the collection and publication on one central web-site of information on all private providers for England (and on an agency basis for the UK as a whole). This would cover their status (eg; licensed, registered, candidate, awarded DAPs etc), statistics on their staff and student numbers and web-links to their prospectus, their financial accounts and any published accreditation or quality reports on them. The regular maintenance of this web-site would be an important tool in creating effective consumer protection against dubious providers.
- BIS could set out what support or incentives it was willing to offer existing private providers and any international ones that wished to enter the UK. This would clarify the position as regards state support for students and the terms on which private institutions could access the academic resources' infrastructure.⁷⁵ It would be helpful to specify which category of provider was entitled to access these facilities or receive any support. Not all of the 670 organisations identified by HESA will be offering higher education⁷⁶ or be of an appropriate standing, so that some basis for classifying those worthy of support will be required.

One common feature of higher education systems which have both private and public providers is a regular mechanism for co-ordination on policy matters between the two sides and with government. Although this happens on an ad hoc basis (such as over the UKBA's consultations on immigration issues), it is not a permanent – and open - feature of the policy world. If, as we expect, the private sector grows in size and status, it will feel entitled to more formal recognition and this should also bring with it greater co-ordination and information sharing between higher education agencies. Permanent collaboration between the different arms of the higher education sector would also help; already, several private providers have applied to join UniversitiesUK and some have joined Guild HE.

⁷⁴ See for example BPP's plans for one law scholarship described in an article by Carl Lygo in *Engage, Winter 2010*. Leadership Foundation magazine.

⁷⁵ The term means the libraries, electronic resources and research facilities in the publicly funded sector as well as those agencies or units offering services (such as JISC and the purchasing consortia).

⁷⁶ This is part of a preliminary statistical survey of private HE providers commissioned by BIS.

The Coalition Government has stated that full-time and part-time students studying degree level programmes at private colleges will be eligible to apply for proposed Student Finance Plan support through the Loans Fund and grant schemes. As a consequence, the number of UK/EU students in the private sector is likely to increase from its present low base. This means that England could see a repetition of the US position in which a very large share of the income of the for-profit education companies consists of public funds in the shape of grants and loans to students for their tuition fees. English HEIs are in the same position with regard to much of their UK/EU tuition income.⁷⁷ Nonetheless, the question arises whether there should be some extra regulatory check on private providers to deter these institutions from emulating the alleged practices of their peers in the USA of enrolling students who are unable to complete their studies and are also liable to default on their loans. If it was thought that some check was needed, the obvious question is whether it should also be applied to publicly funded HEIs. Those that have adopted policies for widening access have found themselves facing a similar issue of poor completion rates (and possibly a high rate of student failure to repay their loans – but this will not be known for some time).

Possible policy options relating to the funding and organisation of the private sector.

Private providers in the UK obtain funding in very similar ways to those in the US; from family sources, from corporate enterprise funding via banks and loans and from the Stock Exchange for quoted companies. A basic question is whether private providers should receive any direct financial help or incentive from government. In this section we review some possible areas where either direct or indirect support might be provided; some of these options are based on international precedents.⁷⁸

- Since the UK private sector has grown rapidly in the last few years and appears to be prospering, one option is to take the view that no support is needed or justifiable, unless the government wishes to influence the sector to adopt a particular set of programmes or policies that it might otherwise be reluctant to follow.
- One option would be to make private providers eligible to apply for special funding on the same terms as public HEIs, for example, on the model of the funding made available for Strategically Important and Vulnerable Subjects (SIVS). The Browne Review recommended that English private providers could be funded by HEFCE for those subjects that it will be funding, but this has not yet been accepted by the Coalition. Where there is competition for any such funding, the same selection criteria should be applied to both public and private bidders, but since the size of the funding pot for SIVS will be fixed, any allocations to private providers will be at the expense of the publicly funded institutions.

⁷⁷ But tuition fees represent almost 100% of the income of private providers and much less of the income of publicly funded HEIs.

⁷⁸ Fielden, J., Cheng, K.M., (2009). *Financial considerations*. Chapter 2 in *A new dynamic: private higher education*. UNESCO. Paris

- Another area where public funding might be available to a private provider is where it was willing to merge with, or take over, a failing publicly funded institution (as defined for example by HEFCE's designation of the institution as being "at higher risk"). One way in which financial help could be provided is by applying favourable terms for the repayment of the "Exchequer Interest" which represents the written down value of the public assets that the HEI has been given. Another would be to follow the model of the former Strategic Development Fund which provided finance towards the implementation cost of mergers between public institutions. A key driver in deciding whether public support was needed would be the number and disciplines of the remaining students in the HEI and whether any alternative home for them could be found.
- One radical option would be to use public funding to promote active partnerships between public and private providers. Some publicly funded HEIs have found that there are educational lessons to be learned from the practices of the best private colleges that they validate. It is very possible that the public HEIs would benefit by teaching students as cost effectively as in the private sector and the students would be equally satisfied. HEFCE and the HE Academy have devoted considerable resources to exploring and promoting good practices in learning and teaching. Is there any reason why partnerships and alliances between the public and private sectors should not be supported to further similar aims?
- An extreme model of public and private working together has been adopted in Australia and several African countries, where publicly funded universities have parallel streams of private fee-paying students. It could be argued that this is virtually the same as the current proposal to withdraw state funding from humanities and social sciences students so that they are "privately funded". One option would be to explore whether this could be applied across all disciplines with the active involvement of private partners.
- Private providers see themselves as principally teaching institutions, but, as we have discussed, this means that their academic staff could be deprived of the benefits of scholarship and research. Should government encourage the private sector to develop its research capacity? One simple way would be to open up all public research funding to applications from staff working for private providers; those few remaining public schemes for funding young researchers and PhDs might also be opened up to appropriate providers. Another option would be to offer matched funding to those private providers willing to create internal research funds for staff use. There is of course nothing to prevent private providers from tapping private companies as sources of applied research funding in competition with public HEIs and this is starting to happen.
- The option of opening up the "academic resource infrastructure" to private providers has been mentioned as part of a regulatory package. It would be in the interests of private students and has financial implications since access charges could be levied on the private sector as some compensation to government for its long investment in the facilities concerned. There could therefore be a net financial gain to the system.

- All publicly funded HEIs are, regardless of their basic legal status, also exempt charities. As such they are freed from charging VAT on their fees. The same will apply to those private not-for-profit providers that are registered as charities. Is there a case for also exempting private for-profit providers from VAT, since they are providing a public good? A recent Policy Exchange paper has argued that the present system under which they have to pay VAT may be in breach of a European Union directive.⁷⁹

Some of the regulatory and funding options we have outlined above could be embodied in framework legislation as suggested earlier. For political reasons it may be desirable to take some regulatory items separately and present them as a package to show the publicly funded sector that private providers were being effectively monitored and controlled.

When a regulatory package is unveiled there is one issue that will need to be faced and that is the interface with Further (non-HE degree level) and Professional education. This paper has focussed on higher degree level provision only, but many private sector providers straddle HE and FE and are proud of the pathways and access routes to higher education that they offer. Most of the private providers identified by HESA offer only further and professional programmes, but at present no-one is certain of the numbers in this category. Thus, as we discussed in section 1 and stated in our listing of principles at the start of this section, an essential prerequisite of any policy development is agreement on a clear definition of where “higher education” stops and starts and what this means for the classification of providers and their place in any regulatory framework.

Possible policy directions for the Coalition Government (omitted in the Summary)

The Coalition Government has stated its willingness to investigate a greater role for the private sector and a scenario in which private providers grow in number and size can be foreseen. However, even if the overall policy is benevolent to the sector, the actions of the UKBA and the political pressure to curb immigrants are likely to have a negative effect on international student numbers entering some of the colleges. The impact of this could be uneven, as it is more likely to fall on those that have not achieved Highly Trusted Status and which have few pre-degree programmes.

If the Government wishes to go further and give some encouragement to the private sector, it can choose between the options that we have outlined above. Some of these involve indirect support – to students – and some require adjustments to the rules and incentives in the system so that funds or facilities can be available to private providers on equal terms to publicly funded providers.

We believe that the case has been made for the Coalition to draft a new regulatory framework for the private higher education sector. This would ensure or enable:

- Consumer protection over services offered by UK and foreign providers in the UK.

⁷⁹ Policy Exchange (2010) op cit. p.52

- Protection of the UK HE reputation and brand for international students in private colleges.
- A contribution by the private sector to ensuring access for UK students to HE
- An increased choice of quality-assured provision for UK/EU and international students (the range of choices could be: type of provider; geographical location – local, regional; types of provision – 2-year, 3-year, 4-year degrees + foundation level & post-graduate (taught & research routes) or distance learning; part-time & full-time). A broader range of pathways from A level to professional or postgraduate level would also be available from some private providers.
- The addition of new funding and new ideas to the system.

Two fundamental objectives of the new regime would be to strengthen the quality and scale of public information from the private sector and to define more clearly the different types of HEI and their rights, responsibilities and obligations as HE education providers within a world-class HE system.

The next steps could be to incorporate the policy issues in this paper in the forthcoming White/Green Paper to activate fuller debate. Following that, the necessary legislation could be drafted late in 2011 or early 2012.