



#### About GuildHE

GuildHE is an officially recognised representative body for UK Higher Education. Our 54 members include universities, university colleges, further education colleges and specialist institutions from both the traditional and private sectors. Member institutions include some major providers in professional subject areas including art, design and media, music and the performing arts; agriculture and food; education; business and law; health and sports.

## Opening Comment

- **UK Sector has strong record for delivering excellent higher education**
  - It is important to start by acknowledging the excellent record of UK higher education sector for high quality higher education, and supporting students reach their potential, become rounded citizens and make a positive contribution to society through their social, cultural and economic activities.
  - We do however, recognise the concerns raised by the OfS in their consultation, supported by concerns in government, the media, amongst students and wider population that there are still some pockets of low quality provision. GuildHE, and our member institutions, have been strongly engaged in recent activities to tackle grade inflation, enhance teaching and learning and maintain robust academic standards, and we are committed to continuing to do this to ensure all students have an excellent experience.
  
- **The future needs of the UK will be met through more flexible delivery, innovative curriculum and be responsive to skills needs**
  - The Prime Minister recently emphasised the importance of future skills needs, flexible approaches to delivering tertiary education and any new quality system needs to be suitably future-proofed to ensure that these approaches are encouraged and not stifled.
  
- **Quality and standards are not an island**
  - Approaches to maintaining robust academic standards and high quality do not sit alone and must not unintentionally impact on our efforts to increase access, participation, equality and diversity across the higher education sector.
  - Reviewing the OfS's approaches to quality need to be seen alongside the uncertainty surrounding the National Student Survey and the current Review, the Teaching Excellence Framework and the outcomes of the Pearce Review, ongoing OfS consultations including on reportable events and monetary penalties and the ongoing impact of the pandemic and it's impact on the underlying data and economic chances for graduates.

This document contains a headline overview of our main comments about the OfS' Consultation on Quality and Standards. Annex 1 goes through the specific definitions of quality and standards as outlined in Table 1 of Annex A of the OfS Consultation. Annex 2 is a draft of our response to the specific questions in the consultation document.

We would remind the OfS that the higher education sector has been dealing with an unprecedented global pandemic, changing their entire business model and shifting to online and blended approaches as well as dealing with digital poverty of students and staff and the significant impact on their mental health.

We would strongly encourage the OfS to reflect on whether this was the most appropriate time to launch a major consultation and whether they should be launching any additional consultations in the near future.

## Main overarching points:

- **Retain the Quality Code to maintain a UK-wide framework**
  - An underpinning feature of the quality assessment system should be to ensure a UK-wide framework within which the different national approaches all sit. This is also particularly important given the UK's international reputation for high quality education supporting international student recruitment and partnerships, and other countries look at the UK as a whole rather than the different approaches in the four nations. It is also important that in a single United Kingdom of four nations that we facilitate graduate mobility around the country through a national quality framework.
  - In the current Regulatory Framework this "UK-ness" is mainly expressed through alignment with the Quality Code, and in particular reference to the Core Practices and Expectations that apply to the whole UK. **We therefore believe that the English system should continue to be aligned to Quality Code in order to retain the UK-dimension.** If the OfS does decide to press ahead with removing references to the Quality Code then they must replace that with measures to protect a UK-wide quality assessment system.
  - Further, we believe that removing references to the Quality Code (and the Advice and Guidance), which is a sector-agreed way of enhancing the quality of education above the baseline, would not be good regulation as it is at odds with the initial principle in the Regulator's Code about supporting those that they regulate to both "comply and grow".
- **Removing benchmark data for employment progression data will result in greater inequality**
  - The role of the regulator is to regulate on things over which an institution has control. There are structural inequalities within society that impact on the type and level of jobs that people are appointed to. There are also likely to be regional differences in current skills needs and not considering this factor by removing benchmarks might negatively impact on Government plans to "level-up" regional economies. **Not benchmarking this data for progression to professional and managerial employment will unfairly penalise institutions for issues beyond their control.** We therefore propose that the OfS must retain benchmarked data on the progression measure.
- **Develop more sophisticated benchmark data for other metrics**
  - Benchmark data has long been a tool to support providers to widen participation to the least advantaged and provide opportunities for many that would not otherwise have experienced higher education. The benchmark data recognises the huge value added to these individuals whilst understanding that there may be differential outcomes and not discouraging providers from undertaking these activities due to fear of the regulator. The OfS should be seeking to develop more sophisticated benchmark data rather than proposing to remove it, and in particular should reconsider how it measures this value-added by providers.
- **Measure the impact of possible unintended consequences of removing benchmarked data**
  - The OfS should carry out, and publish, a robust equality impact assessment of the various possible unintended consequences of the proposals, and particularly if benchmark data were removed. This should include the consideration of the impact on the numbers of

students with protected characteristics entering higher education if some providers take a conscious decision not to recruit particular groups of students due to their continuation or completion rates, or the longer-term impact on these students if they are steered towards shorter level 4 or 5 qualifications or bite-sized credits. The impact assessment should also consider the impact of some providers closing and there being fewer providers able to deliver student choice, particularly in “cold spots”. The recent OfS publication on KPM8 and KPM9 suggests that the OfS has an interest in this subject, so it is strange not to see it carried through to the Quality and Standards proposals.

- **Reliance on data for institutions with small cohorts**
  - The OfS’s proposals for more reliance on numerical baseline data places an enhanced reliance on the robustness of the data. The majority of providers on the OfS register have either small student numbers, or many courses with small numbers, all of which means that the data is unlikely to be statistically robust to make regulatory decisions, especially when looking at the intersection of different student characteristics. The second phase of the consultation needs to make clear how this will work in the vast majority of providers on the OfS register with small cohorts of students and data that is more likely to fluctuate on a year to year basis. The second phase consultation should also consider the possible risks of aggregation which may hide some very good or very poor outcomes.

## More detailed issues:

In addition to our broad overarching comments there a number of more detailed points

- **Use of new SOC 2020 codes for professional and managerial jobs**
  - It will be important that if the OfS is to use progression to professional and managerial employment as one of it’s key metrics that it uses the most up to date Standard Occupational Classifications (SOC Codes). There has been a significant change in the economy over the last ten years and a number of jobs that were not considered as “graduate jobs” when the SOC Codes were reviewed in 2010 are now considered as such in the 2020 iteration and so an up-to-date list of occupations must be used.
  - This includes a number of roles that were listed in bands 4-7 in SOC2010 but are now listed in bands 1-3 in SOC2020, these include: veterinary nurses, paramedics, teaching assistants, early years practitioners, office managers, detectives, fraud inspectors and many other roles with manager in the title.
- **Norm-based system for bottom 10-20%**
  - The reference in paragraph 57 of Annex B to seek to improve the performance of the bottom 10-20% of providers in the sector for any given provider suggests a worrying move to a norm-based system. It is worth noting that this type of system would lead to an ever-rising bottom range of 10-20% which could result in an increasingly homogenous system and go against the OfS’s duties to maintain the diversity of the higher education sector. If this approach is retained then the reference to the bottom 10-20% of “provider” will be important to prevent a return to regulatory overburden of all providers having some kind of enhancing monitoring/Condition relating to specific subject disciplines within an otherwise good provider which is not in keeping with a risk-based, low-burden approach.
- **Specific definitions of quality**
  - The OfS’s definitions of quality are an unhelpful move away from the more principles-based definitions, of the expectations of the Quality Code towards a more rules-based

approach. We believe that the Quality Code is more precise and is more understandable by students. Annex 1 goes through the specific definitions in more detail.

## Annex 1: OfS proposals of quality

*As a wider point many of these are not so very different to the Quality Code. It would be more appropriate for the regulator to identify the things it believed were important and ask its DQB to ensure that these were captured through the core practices. This would also enable the maintenance of a UK-wide approach. Additionally, it is not clear what the purpose of the list is - are they principles, or things that OfS proposes to measure? For example, the first element is unarguable as a principle, but if using continuation and completion data as a measure, it will be incoherent for the reasons we provide. If these definitions are to be used they need to be more precisely worded, being clear what they cover and what they don't and how the OfS will assess whether an institution has met them. These proposed definitions should be developed based on in-depth discussions with students and institutions.*

<b>OfS proposed definition of quality</b>	<b>Comments</b>
Students admitted to a course have the capability and potential to successfully complete their course.	As a principle this is unarguable, but if they are using continuation and completion data as a measure, is incoherent. This is presumably linked to the continuation and completion outcomes data that the OfS could consider, but a student can have the "capability and potential" without actually continuing or completing. This same point about the clash between principle and measurable activity can be made to most of the definitions below.
The provider's admissions arrangements identify the additional support students need to successfully complete their course.	Do you need the word "additional", surely it's just about identifying the support that they would need.
The content of a course is up-to-date and assessed effectively	How would the OfS go about assessing the content of the course? Surely that is a question of academic judgement? Perhaps alignment with Subject Benchmark would be more appropriate?
The content and assessment of a course provides educational challenge consistent with the level of the course	How would the OfS judge this?
The structure of a course is coherent and delivers academic progression through the course.	How would the OfS go about assessing the coherence of the course? Surely that is a question of academic judgement?
The content and structure of a course allows students to develop intellectual and professional skills.	The <a href="#">grade classification descriptors</a> look at "knowledge and understanding", "cognitive skills", "practical skills" and "transferable skills" and where relevant "professional

	competencies”, rather than just “intellectual and professional skills”.
The course is delivered effectively and in a way that meets the needs of individual students.	Meets the needs of all individual students? Is that possible or even desirable since they may have competing needs.
Staff who design and deliver a course are sufficient in number, appropriately qualified and deployed effectively to deliver in practice.	Who defines whether there are sufficient staff, appropriately qualified and deployed effectively?
Physical and virtual learning resources are adequate and deployed effectively to meet the needs of individual students.	
Academic support, including specialist support, is adequate and deployed effectively to meet the needs of individual students.	Who defines whether the support is “deployed effectively”?
Students are effectively engaged in the quality of their educational experience.	Individually or collectively or both? Does this mean engaged in measuring / judging the quality? Setting it? As it stands this sentence makes no sense
Students continue from their first to second year at a rate above the OfS numerical baseline.	This is measurable but is not a principle. If it is to be included, it should be “at or above an agreed minimum threshold”.
Students complete their course at a rate above the OfS numerical baseline	This is measurable but is not a principle. If it is to be included, it should be “at or above an agreed minimum threshold”.
Students progress to managerial and professional employment (or employment appropriate to the qualification level) or to higher level study at a rate above the OfS numerical baseline	This is not a measure of the quality of the course and does not reflect the social value of education.
Students have the right skills from their course once in employment and employers are satisfied with the graduates they employ.	Who defines whether employers are satisfied? In particular how would this be measured from the self-employed, those with portfolio careers and those working for smaller employers.
The standards set by the provider (if it is an awarding body) and achieved by its students are consistent with sector-recognised standards.	
The provider’s assurance arrangements ensure that assessment of students and the resulting awards are valid and reliable.	
Qualifications awarded to students have value at the point of qualification and over time.	

## Annex 2: GuildHE responses to the specific questions

### Questions relating to Proposal 1

**Question 1a: Do you agree or disagree with the proposed definitions of ‘quality’ and ‘standards’ set out in Table 1 of Annex A and that this should be used to express minimum baseline requirements for quality and standards in revised B conditions?**

- Agree
- Disagree**
- Neither agree nor disagree

### GuildHE response

#### ***Definitions of Quality***

*An underpinning feature of the quality assessment system should be to ensure a UK-wide framework within which the different national approaches all sit. This is also particularly important given the UK’s international reputation for high quality education supporting international student recruitment and partnerships, and other countries look at the UK as a whole rather than the different approaches in the four nations. It is also important that in a single United Kingdom of four nations that we facilitate graduate mobility around the country through a national quality framework.*

*In the current Regulatory Framework this “UK-ness” is mainly expressed through alignment with the Quality Code, and in particular reference to the Core Practices and Expectations that apply to the whole UK. **We therefore believe that the English system should continue to be aligned to Quality Code in order to retain the UK-dimension.** If the OfS does decide to press ahead with removing references to the Quality Code then they must replace that with measures to protect a UK-wide quality assessment system.*

*We disagree with the proposals outlined in the Table 1. We do not agree with the proposal to remove reference to the Expectations and Core Practices of the Quality Code. This is both at a principled level of believing that the Quality Code provides a framework to maintain a UK-wide quality assessment system and secondly that the Quality Code is a sector agreed document based on agreed definitions of what a high quality student learning experience looks like and was jointly developed by the sector. We would question whether it is good regulation to remove references to these in the regulatory framework.*

*We would also question whether the proposal meets the initial principle in the Regulator’s Code about supporting those that they regulate to both “comply and grow”.*

*Additionally we have a number of specific comments on the detail of the definitions, see the table above for these. [INSERT TABLE ABOVE IN FINAL CONSULTATION VERSION]*

*Within the principles/standards/measures set out in Table 1, outcomes at an appropriate level of quality and standards are defined as being “above the OfS numerical baseline”. This should be “at or above” the baseline, rather than specifying providers must be above it.*

#### **Sector recognised standards on degree classification descriptors**

*Para 40 of the consultation refers to the sector-recognised standards on degree classification descriptors would “allowing an assessment to be made about whether the classes of bachelors’ degrees awarded by a provider meet, in practice, sector-recognised standards”. GuildHE worked closely with Universities UK*

and QAA to develop these degree classification descriptors and believe that they form an important UK-wide sector reference point. Research by UUK and GuildHE on progress across the UKSCQA's degree classification programme of work already suggests 76% of providers have or intend to engage with the descriptors.

However it is important to recognise that they are a reference point rather than prescriptive set of definitions for all institutions. The sector is diverse both within and between providers and there needs to be flexibility in how they are used and incorporated to account for the diversity of provision and enable innovation. Therefore, while we support their inclusion in the definition, further information is needed on how the OfS will regulate on these within the proposed rules-based approach with reassurance that flexibility will be retained. Any further proposals relating to this will need to demonstrate that they do not interfere with academic judgement and institutional autonomy.

**Question 1b: Do you have any comments about how the proposed definitions of quality and standards set out in Table 1 of Annex A should be assessed for individual providers?**

**GuildHE response**

*We do not believe that the proposed definitions should be used.*

*Additionally we have concerns about a purely data driven approach to assessing quality. The OfS's proposals would result in even more reliance on numerical baseline data which would place an enhanced reliance on the robustness of the data at a provider level. The second phase of the consultation needs to make clear how this will work in the vast majority of providers on the OfS's register with small cohorts of students and therefore data that is more likely to fluctuate on a year to year basis. The second phase consultation should also consider the possible risks of aggregation which may hide some very good or very poor outcomes.*

*This issue of robust use of data will be especially true at the subject level and even more so in smaller institutions – many of whom are essentially single subject institutions – and so the burden on smaller providers needs to be considered.*

*The consultation notes that its approach and definitions for quality and standards will cover all types of provision, including higher technical education and apprenticeships. With the move to OFSTED inspections for apprenticeships, it is unclear how OFSTED's judgement of quality and standards will relate to the OfS' regulatory role. The role of IFATE in approving higher technical qualifications requires similar consideration. Greater attention is needed to fully recognise the diverse provision individual providers have and how different regulatory requirements interact. The same will be true for some PSRBs. There will need to be clear guidance for institutions for how these different inspection and regulatory systems inter-relate without creating excessive burden, duplication of activity or requesting similar information in slightly different formats.*

**Question 1c: Do you agree or disagree with the proposal in paragraphs 41 to 43 to express initial requirements differently from the equivalent ongoing requirement for providers seeking registration?**

- Agree
- Disagree
- Neither agree nor disagree

**GuildHE response**

*We believe that it would be more appropriate to use a more rules-based approach, employing baseline data, as part of the registration process where providers are seeking to demonstrate their compliance. This would allow the OfS to ensure that there is a high threshold quality to enter the higher education sector. However, once providers are on the register we suggest a more principles-based approach based on autonomous providers developing processes appropriate for their provision. There will however be challenges for new providers who do not have a track record of delivering HE and therefore will not have any data at the point of registration, for these institutions the OfS will need to develop a robust system that isn't based on Outcomes data.*

**Questions relating to proposal 2**

**Question 2a: Do you agree or disagree with the proposed approach to assessing student outcomes set out in Annex B?**

- Agree
- Disagree**
- Neither agree nor disagree

**GuildHE response*****Removing benchmark data for employment progression data will result in greater inequality***

*The role of the regulator is to regulate on things over which an institution has control. There are structural inequalities within society that impact on the type and level of jobs that people are appointed to. There are also likely to be regional differences in current skills needs and not considering this factor by removing benchmarks might negatively impact on Government plans to “level-up” regional economies. **Not benchmarking this data for progression to professional and managerial employment will unfairly penalise institutions for issues beyond their control.** We therefore propose that the OfS must retain benchmarked data on the progression measure.*

***Develop more sophisticated benchmark data for other metrics***

*Benchmark data has long been a tool to support providers to widen participation to the least advantaged and provide opportunities for many that would not otherwise have experienced higher education. The benchmark data recognises the huge value added to these individuals whilst understanding that there may be differential outcomes and not discouraging providers from undertaking these activities due to fear of the regulator. The OfS should be seeking to develop more sophisticated benchmark data rather than proposing to remove it.*

***Reliance on data for institutions with small cohorts***

*The OfS's proposals for more reliance on numerical baseline data places an enhanced reliance on the robustness of the data. The majority of providers on the OfS register have either small student numbers, or many courses with small numbers, all of which means that the data is unlikely to be statistically robust to make regulatory decisions, especially when looking at the intersection of different student characteristics. The second phase of the consultation needs to make clear how this will work in the vast majority of providers on the OfS register with small cohorts of students and data that is more likely to fluctuate on a year to year basis. The second phase consultation should also consider the possible risks of aggregation which may hide some very good or very poor outcomes.*

### **Use of new SOC 2020 codes for professional and managerial jobs**

*It will be important that if the OfS is to use progression to professional and managerial employment as one of its key metrics that it uses the most up to Standard Occupational Classifications (SOC Codes). There has been a significant change in the economy over the last ten years and a number of jobs that were not considered as “graduate jobs” when the SOC Codes were reviewed in 2010 are now considered as such in the 2020 iteration and so an up-to-date list of occupations must be used.*

*This includes a number of roles that were listed in bands 4-7 in SOC2010 but are now listed in bands 1-3 in SOC2020, these include: veterinary nurses, paramedics, teaching assistants, early years practitioners, office manager, detectives, fraud inspectors and many other roles with manager in the title. As an example of the lack of coherence of the SOC mapping, a scenic artist is considered a graduate job and a props maker is considered a non-graduate job. Thus we could have two students with identical achievement from the same programme going into slightly different roles and one is classified as graduate employment and the other not.*

**Question 2b: Are there any other quantitative measures of student outcomes that we should consider in addition to continuation, completion and progression (see Annex B paragraph 18)?**

#### **GuildHE response**

*The OfS, and previously HEFCE, have tried to identify value added within institutions and whilst this has been difficult to quantify this does not mean that we should give up – especially if you proceed with your proposal to remove benchmarked data. If institutions are able to describe, in robust ways, the value that they are able to add to their students then this should be considered.*

*It will be important that any use of quantitative metrics must be statistically robust and so we strongly caution against measures like Start to Success which seek to combine different data sources in ways for which they were not designed, and therefore risk the credibility of the regulator.*

**Question 2c: Do you agree or disagree with the proposals for the levels of study at which indicators should be constructed? Should any additional indicators be considered (see Annex B paragraph 25)?**

- Agree**
- Disagree
- Neither agree nor disagree

#### **GuildHE response**

*It is appropriate to separate out different levels of provision, and if you proceed with numerical baselines it will be important to develop baselines appropriate to the level of the study. This is particularly important in terms of any form of progression metric and considering what is relevant based on the level of study. Paragraph 25 identifies some additional areas (such as apprenticeships or sandwich courses) where it might be appropriate to develop additional metrics. There are concerns that “Other degrees” may draw together too many different types of courses and qualifications, such as Level 4/5 and Foundation degrees that may not be comparable and may therefore reduce the robustness of the data. It should be considered what the purpose of these additional metrics are and what they are seeking to assess, in addition to ensuring that they are robust in data terms. It will be important to consider how we futureproof the quality and standards system for new provision and providers and to consider whether the proposals will allow for this. For example with the likely growth in ‘accelerated degrees’, which place distinctive pressures on students, we feel it would be sensible to categorise these as a separate sub-group.*

*Any extension to the levels of study, however, needs to be mindful of the burden associated with generating multiple data points and metrics. This could end up requiring complex reporting and tracking approaches to cover different types and sizes of providers.*

**Question 2d: Do you have any comments about an appropriate balance between the volume and complexity of indicators and a method that allows us to identify ‘pockets’ of performance that are below a numerical baseline (see Annex B paragraph 32)?**

**GuildHE response**

*It is important that pockets of practice that need to be improved should be identified, but we would question whether this is the role of the regulator or the role an autonomous institution with robust internal quality assurance procedures. Universities UK is currently developing a charter in England for enhancing portfolio review processes to tackle low value and low quality courses. Their work seeks to demonstrate the sector's commitment to consistency and transparency in processes to tackle low value courses through the publication of a Statement of Intent, agreed by universities. This approach of strengthening institutions' own internal processes is an essential element in tackling pockets of poor performance and therefore any intervention by the regulator should be a very last resort where the institution is not identifying and addressing these pockets.*

*There is the additional challenge in smaller institutions that each course could become a “pocket” and so it will need to be considered how this is managed in a proportionate way.*

*In principles the inclusion of transnational education (TNE) is welcome however the lack of outcomes data and limitations of individualised data from the HESA Aggregate Offshore Record needs to be recognised when assessing TNE outcomes. Furthermore, transnational partnerships can be subject to significantly different regulatory frameworks and expectations, meeting requirements from both the UK as well as the partner country and the OfS should consider how it engages with these to prevent duplication of burden.*

**Question 2e: Do you agree or disagree with the demographic characteristics we propose to use (see Annex B paragraph 36)? Are there further demographic characteristics which we should consider including in the list of ‘split indicators’?**

- Agree**
- Disagree
- Neither agree nor disagree

**Question 2f: Do you agree or disagree that the longitudinal educational outcomes dataset should be used to provide further indicators in relation to graduate outcomes (see Annex B paragraph 46)?**

- Agree
- Disagree**
- Neither agree nor disagree

**GuildHE response**

*We strongly disagree with the use of LEO data – or indeed any purely salary data – to assess the quality of English higher education. On a fundamental level it is a dangerous step to only seeing value in institutions that graduate students who go on to achieve high salaries and would be a highly retrograde step towards recognising the social contribution of graduates. Additionally, the challenges in LEO of not*

*recognising the differential salaries in different parts of the country and parts of the economy mean that this would be a highly flawed approach. It ignores the tendency for graduates in some subject areas to progress – by deliberate choice – into lower paid roles initially as the first step in their career progression. We also believe that LEO does not consider the fact that many student progress into graduate careers that are accompanied by relatively low salaries (Nursing, Early Years etc.), but these are precisely the roles that have been instrumental in enabling the UK to respond to the COVID-19 pandemic, and ensure key public services continue to be provided in a national crisis. We believe that providers should only be regulated on things within their full control. Systemic inequalities and bias in the employment market are not issues of quality for individual HE providers.*

*There should be a clear distinction between quality (that which is within a provider's control and delivered directly to students) and value (a more subjective and relative measure that corresponds to a wide range of potential benefits for students and society). The 2013 Social Market Foundation report "[Robbins Revisited](#)" written by Lord David Willetts outlined that "the potential benefits of HE are wide-ranging: as well as the individual financial benefits, there are nonfinancial individual benefits (such as improving health and reducing propensity to commit crime); financial societal benefits (such as higher economic growth and tax revenues); and non-financial societal benefits (such as greater cohesion and social capital).*

*The recent Social Market Foundation report "[Elusive Quality: how should we evaluate higher education?](#)" put it even more strongly "Many people see it as excessively narrow and philistine to reduce the value of a degree to its financial benefits. That includes many students: in a recent survey, 84% of students and recent graduates said that future salary was not the only factor in choosing their degree... Focusing too narrowly on financial gains has a number of problematic implications. For example, it implies that institutions and courses that produce highly paid bankers are much 'better' than those that produce nurses and teachers on more modest salaries. The logic of that would be an HE quality policy that encourages institutions to produce as many future bankers as possible, and as few nurses as possible. Since jobs in London tend to be better paid, such a measure would reward institutions whose graduates work in the capital, rather than in the provinces. Given the gender pay gap, such a metric could disadvantage courses with more female students.<sup>68</sup> These perverse incentives, if given too much weight, could feed through to recruitment, with institutions less likely to take on students with less social capital, and thus less potential earning power – with extremely undesirable consequences for equality of opportunity."*

**Question 2g: Do you have any comments about how the range of sector-level performance should be taken into account in setting numerical baselines (see Annex B paragraph 57)?**

**GuildHE response**

***Norm-based system for bottom 10-20%***

*The reference in paragraph 57 of Annex B of seeking to improve the performance of the bottom 10-20% of providers in the sector for any given provider suggests a worrying move to a norm-based system. It is worth noting that this type of system would result in an ever-rising bottom 10-20% which could result in an increasingly homogenous system which would go against the OfS's duties to maintain the diversity of the higher education sector. If this approach is retained then the reference to the bottom 10-20% of "provider" will be important to prevent a return to regulatory overburden of all providers having some kind of enhancing monitoring/Condition relating to specific subject disciplines within an otherwise good provider which is not in keeping with a risk-based, low-burden approach.*

**Question 2h: Do you have any comments about the other contextual factors that should be taken into account and the weight that should be placed on them (see Annex B paragraph 68)?**

**GuildHE response**

*Existing quality infrastructure like the UK Quality Code and QAA Subject Benchmarks ensure, already, high and consistent standards in the sector's approach to the management and oversight of quality and standards. In addition, the Access & Participation Plan (APP) of each registered provider set stretching and ambitions goals for addressing gaps in relation to access, continuation, completion and progression. Providers will, quite rightly, be held to account against the targets agreed with the OfS, and closure of existing awarding gaps etc. for key disadvantaged groups.*

**Questions relating to proposal 3**

**Question 3: Do you agree or disagree with the proposals in Annex C for monitoring ongoing compliance with regulatory requirements for quality and standards?**

- Agree**
- Disagree
- Neither agree nor disagree

**GuildHE response**

*We welcome recognition that indicators need to be more timely to be of more relevance and so the proposals surrounding lead as well as lag indicators is positive.*

*However 4e) refers to institutions receiving a TEF award in the lowest available category. TEF has been seen as looking at quality above the baseline and so is unlikely to provide relevant information relating to the baseline itself. This feels like a blurring of assurance and enhancement activities.*

*This also links to para 75 which states that "The use of indicators in this approach to risk-based general monitoring does not prevent the OfS from separately requiring a provider's performance to be above a numerical baseline in relation to certain student outcome indicators." The OfS needs to be clear about its role and whether it is maintaining the baseline or enhancing activity above that. Para 75 suggests activity above the baseline may be of interest whereas para 16 states that 'We do not regulate through the B conditions in a way that seeks to drive continuous improvement'.*

*See previous responses relating to use of non-benchmarked progression data and the need to update the SOC Codes to SOC2020.*

*The OfS will be consulting the sector about reportable events in the near future and so it will be important that the response to that consultation are taken into consideration when developing proposals on Quality and Standards.*

*Additionally we still don't have a definitive answer from government on the future of the TEF and therefore a second stage consultation should also include questions of how TEF relates to quality once the the independent review and government response have been published.*

*Data from the National Student Survey only gives one group of students a voice – those of final year students and disregards the experience of others. Student surveys are also at subject-level so could present a disproportionate picture of the satisfaction of students at an institution. It is also not clear what student polling represents, who would carry out the polling, or how this would be framed.*

*It will be important that the OfS shares the dataset that it is working from with the institution so that they are able to respond appropriately to OfS requests. This has not currently been the case and can cause confusion with both parties using slightly different datasets.*

*The broad range of bullet points set out in Paragraph 7, Annex C are appropriate, but within each it might be helpful to clarify useful 'thresholds' below which a change might not require reporting to the OfS. If we take example a.1, "The size and shape of its student population, and significant changes to these", what would constitute a significant change? Would, for example a modest increase in the proportion of mature students of 6% be considered a 'reportable event'? Similarly, would the closure of a single subject area, where there is a robust 'teach-out plan' in place, be reportable in relation to a.2 which refers to "The subjects, modes and levels it delivers, and significant changes to these"?*

*It will be important that the OfS shares the dataset that it is working from with the institution so that they are able to respond appropriately to OfS requests. This has not currently been the case and can cause confusion with both parties using slightly different datasets.*

*The broad range of bullet points set out in Paragraph 7, Annex C are appropriate, but within each it might be helpful to clarify useful 'thresholds' below which a change might not require reporting to the OfS. If we take example a.1, "The size and shape of its student population, and significant changes to these", what would constitute a significant change? Would, for example a modest increase in the proportion of mature students of 6% be considered a 'reportable event'? Similarly, would the closure of a single subject area, where there is a robust 'teach-out plan' in place, be reportable in relation to a.2 which refers to "The subjects, modes and levels it delivers, and significant changes to these"?*

#### **Questions relating to proposal 4**

**Question 4: Do you agree or disagree with the proposals in paragraphs 86 to 101 for our approach to intervention and gathering further information about concerns about quality and standards?**

- Agree  
 Disagree  
 **Neither agree nor disagree**

#### **GuildHE response**

*In Paragraph 90 the proposals include the statement that "Such action could be initiated each time we receive a third-party notification". It is important to ensure that 'could' does not become "will be". Each third party notification needs to be thoroughly checked, verified and considered in relation to the likely 'impact' or relevance that any notification might have on the ability of a provider to meet the conditions of registration. Any investigation which involves establishing a direct dialogue with, or collecting information from the Provider should only be initiated where this 'risk' is considered to be credible.*

*Paras 94 and 95 refer to the designated quality body "or another appropriate body" to gather evidence relating to quality. Having designated a quality body, with additional membership subscriptions, it would be inappropriate for any other body other than the DQB or OfS to investigate B conditions of quality.*

*In Paragraph 99 the proposals state that the OfS may, by way of penalties impose any of the following upon a HE provider:*

- *impose one or more specific ongoing conditions of registration:*
- *impose a monetary penalty*
- *suspend aspects of a provider's registration, to include suspending access to student support funding or OfS public grant funding*

- vary or revoke a provider's authorisation for degree awarding powers, or revoke a provider's authorisation to use 'university' in its title
- deregister a provider".

*Whilst these powers already exist within the regulatory framework, it is important to recognise that in the current financial climate, and that likely to prevail for the next few years (due to COVID-19's likely impact on the economy), Universities and other HE Providers will be having to manage extreme financial constraints and challenges. Monetary penalties need to be considered very carefully indeed by the OfS and should not be a first resort. They also need to be proportionate to the breach concerned, and to the financial resources of the provider in question. A fine of £500,000 may be insignificant to a large, wealthy provider with massive reserves and resources, but could effectively threaten the financial sustainability of a small provider with limited financial safety margins or reserves. We would therefore urge extreme caution, care and mindfulness in the application of these powers, and would wish to see the first bullet point being applied in all but extreme cases of breaches of conditions. Applying any of the last three bullet points would be tantamount (in some cases) to forced closure since the financial implications would be catastrophic for some providers.*

### **Questions relating to all proposals**

**Question 5: Do you have any comments about any unintended consequences of these proposals, for example for particular types of provider or course or for any particular types of student?**

#### **GuildHE response**

*The OfS should carry out a robust equality impact assessment of the various possible unintended consequences if benchmark data were removed. This should include consideration of the impact on the numbers of students with protected characteristics entering higher education if some providers take a conscious decision not to recruit particular groups of students due to their continuation or completion rates, or the longer term impact on these students if they are steered towards shorter level 4 or 5 qualifications or bite-sized credits.*

*The proposals to construct indicators for what has been labelled 'non recognised HE' require particular consideration to the nature of these courses and the students who study them. NPHE courses include a range of technical, vocational and professional courses that are less than one year in duration and are often studied by older students. Conventional definitions and interpretations of continuation and progression will not apply to these courses in the same manner as they do to recognised HE.*

#### **Reliance on data for institutions with small cohorts**

*The OfS's proposals for more reliance on numerical baseline data places an enhanced reliance on the robustness of the data. The majority of providers on the OfS register have either small student numbers, or many courses with small numbers, all of which means that the data is unlikely to be statistically robust to make regulatory decisions, especially when looking at the intersection of different student characteristics. The second phase of the consultation needs to make clear how this will work in the vast majority of providers on the OfS register with small cohorts of students and data that is more likely to fluctuate on a year to year basis. The second phase consultation should also consider the possible risks of aggregation which may hide some very good or very poor outcomes.*

*It would be important to consider the impact of the proposals on a UK-wide quality assessment system and the impact on graduate mobility if this was the final straw for the nations and resulted in the formal ending of the UK-wide higher education quality assessment system.*

**Question 6: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?**

**GuildHE response**

*See response to Q5*

**Question 7: Do you have any comments about where regulatory burden could be reduced?**

**GuildHE response**

*The key way of reducing regulatory burden would be by stopping developments towards a subject-level TEF and removing subject-level quality assessment referred to in the consultation in providers that are consistently above the baseline. The investigation of subject level quality in such providers is an unnecessary invasion of institutional autonomy and a disproportionate regulatory approach that will waste limited sector resources.*

*In line with 5.4 the Regulator Code ('Regulators should seek to create an environment in which those they regulate have confidence in the advice they receive and feel able to seek advice without fear of triggering enforcement action.') it would be important for the OfS to consider how the OfS might engage more positively with providers in terms of support and advice, rather than seeing this as a negative – this would clearly be in line with.*

*Condition E4 was identified as a mechanism by which providers would inform the OfS of changes that have a material impact on the operation of the provider. However as currently set out, despite relying on a provider to judge whether an event is material and should be reported, the threshold is low. For example, the formation of a new academic partnership in which an established provider franchises its provision within an established and robust academic governance framework is unlikely to have a material impact, yet as reporting of such partnerships formed part of the initial registration process, providers feel obliged to report such changes. Similarly, a decision to exit a partnership resulting in an agreed teach out plan and with a provider supporting a partner through to the final cohort of students is low risk and will typically follow a strategic decision by one or both parties to terminate a relationship. By virtue of the fact that such a partnership would've been included within an initial registration, providers are compelled to report this regardless of an assessment of materiality. Providers becoming aware of legal or court action is also denoted as a reportable event regardless of the scope or threshold of such action. These examples run counter to a regulatory framework in which a provider is expected to exercise its own judgement about whether to report an event.*

**Question 8: Do you have any other comments?**

- **UK Sector has strong record for delivering excellent higher education**
  - *It is important to start by acknowledging the excellent record of UK higher education sector for high quality higher education, and supporting students reach their potential, become rounded citizens and make a positive contribution to society through their social, cultural and economic activities.*
  - *We do however, recognise the concerns raised by the OfS in their consultation, supported by concerns in government, the media, amongst students and wider population that there are still some pockets of low quality provision. GuildHE, and our member institutions,*

*have been strongly engaged in recent activities to tackle grade inflation, enhance teaching and learning and maintain robust academic standards, and we are committed to continuing to do this to ensure all students have an excellent experience.*

- ***The future needs of the UK will be met through more flexible delivery, innovative curriculum and be responsive to skills needs***
  - *The Prime Minister recently emphasised the importance of future skills needs, flexible approaches to delivering tertiary education and any new quality system needs to be suitably future-proofed to ensure that these approaches are encouraged and not stifled.*
- ***Quality and standards are not an island***
  - *Approaches to maintaining robust academic standards and high quality do not sit alone and must not unintentionally impact on our efforts to increase access, participation, equality and diversity across the higher education sector.*
  - *Reviewing the OfS's approaches to quality need to be seen alongside the uncertainty surrounding the National Student Survey and the current Review, the Teaching Excellence Framework and the outcomes of the Pearce Review, ongoing OfS consultations including on reportable events and monetary penalties and the ongoing impact of the pandemic and it's impact on the underlying data and economic chances for graduates.*

*We would remind the OfS that the higher education sector has been dealing with an unprecedented global pandemic, changing their entire business model and shifting to online and blended approaches as well as dealing with digital poverty of students and staff and the significant impact on their mental health. We would strongly encourage the OfS to reflect on whether this was the most appropriate time to launch a major consultation and whether they should be launching any additional consultations in the near future.*

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