



GuildHE Consultation Response

Regulatory Framework

December 2017

Part 1

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

As has been noted in our response to the proposed Quality Code, it is unclear what it means to state that a qualification holds its value over time (Objective 2). Alignment with sector standards is sufficient as a priority concern.

With this exception we agree that the four objectives identified are suitable priorities for the OfS however we believe there are two fundamental omissions not covered under these objectives.

The first relates to the Duty OfS has to ensure a diverse and innovative sector as outlined in HERA. Whilst this would not necessarily be something that it would hold providers individually account for, the OfS itself must be accountable for ensuring that sector diversity is promoted and preserved as prioritised during the parliamentary debates surrounding the passage of HERA. GuildHE has made the case many times to DfE and its predecessors that the regulatory climate is not set up to allow small institutions to thrive, and smaller institutions are actively discriminated against because of their size, in bidding for public money such as HEIF and CCF funding for example.

We are disappointed that the OfS Consultation document refers only to ensuring sector diversity through allowing new providers into the market. We have over 50 specialist publicly funded institutions in England, 15 publicly funded institutions founded by the Churches, over 200 SCITT consortia in England, competing with universities to train teachers and over 100 alternative providers who have access to public funding in the sector already. OfS needs to ensure that its new processes, procedures and activities nurture diverse learning environments and do not discriminate against smaller institutions in the ways regulation currently does. Ministers explicitly referenced the existing diversity of the sector in the passage of HERA: this needs to be embedded in the way OfS carries out its duties in order to reflect the intention of the legislation.

This is not just about regulatory burden as put in this draft framework, but in the additional costs (financial and otherwise) associated with running a small organisation. As a 'true' market regulator, this consultation proposes that the OfS would allow institutional failure as part of the natural order of a market. This is counterproductive to ensuring students have a broad range of choice about types of provider to apply to. The document is contradictory in that it says that the OfS would intervene in certain instances of market failure such as a specific region dropping opportunities to study languages, but this action would not be covered by any of the current objectives. GuildHE would like to see the OfS' duty to protect the diversity of the sector as a specific risk in which it will be judged against.

As a strong proponent of student Partnership, we are disappointed that nowhere in this regulatory framework does it mention the ways in which students should be contributing to defining baseline risks, and at an institutional level actively involved as partners in the

management of a HE provider. This has been a sector-wide standard since 2012 (through the introduction of the student partnership expectation in the UK Quality Code), and in the duty for universities to have an independent Students' Union as per the 1994 Education Act. We are also frustrated that student partnership has been 'downgraded' in the new draft UK Quality Code to passive student feedback. We are proud that students are partners in shaping their learning, and the OfS should be championing this to continue as a baseline requirement. They should be the ones helping to decide what is meant by 'value for money' as the 'consumer', not solely central government or the OfS. Current alternative providers have already shown to be successful in developing their practices and supporting effective student representation and partnership working and we would not want this to stop, or for new providers not have to include students in institutional decision making.

We would therefore like the wording of objective 4 to be modified to make reference to treating students as partners - with institutions themselves being allowed to define what this means in a Student Partnership agreement which we believe should also be a condition of registration for Approved providers in order to show OfS that it is working in the interests of its 'customers'.

Many research exercises have focused on understanding the student perspective of the student experience highlights that students include many things in their definition of the student experience than just classroom teaching. Things such as accommodation, safety, access to clubs and societies and other social activities, access to and affordability of additional learning materials, specialist equipment, masterclasses and fieldwork all contribute to a student's perceptions of value for money. Without their voice, the OfS and by extension HE providers would not be meeting their requirements to ensure value for money in students' minds. This would be a major failure for the regulatory system. The draft frameworks talk a lot about market forces encouraging innovation, but HE is not a product and the sector is not really a market for many students (especially those who are considered to be hard to reach or disadvantaged). We do not believe that student choice alone is a driver for institutional improvement, and would like OfS to acknowledge that, in reality, in order to ensure value for money for students it will have to encourage providers to improve its services.

2. Given all the levers at its disposal, including but not limited to access and participation plans, what else could the OfS be doing to improve access and participation and where else might it be appropriate to take a more risk-based approach?

We hear a lot from members in relation to working with schools that there are some major barriers to undertaking activities in their local communities. Schools are not often welcoming to local universities to offer talks and workshops for a number of reasons including:

- OFSTED does not define university outreach as objective and unbiased advice, and therefore cannot be counted in school submissions.
- Universities who do currently sponsor schools are regularly shut out of supporting other local schools in the area because of the competition built into the new school system.
- Schools do not have the time with all of the major curriculum changes to let students out for outreach, and extracurricular academic enrichment activities.
- Schools are now directly competing with universities in their new roles as SCITT consortia, School Direct leads and CPD providers within Teaching School Alliances

and MATs/ MACs, which also takes schools' focus away from their core purpose of pupil learning.

We have provided DfE and OFFA with many reasons as to why universities (and especially smaller, specialist providers) struggle to engage schools as part of their outreach activities and the OfS could do more to remove some of these barriers by working more closely with the schools and careers teams at DfE to ease this pressure on universities. We do believe that universities can be part of the solution to school attainment, but this only works when there is true partnership with the schools sector, and current performance measures and pressures prevent universities from being able to do as much as they can do.

As per the Social Mobility Advisory Group report, we believe that the sector has not been truly evidence led in its approach to widening access, however as a complex issue it is hard to evaluate what works successfully which is replicable across England. We are committed to partnering with UUK in their endeavour to set up an impact exchange for WP practice, and institutions do need to be more scientific in their analysis of how impactful their activities are. As many of the root problems in access and participation are situated within regions and cultures, we think it would be right for OfS to continue to ensure institutions are collaborating regionally in their activities. There are some shortcomings with the current NCOP programme, especially in relation to the scope of activity being centred around 16-18 year olds; but we believe the spirit (and supportive funding) should continue in some form going forward. We also hope future iterations of national WP activity will support consortia approaches based on subject disciplines.

3. Do you agree or disagree that a new Quality Review system should focus on securing outcomes for students to an expected standard, rather than focusing on how outcomes are achieved?

We welcome a focus on outcomes, however this should not come at the expense of the current student experience and therefore we would disagree with the reference to “rather than” focusing on how outcomes are achieved. It is worth noting that [recent research](#) by a group of 27 students' unions suggested that teaching excellence is most clearly demonstrated by teaching/ teachers (90%), support (89%) and assessment and feedback (87%) rather than graduate employability (76%) which was cited as the least important factor.

It should also be noted that if the OfS is primarily looking at student outcomes this is - by its very nature - historic data that reflects a point in time rather than where the institution is today. There is also a challenge that some outcomes - such as access to some careers or some better paid roles - are as likely to be impacted by a student's cultural capital, and location, as well as their educational attainment, and so the institution will play a key - but not exclusive role in a student's outcomes.

It will therefore be important for OfS to look at both outcome data as well as data reflecting the current student experience. We are concerned that the only data pertaining to the 'current' student experience will be collected through continuation rates. Removing a systematic, cyclical quality assurance process loses OfS' ability to have oversight of current student experience and student engagement. Some students cite they succeed 'in spite' of their university. We believe that the argument put by the document that students will move providers if they are unhappy is false, and is an extreme response to student concerns. There seem to be no continual drivers to offer a 'good quality' educational experience in the

new regulatory system when providers are only judged on a baseline and not whether they make improvements.

GuildHE also wishes to put on the record our concern about the suggestion in para 17 that the OfS may decide that the Quality Code “is not suitable” and could “task the DQB to work with the sector to design and implement” an alternative “rather than the Code”. This is completely unacceptable and **must not happen**. The Quality Code is the glue that holds the UK higher education sector together and must remain a UK-wide document. A risk based, baseline approach to quality and standards already puts in danger our reputation as leading providers of higher education, and the fragmentation of quality and standards in the UK by discounting the UK Quality Code could add additional major risks to our international reputation.

We would therefore strongly recommend the OfS to use the outcomes from the consultation on the Quality Code currently being conducted by the UK Standing Committee for Quality Assessment, rather than diverging from the UK-wide agreed reference points.

4. Would exploring alternative methods of assessment, including Grade Point Average (GPA), be something that the OfS should consider, alongside the work the sector is undertaking itself to agree sector-recognised standards?

We would like to clarify to DfE that GPA is not an “alternative method of assessment”, it is a way of recording achievement. Assessment is rightly the responsibility of autonomous institutions based on their academic judgement of the most appropriate way of assessing student attainment to maintain their academic standards. GPA is simply another approach to grading achievement.

When considering GPA the recent joint UniversitiesUK and GuildHE report *Understanding Degree Algorithms* found that there is no appetite in the sector for adopting Grade Point Average. The responses received from higher education providers indicate that the adoption of the GPA has been slow and that there is little firm appetite for future uptake. Problems with the GPA include a lack of awareness by students and employers meaning that it is typically used in parallel to conventional classification. In addition, there are multiple ways of designing and implementing GPA and where adoption of the GPA has occurred, it has not delivered the benefits originally envisaged.

The survey responses, of which there are 106, indicate that there is limited appetite in the sector to use GPA in tandem with honours degree classification. 77 (72.6%) of respondents indicated that their institution was not planning to introduce the GPA. Of the 29 institutions that had plans to introduce the GPA, seven (6.6%) had introduced a GPA, with a further five (4.7%) piloting a scheme. One institution indicated that it had made good progress towards the introduction of the GPA without setting out a time frame for introduction. A further 14 (13.2%) institutions indicated that they had had preliminary discussions only about the introduction of the GPA.

The GPA is struggling to gain traction in the UK. Where the GPA has been adopted, multiple scales exist. This is problematic – it means that the GPA replicates issues with the honours degree classification and introduces new problems.

The introduction of a single GPA scale, if it were desirable, would address only the issue of differentiation within student performance. Grade inflation is still prevalent in higher

education sectors where the GPA is in use. We would therefore argue that there is limited appetite for further expansion of the GPA system.

GuildHE is pleased to be working with UniversitiesUK - alongside QAA, AoC, alternative providers, students and employers, to take forward the work on grade improvement/ inflation and sector-recognised standards, and working with the UK Standing Committee for Quality Assessment to provide a UK-wide perspective on the approval of these.

5. Do you agree or disagree that a student contracts condition should apply to providers in the Approved categories, to address the lack of consistency in providers' adherence to consumer protection law?

Much of the confusion around CMA compliance lies in the level of information providers can give out in advance of the start of a programme, and the sector is nervous to provide information about possible activities offered to students in case they are unable to run. This spans information relating to modules, field trips and other contextual information about a course. In reality providers are offering less information to prospective students in fear that students will hold them to account for things that are options which 'could' happen. We agree providers should set out what students should expect from their student experience, but not all course content can be set in stone at the beginning and students need to realise this when applying to the course.

We have welcomed the CMAs intervention in ensuring students are clear on the policies and procedures which they sign up to on entering a course, and believe we have made great strides in improving the transparency of these terms and conditions. We are not opposed to having a more universal document for students to see which details their responsibilities and the responsibilities of the provider, but this is a document which already exists in the majority of institutions.

We find the term student 'contract' problematic as we think it confuses the legal status of the document the draft framework refers to. Most English HEIs will have a student charter which outlines many of the things proposed in this 'contract'. What is important about these charters is they are written in consultation and partnership with students themselves. Calling these new documents contracts could confuse students into thinking the legal status of their relationship with the institution has changed, when in reality this is not the case.

We would be happy to endorse a mandatory registration condition that a document outlining student and institutional responsibilities is drafted in consultation with the student body, but do not believe it should be called a student contract. The key risk of this approach is that it might result in an overly legalistic response from students who may try to seek legal recourse rather than using the OIA. The OIA has evolved since its creation into an effective process that meets the needs of students without reverting to the overly adversarial, and expensive, approach of involving lawyers and taking an institution to Court.

We also believe to protect the interests of all students in the system, student 'contracts' should be a condition of registration for all providers basic and approved. Why should the OfS just be providing additional protections for those students taking out a student loan, when all providers are subject to CMA compliance?

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

As we have already highlighted, we fundamentally believe that to ensure value for money for students, the OfS must ensure providers treat students as partners in the management of the institution. It is not enough that the OfS works in the interest of students, students themselves as the primary user of services provided by the HEI, should have a responsibility to ensure the quality of provision with the provider.

The increase in tuition fees has changed the relationship between students and institutions, but mainly to the benefit of working more closely together. Students should feel entitled to be treated with at least the same respect afforded to any client, in any walk of life; but consumer panels, sounding boards, survey feedback etc. is way behind the trust, respect and genuine partnership that many institutions have fostered with their student body across many different types of providers.

We are concerned that the student voice is being devalued in many of the OfS' mechanisms to ensure standards and quality. For example, the halving of the NSS weighting in the TEF, coupled with students not being involved in any part of the institutional submission process means that the only guaranteed 'student engagement' comes from panel members themselves. We believe that in order for OfS to ensure students are getting good value, students should be shaping the conditions in which this value is defined. Therefore we would like to see a condition of registration to be ensuring providers have a student partnership agreement in place written in conjunction with students, and outlines their individualised institutional approach to ensuring students are involved in decision making and in maintaining and enhancing quality. Those providers who do not have an independent SU can still (and currently do) already do this as part of their requirement to meet the UK Quality code. We believe that this should be a baseline requirement for all approved providers. If the OfS is doing it as part of its governance arrangements, then individual providers should be expected to too.

There is no financial disadvantage for institutions to do this; in fact the opposite is true. Student partnership has shown to improve institutional attainment, promotes better retention rates, creates higher student satisfaction, and cultivates a genuine academic community. Our report '[Making Student Engagement A reality](#)', outlines many ways in which providers of all shapes and sizes see the benefits of partnership working with students.

Ultimately if DfE wishes institutions to treat students like consumers, then more must be done to understand how groups of student define value for money. This is often a contextual calculation, dependent on capital and culture which define and shape student expectations. There has been quite a large body of academic research which has looked to uncover how students develop their expectations which in turn inform their attitudes toward value for money. OfS should be connecting more of this academic research to practice, and highlighting some of the differing perspectives from students. It is not simply a crude calculation of tuition fee/contact hours, nor is it just a pie chart which shows students how their tuition fee money is spent. The power of student partnership is that providers and students can have an ongoing dialogue about what is important to students, what must happen in the interests of students, and how resources can be effectively allocated.

The [CHERI report](#) on student engagement in 2009 showed that there are wild variations in what students and academics find to be most useful forms of student engagement. These gaps are also identified when talking to students about the most important aspects of their

learning experience so it is vital that the OfS and the sector consult with students to shape any definitions of value for money.

We are also concerned that the current narrative being developed by government only relates to the cost of the course vs. a student's future earning power. The societal benefits of a highly educated society are being lost in this rhetoric, and OfS must ensure that it has measures other than graduate salary to determine value for money for students – not just the tax payer. There also a need for a more robust evidence base to inform discussions surrounding value for money, too much emphasis is currently being placed on the relatively small sample-sized HEPI-HEA Student Experience Survey compared to the National Student Survey. Future discussions in relation to value for money should be informed by more rigorous and robust research into student views.

7. Do you agree or disagree that a registration condition on senior staff remuneration should apply to providers in the Approved categories? Are there any particular areas on which you think should the OfS should focus when highlighting good practice?

We are supportive of the principle that senior staff pay should be more transparent.

We recognise that there needs to be a different approach to senior staff pay, especially as many institutions receive much of their income from public funds either through student loans or research grants.

We are committed to working with CUC on the development of further guidance for staff remuneration committees. Whilst we believe that the £150,000 figure is an arbitrary one, based on an assumption of the Prime Minister's salary which fails to take into consideration a range of other benefits that the PM has both in office and subsequently, we believe the sector can and should be more transparent about how senior salaries are decided.

We think you can take a number of approaches which could include various options. This could include the proposed option of making available the numbers of staff earning over £100,000 and providing justification for salaries over £150,000. We know that these salary benchmarks are used in the NHS and Civil Service, although the OfS should remember that HE providers are not public bodies, and it should be recognised that many providers have significant additional income sources other than through direct government support.

We support the development by the Committee of University Chairs (CUC) of a new governors' Remuneration Code which we believe will contribute towards sector transparency on vice-chancellor pay through the provision of data on pay ratios. Which UCEA have analysed and published since their inclusion in the 2011 Hutton Review of Fair Pay in the Public Sector. We are supportive of the publication of pay ratios by institutions based on technical guidance provided by the CUC.

8. What are your views on the potential equality impacts of the proposals that are set out in this consultation? Please provide any relevant evidence if you can as this will support future policy development.

The students described in the equality duty are often deemed 'hard to reach' or less engaged members of the HE community. Protecting their interests are different to protecting

the interests of white, middle class 18 year old entrants who make up the majority of HE entrants.

A market regulatory approach does not protect their interests for one fundamental reason. They have far less choice in what and where to study than the socially and culturally affluent in this country. Mature, part time, and many working class, women and people of certain cultures are not able to leave home and undertake courses anywhere in the country. They have to choose between institutions in a commutable distance.

Regulating the market only through baseline requirements does not guarantee these students a good quality education, and neither does it guarantee they will have access to an array of opportunities in which to choose 'the best'. There will always be a 'market' for these students who are locked into their location, and the current OfS approach risks keeping in business low quality providers if its baseline is set too low. The majority of institutions recruit a large proportion of its students from its local region and this in itself is not a negative thing. But it will be only those students who have the capital, and high attainment who will benefit from a market approach to assuring quality, being able to move anywhere in England to the 'best' institutions. This sector is proud of the impact it has made to social mobility, but as institutional perceptions become more important to government and employers, this approach threatens devaluing the UK HE brand and will disadvantage those who have no choice in where to study.

There is also an opportunity for OfS to gain a better understanding of the gender pay gap within the sector as part of its duty to collect information about staff salaries.

Part 2

9. Do you agree or disagree that participation in the TEF should be a general condition for providers in the Approved categories with 500 or more students?

Following the introduction of the cap on student tuition fees the incentive for institutions to enter the TEF was reduced, it is perhaps unsurprising that the OfS is proposing to make participation a condition of registration.

We welcome the process of the TEF to enable institutions to have the opportunity to explain their data through their institutional statement. An entirely data-driven process would be highly challenging on institutions with smaller cohorts of students, or specific contexts. This narrative has proven incredibly useful in the first TEF iteration to allow institutions to demonstrate their excellence their specific contexts. We would however call on OfS to allow an additional page within the institutional submission to provide space for a student commentary to ensure greater engagement with students in defining quality within a local context.

The subject-level TEF will help get around the challenge of a student studying on a "Bronze-level course" in a "Gold institution" however there are particular challenges for specialist institutions. We would not want to excessively increase the burden on smaller or specialist institutions. We would expect the pilots to consider the impact of burden on smaller and more specialist institutions, and the extent to which the activity adds real value to students in their decision making so the burden does not outweigh its value.

There is, however, a serious question mark about making it a condition of registration before the independent review has taken place. The TEF has already been significantly altered following the first iteration, and more changes are expected as we move towards a subject-level TEF. The HERA section 26 and particular subsection (5) details a significant and substantial review for TEF. It is therefore not appropriate to expect providers to sign-up to something before they actually know what the new TEF will look like. It will also be important that any changes to the TEF are clearly consulted on and agreed by the sector before additional changes are made.

We would therefore propose that institutions are encouraged to participate in the TEF, and to explain why they are not participating if they decide not to, but for entry into the TEF not to be a condition of registration until after the independent review when OfS can consult again on including it as a condition of registration.

Given the likely role of the TEF in judgements relating to enhancing quality it will be important that the DQB has a central role in the delivery of the TEF in order to maintain the coherence of, and a dimension of independence to, the overall quality and standards assessment framework.

10. Do you agree or disagree with the proposed ongoing general registration condition requiring the publication of information on student transfer arrangements? How might the OfS best facilitate, encourage or promote the provision of student transfer arrangements?

Yes - institutions already have policies and procedures to do this. However, with some courses having different curriculum content or ordering, particularly on PSRB accredited courses, it may mean that a student may not be able to take all their credits with them, or may need to re-take or repeat modules or full years.

Indeed, due to the formation of friendship groups and access to accommodation some students may wish to re-start the course. The guidance should make clear to students that they may have to start again even if they wish to transfer to the same course at a different institution.

As well as simply providing information to students they should be encouraged to seek advice and guidance from their current university on their options so that they are supported to make the best decision for them.

In addition to the transferring academic credit it will be important to consider other practical challenges such as access to student loans, especially if any requirements to retake credit takes them beyond the maximum loan entitlement. This will require a more flexible approach to student finance from the SLC and we would prefer to see a more flexible credit based model of loan calculation, rather than based on semesters.

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

We welcome the OfS undertaking thematic reviews of various parts of the sector. We hope these themes will be decided in consultation with the OfS student panel in order to ensure practice sharing is linked to things students care about. The QAA has been very successful in the past in undertaking this sort of activity through analysing outcomes of institutional review process and we welcome the opportunity for the sector to share practice in this way.

As the OfS has signalled that it will not be responsible for encouraging enhancement in the sector, we assume that many of these thematic exercises will be undertaken by the DQB as the experts in quality and enhancement practice.

We have already highlighted our concerns with the level of student led priorities in other questions in this consultation. However a specific issue in relation to the wording of the consultation refers to the role institutions should play in monitoring the activities of their Students' Union. SUs are autonomous organisations and the institution has no rights or responsibilities to ensure the SU is compliant with Charity Commission rules.

We are happy that the consultation specifically refers to ongoing Teaching Grant allocations being provided to high cost subjects and to support student achievement. However the minister's references to this funding have all been in relation to STEM subjects. The creative industries are one of the UK's biggest assets and will have a skills shortage in light of changes to the school curriculum. Specialist arts institutions in particular are at risk from becoming financially unviable if they lose their high cost T funding, and we want reassurances that there will be no changes to the way in which arts funding is allocated. We of course also welcome the Institution Specific Fund which supports specialist providers to exist in the sector, but hope that the methodology will be revisited as the last exercise had perverse consequences for many highly regarded institutions. Having a requirement of an institution being "world class" to receive funding is not in the national interest. There are high quality specialist providers who exist to train our future workforce, not to be world leading researchers in a particular area. These institutions must also be protected to allow a genuine diverse sector which meets the needs of the UK economy.

The student panel and student place on the OfS board should be instrumental in setting the OfS priorities. We welcome the OfS championing issues on behalf of students, but these issues should be set in partnership with students. There are many national issues which affect students which OfS will not routinely be collecting data on such as student accommodation, student welfare issues and campus safety which students may wish OfS to ensure standards in other ways.

We have talked at length with the TEF team at DfE about the burden TEF imposes on small providers. Many of our members do not have policy, planning or data analytics experts who have responsibility for pulling this sort of data together. We can see the benefits in theory of moving to a subject level TEF exercise, but DfE must show the benefits to students outweigh the burden of doing it. The [latest SU commissioned research](#) suggests that this may not be the case.

There is a clear case to be made that those in receipt of public funding should be asked to provide transparent and accurate data about how this money is spent. The new 'live data' returns however are a completely different approach to collecting information from the sector and as such we would ask that due regard is placed on how big of a change this will be to the sector. This is especially problematic for smaller providers, and alternative providers who have not had to provide this level of detail before, and have little staff resources internally in which to do this. We believe OfS should provide support to providers who do not have the finances and expertise to fully understand what is required of them and to provide training and support.

With regards to the OfS duty to ensure information is available to students in order to make informed choices, we would strongly encourage them to continue to ask prospective students and their advice givers what information is most useful, coupled with a provider and

current student perspective. HEFCE has undertaken a number of research exercises looking at information needs, and students generally want comparable information so that they can make decisions more easily. We are concerned that the holistic move to deregulate institutions will be at odds with students wanting comparable information, and in order to facilitate this, OfS may have to be more prescriptive with providers in outlining what information should be available and how to make it easy for students to compare.

We are concerned that as part of the public information landscape DfE suggest that the Transparency duty to report student outcomes by characteristic should be used as a piece of information to inform student choice (page 56). We fully believe that this information should be available to hold providers to account – however we believe that using this as a tool to support student choice will have perverse consequences. It may very well put off students with certain characteristics from applying to particular providers, and may undermine the good work institutions are doing to widen participation. We therefore do not feel it should be included in any future iterations of UNISTATS or other national student information publications, but should form part of the data which informs baseline standards and access and attainment plans.

We would like to take this opportunity to reiterate the point that a high graduate salary is not the only successful outcome of HE, yet it is one of the only things measured in terms of impact of the degree. The LEO data is divisive in that it cannot currently include students' self-assessment data. Many students become self-employed after graduation, and institutions have been encouraged to promote entrepreneurship and enterprise as a genuine graduate outcome. Yet they are currently penalised in that this income is not included in calculations of graduate salary. We know you are aware that this especially rife in certain sectors such as creative, medicine and business and we would like to see the OfS take more responsibility for ensuring that accurate salary data is provided to the public and on which institutional performance is measured.

Finally we do not think it is appropriate for the OfS itself to be a validator of last resort. This is a massive conflict of interest. We agree that there needs to be an option for providers who, due to issues of competition in the market, are unable to find a validator, but that validator must not be the OfS whose staff are not academics, and are not qualified to decide on the academic merit of students work. The OfS should have a contractual relationship with a provider in which to manage this activity.

Part 3

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

13.The initial conditions should provide reassurance that providers will meet the general ongoing conditions without creating unnecessary barriers to entry. Given this, are the initial conditions appropriate?

The wording of Conditions B1, B2, B3, C1, C2 should map against the revised Expectations of Quality Code - and as a sector-run, being overseen by the UKSCQA, and UK-wide consultation process the wording should come from the revised Quality Code rather than any amendments as part of this OfS consultation.

The UK-nature of the Quality Code is an essential feature of maintaining our UK higher education system and must not be lost through an unintended divergence as part of these consultations running side-by-side and with different nations responding.

Condition F does not look strong enough to provide reassurance to students in new entrants to the higher education sector. It is more than just “minimising any impact” and “all reasonable steps”.

We would also like to see an additional condition under part E which relates to a provider having a student partnership agreement in place, in order to ensure that students have a place in defining value for money and have a stake in protecting their interests.

It should be clear how these baseline registration conditions relate to the previously articulated UKSCQA baseline conditions which includes reference to the HE Code of Governance and OIA good practice guidance. It will be important that we do not lose reference to these other frameworks.

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

Yes, the broad principles surrounding academic freedom, freedom of speech, accountability, risk management, governing body, academic governance, fit and proper seem appropriate. Although see response to other questions about presenting value for money information.

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

The extension of the benefits associated with Tier 4 to private providers and publicly funded FECs that publicly funded HEIs currently receive with Tier 4 is very welcome. Currently students at these providers are not allowed to work whilst studying, bring their partner and various other rights and so this levelling of the playing field is a positive step forward.

With these extra rights will come some additional responsibilities by being on the register as either approved or approved (fee cap). This will be an increase in oversight for some providers, with meeting the general conditions for registrations more burdensome than educational oversight processes. However, the benefits to students will be significant, both in terms of their additional rights to work and so on but it will also enhance student protections with the fact that this will require these providers to have a student protection plan.

16. Do you agree or disagree that paragraph 7 and 8 should be removed from Schedule 2 of the Education (Student Support) Regulations 2011, which lists the types of courses that allow with access to the student support system? If you disagree, are you aware of any courses dependent on these provisions to be eligible for support?

We are concerned that this will impact on ‘access to HE’ courses which provide a means to pick up those students for whom school education is not working and who need a ‘Year 0’ approach. We are therefore suggesting that while para 7 can be dropped, para 8 should be amended to provide for courses designed to provide access to HE, where there is a proper progression route offered by a provider.

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

We believe that the benefits awarded to each type of registration type are proportionate. However, we would take issue with a UK provider with DAPs being able to register as a basic provider. Because of the lack of oversight over these types of providers in this category we would not be able to secure the standards and reputation of a UK HE award if a basic provider was able to award qualifications. We therefore believe that UK providers with DAPs should not be able to become a basic provider, or a hybrid model of quality assurance would have to be developed to specifically ensure the maintenance of UK standards for those providers.

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

See responses to previous questions relating to senior staff remuneration, entry to the TEF, transparency conditions and student transfer.

The key with both the conditions or registration and ongoing monitoring is that the data is seen in the context of the specific institution, this contextualisation is particularly important in institutions with smaller student bodies where the data is more likely to fluctuate on an annual basis.

We recognise the need to make the Basic category attractive to encourage providers to register that have not previously engaged with the regulatory framework, and therefore the need to make this as light touch as possible. This is especially true since many of these providers will be very small indeed, and in the case of SCITTS and other school-based teacher training, may only have very small numbers of students.

However, in a risk-based system it is likely that this category of provider will have a disproportionate high reputational risk to the sector. Students are unlikely to understand the difference between different categories of providers and just focus on the fact that they are a recognised provider. It will therefore be important that students at these providers have at least a minimum level of protection – and this should be more than just that the institution is a member of the OIA. This should include both that the provider should have a student protection plan and that there should be student ‘contracts’.

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

Table 6 is a helpful overview of monitoring risk for registered providers. However, the division of roles between the OfS and the Designated Quality Body are not clear. As an independent, internationally respected body based on the principles of co-regulation we would expect the QAA to be designated and as the DQB to play a central role in assuring the quality and standards dimensions of the risk assessment and monitoring processes. We would therefore expect that the DQB plays a role in relation to quality and standards in developing the risk assessment at the point of registration, general monitoring, enhanced monitoring as well as through the random sampling of providers.

The consultation does not reflect the co-regulatory nature of quality and standards across the UK, which was reflected both during the passage of the HERA as well as in the final iteration. This rather prescriptive tone in the consultation highlights the need to both designate the QAA as the DQB and also for them to have a major role in the monitoring processes towards risk assessment and monitoring.

The general monitoring includes drawing information from other sources such as whistleblowing and complaints which the QAA (as the sole applicant for DQB, and supported for this role by GuildHE) has already demonstrated through its Causes for Concern process over several years.

There is a disappointing absence of the role of students and their representatives as part of the quality assessment processes. This must be addressed. Under the other sources of information para 248 refers to seeking input from students themselves. This would be a useful opportunity for the OfS to consider how it better engages the views of students, student representatives and students' unions in a more structured way.

Whilst the random sampling approach aims to reduce burden for institutions compared to the previous cyclical institutional review process, however, we expect the OfS to consider the burden of the whole process - including ongoing monitoring and efficiency studies - to ensure that the overall burden is appropriate to the risk of providers. Additionally it is not clear what the random sampling process will look like and what its purpose is. Is it a deep dive on data or more akin to a Higher Education Review or indeed a Higher Education Assurance Review, without clarity on this it is difficult to effectively comment on the proposal. It will be important for the OfS to consult on what these random sampling reviews will look like to ensure that they actually add value to the system. It is unclear as to the rationale for 5% as opposed to any other figure, will 5% be sufficient to maintain public confidence in the sector and does this figure need to be prescribed?

The UK has a hard-earned track record for excellent quality higher education, and this UK dimension must not be lost. We therefore see a role for the UK Standing Committee for Quality Assessment as providing oversight of the UK dimension to ensure that policy divergences across the nations of the UK does not result in a fundamental separation of the UK's quality framework. It should also be noted that the UK higher education system is also aligned to the European Higher Education Area, gaining many benefits for students and institutions as well as reputationally. It will therefore be important to ensure that the proposed registration conditions are compliant with the European Standards and Guidelines, including 2.4 which refers to the role of external "peer review experts".

We have concerns about the absence of transnational education in the new regulatory landscape— this poses a significant risk to the reputation of UK higher education internationally. Over 700,000 students are studying UK degrees through transnational agreements and we need to address how we continue to quality assure TNE in the future, in a way that maintains the confidence and trust of international governments and regulators. It is important that the experiences of these students are considered, and this should be overseen by the DQB.

20. Do you agree or disagree with the proposed approach on interventions (including sanctions) and do you agree or disagree with the proposed factors the OfS should take into account when considering whether to intervene and what intervention action to take?

The OfS should act where an institution is in breach of their registration and/or ongoing conditions, and this should be based on an open dialogue with the institution. The ability to use sanctions will be an important part of this monitoring, however decisions surrounding more severe sanctions - such as significant financial penalty, de-registration etc - must be subject to adequate scrutiny, including by the OfS Board for the most serious sanctions rather than decision just being taken by OfS officials.

The OfS should balance the impact of making any sanctions public on further destabilising the institution with the need to reassure students and the public that action is being taken. There must be transparency and consistency in the decisions taken. There needs to be a clear appeals process on the sanctions.

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

Yes in principle. However, we need to ensure that institutions do not fall between the gaps. For example, if an institution had previously registered with HEFCE but is based in Wales or NI they may not have processes for course designation, having previously relied to HEFCE processes. We would therefore encourage the OfS to liaise with the relevant authorities across the rest of the UK.

Part 4

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

We are concerned that by not including information on the register pertaining to restrictions in access to student loans (in the event a provider has limited access) prospective student may get confused as to what they are entitled to. If the register is to act as a place for prospective students to find out about a potential choice, the restrictions should be fully laid out to them, and the provider must itself be completely transparent about which courses are eligible for student loan funding and which are not. The problem with publishing information on a 'risk basis' is that the OfS will not be able to be seen a definitive destination for student and public information requirements.

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

We warmly welcome the six overriding principles for engagement.

It is noted that OfS wants "good relationships" with Ofsted and Ofqual with regards to quality. How these relationships will work in practice will need careful consideration so as to keep burden to a minimum.

The relationship with UKRI

We welcome the fact that communication with UKRI is highlighted as crucial. It will be important to ensure that information is exchanged with a provider's knowledge, and that a level of objectivity is maintained by each body to use that information appropriately within the scope of their specific expertise / area of practice.

We particularly welcome the commitment that the OfS and UKRI will collaborate on areas such as “skills, capability and progression; knowledge exchange; infrastructure funding; building robust evidence and intelligence; and ensuring that the REF and TEF are mutually reinforcing.”

We do have some concern that institutions whose research track records are emerging may have difficulties in developing their research excellence if they cannot secure Approved (fee cap) registration status. Their historic access to competitive grants, especially from the Research Councils, has been limited, and QR funding is their primary and perhaps only source of secure, ongoing, unrestricted funding for research activity.

Part of the relationship with UKRI must ensure that there is close joint working on the REF and the development of the Knowledge Exchange Framework (KEF). It is important to recognise the impact of research and knowledge exchange on teaching and the student experience within an institution, and that knowledge exchange may emerge from the research, scholarship, and teaching activities of an institution. In particular, the KEF could help to capture and acknowledge the wider societal contributions that HEIs make to their local and regional communities. It is only likely to achieve this through joint working between OfS and UKRI and a broad notion of what knowledge exchange may encompass.

An area of concern that has been less explicitly explored in this consultation is the relationship of the OfS, UKRI, and Research England to Postgraduate Research Students (PGRs). As students, the principles of this consultation could be read to also apply to them, and therefore the OfS would take primary responsibility for the regulatory aspect of their experience. However they are far less coherent as a cohort when compared to undergraduates and have markedly different characteristics and therefore present different risks. PGRs require very different levels of support, training and supervision, have a different and variable relationship to institutions as degree awardee and potentially as employer, and completion, progression, and retention may depend on many different factors. We would welcome further and more considered thought on how PGRs relate to the new organisations, and how the language of the OfS truly relates, and is achievable for, all students, including PGRs. Should the outcome be that responsibility for PGRs is shared between agencies, we would welcome clarity as to how that will be handled in practice, particularly to ensure that the excellent and world class system for research training in the UK is not jeopardised by unnecessary bureaucracy but rather that the commitment to recognising and supporting excellence wherever it is found is upheld.

PSRBs

There are a number of Professional, Statutory and Regulatory Bodies which help determine and set standards for many UK degrees. The OfS should develop a stronger relationship to these bodies, who often have a different threshold standard to a non-accredited courses. To minimise burden, the OfS and the Designated Data body could work harder to align the requirements of the PSRBs to the regulatory landscape.

Other Government bodies

Given the emphasis in liaising with other bodies, we wonder whether the OfS should also be seeking a relationship with HMRC, especially in relation to bringing further clarity to which providers will now be VAT exempt.

We also hope that the OfS will be able to develop more strategic partnerships with Departments other than DfE. Working more closely with BEIS, DEFRA, DCMS and DfH will create a much more intelligent dialogue about the higher level skills needs of important parts of our economy. These departments better recognise the challenges these sectors face, and by working in partnership with the OfS, HE providers can be better placed to help solve these.

Industrial Strategy

The Industrial Strategy is an important area where we would seek to see the OfS work strategically and in alignment with the goals of such departments. The Industrial Strategy white paper states that the OfS “will address employer and student needs and expectations in the short, medium and long term – considering skills gaps that exist today, and anticipating the demands of the future economy.” We welcome this reference as we believe it is important for the OfS to be engaged in national policies where HEIs must play a crucial role in developing solutions to grand challenges faced by our society and economy.

We see a role for the OfS in ensuring that government departments looking to engage with and deliver policies through HEIs, such as place-based growth, have access to accurate information about the sector. This would include understanding the strengths smaller and specialist institutions have in terms of close-to-market provision of education and research, being embedded in local economies, and of the many disciplines that may be called upon to answer those challenges, including the creative arts. This kind of nuanced understanding of the sector will be crucial to the success of the industrial strategy.

We would hope that this role to advocate for and communicate about all parts of the diverse HE sector does not fall between the cracks of the new structure of agencies. It is important that the intertwined activities of teaching, knowledge exchange, and research are not artificially divorced from each other by the remits of the new bodies, but are recognised as vitally interconnected and valuable, in a variety of combinations, to delivering innovation, impact, and growth.

Designated bodies

It is important that once designated both the DQB and DDB are independent from OfS and are able to both develop a strong working relationship with the OfS and also providers and students based on the principles of co-regulation. This independence is clearly laid out in HERA but sections of the consultation seem to provide some challenges in this regard.

For example, in para 270 says that the OfS will retain overall oversight for the appropriate information requirements placed on the sector, including the definition and collection of data sets. Surely the whole point of designation is to recognise the expertise and independence of the designated bodies.

24. Do you have any comments on the proposed exercise of OfS functions in relation to validation, in particular in relation to ensuring that the validation service is underpinned by the necessary expertise and operates in a way that prevents or effectively mitigates conflicts of interest?

It is likely that the new DAPs route might reduce the number of institutions going down the validation route, and so this might become a shrinking part of the sector. We have had

members comment that they have been unable to have courses validated through existing partnerships due to perceived competition and so alternatives do need to be considered.

The OfS should use its powers to facilitate validation through existing routes wherever possible. However, the OfS should not act as the validator of last resort in its own right but rather work with a body with DAPs (such as the Open University validation service) to undertake this role. There would be real questions about the value of an “OfS qualification” if they were seen as only being awarded to students in the case of institutional failure, which would not be in the student interest. The OfS is responsible for monitoring compliance with the registration criteria and so should not also be responsible for delivering provision, this would be a major conflict of interest.

25. Does the information provided offer a sufficiently clear explanation of how a provider will apply for registration in the transitional period and what the consequences of registration are in this period?

The mid-Sept 2018 publication of the register for the first time is relatively late in the application cycle for those starting in Sept 2019. Many of these students will have been considering which institutions to study at earlier in the year and over the Summer. The Sept 2018 date will allow institutions to update their online information, and for this to be included on the UCAS website, and so they will be able to find out the provider’s status before applying, however this information will not be available in time for printed university prospectuses. The status of the provider in relation to the register will need to be made clear to prospective students and a form of words that the CMA is happy with will need to be considered for prospectuses and online.

The information surrounding registration during the transition period looks clear, although we would welcome comments from members if there are specific concerns.

Annex C

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

We believe that this proposal seems to make sense and would be a simple switch for current exempt charities for their Principal Regulator to move across from HEFCE to OfS.

27. Provided that the Secretary of State considers OfS regulation is sufficient for these purposes, should exempt charity status apply to a wider group of charitable higher education providers? In particular, considering that providers in the Approved categories will be subject to conditions relating to Financial Sustainability, Management and Governance, and the provision of information (as set out in the Guidance), do you have any views on whether the OfS’s proposed regulation of providers in these categories would be sufficient for the purposes of it carrying out the functions of Principal Regulator?

We believe that this proposal looks to be intended to reduce duplication between the regulatory responsibilities of the OfS and the Charity Commission and, potentially, reduce regulatory burden.

However, care needs to be taken to greater understand the implications of such a change for non-profit providers who are regulated charities. We would therefore recommend and welcome the proposed, further informal consultation.

For example, one potential issue could occur around financial sustainability and the requirement to generate a profit or surplus over three to five years (cf para 121, pg34 in the further guidance). Non-profits may only be looking to break-even/ make a small surplus for reinvestment. Generating vast profit could contravene charity law. How does this work for current exempt charities at present? This would be something that the further consultation could explore.

We would also question whether the Secretary for State for DfE can extend exempt status or whether the Secretary for DCMS would need to make this change. We would recommend that DfE, DCMS, the Charity Commission and the OfS consider the potential change carefully.