**OfS Quality and Standards Consultation – Phase 2**

**GUILDHE FINAL RESPONSE**

GuildHE and our members strongly agree that students should receive high quality teaching and learning, wherever and whatever they are studying. Universities and colleges are committed to continually enhancing their provision and maintaining high academic standards. GuildHE has worked closely with Universities UK and QAA over a number of years to further support institutions in this aim and to tackle grade inflation.

We further welcome the recognition of the diversity of the higher education sector with the establishment of the baseline for quality and understanding that institutions are able to innovate and define high quality education above the baseline.

We do however have a number of concerns with the proposals.

**Coherence with B3 and TEF**

We agree with many of the proposals outlined in this consultation but it will also be important to consider these in the context of the amended B3 and TEF when these are consulted on in the Autumn to ensure that the coherence remains.

It is difficult to form a judgement on the principles outlined in this document without seeing how these will be implemented in practice. This is important both in terms of the specific baselines that will be proposed and also how these will be investigated taking into account the specific context of the provider and drawing on expert academic judgement. We would also need more information on the actions and sanctions that the OfS will take following investigation, this information needs to be seen in the round before we are able to fully comment in the proposals in this consultation.

Given the uncertainty surrounding the ongoing impact of the pandemic the OfS should not be seeking to create further disruption by implementing the outcomes of this consultation in the Autumn. It would make more sense to await the outcomes of the B3 and TEF consultations and implement all the recommendations at the same time to ensure coherence between all the proposals. Any changes resulting from both consultations must be mindful of the other pressures facing the higher education sector as we build back from the pandemic.

**Extension of OfS Conditions to all provision from a registered provider**

*This is referenced in conditions B1, 2 and 4 and so we will include the paragraph in all three sections*

The proposals to extend the ongoing conditions to all higher education courses and provision whether they receive OfS/public funding or not raises a number of questions and could prompt a number of unintended consequences. The analysis of the phase 1 consultation responses (paras 142-148) outline concerns from the sector and the OfS’s response. We remain concerned that this would result in a massive expansion in the OfS and regulatory burden and question how this provision would be monitored (particularly when considering outcomes in the context of a revised B3).

We believe that the additional regulatory cost and burden on the sector would be disproportionate to the risk presented. Additionally, we are concerned that it may impact on the number of partnerships and the breadth of offer both of which could limit student choice or indeed it could just result in ever-more complex corporate structures for providers seeking to limit their liability. It will be important for the OfS to further consider the unintended consequences of this proposal before implementation.

**Quality Code removal**

*The regulatory framework currently references the UK Quality Code in the guidance accompanying Conditions B1, B2, B4 and B5, and so potentially this paragraph should be inserted the response to each of the consultation questions relating to these conditions?*

We fundamentally disagree with the proposal to remove references to the Quality Code. This proposal was only agreed to by a “small number of respondents” (para 198, OfS) in the OfS Analysis of the Phase 1 Consultation and a “substantial number of respondents did not agree” (para 199). The Quality Code provides the UK-wide framework that helps provide coherence to the quality systems of the four nations of the UK and strengthens the international reputation of UK HE and should not be disregarded. The Quality Code is not owned by any one agency and was developed by, and for, the sector setting out a sector agreed framework for both quality and standards. The Quality Code would likely meet the threshold outlined in HERA as being a sector-recognised standard of both being determined by, and having the confidence of, a broad range of registered higher education providers. The elements relating to standards should therefore be considered as sector recognised standards in the true sense of co-regulation and HERA outlines that the OfS must only assess standards against sector recognised standards.

**Proposal 1: impose three general ongoing conditions of registration relating to the quality of a provider’s courses**

***Question 1a: Do you agree or disagree with the proposed introduction of ongoing condition B1 and associated changes to the OfS’s regulatory framework as set out in Annex A?***

Agree Disagree Neither agree not disagree

***Question 1b: Please give the reasons for your answer to Question 1a.***

GuildHE and our members strongly agree that students should receive high quality teaching and learning, wherever and whatever they are studying. Universities and colleges are committed to continually enhancing their provision and maintaining high academic standards. GuildHE has worked closely with Universities UK and QAA over a number of years to further support institutions in this aim and to tackle grade inflation.

We further welcome the recognition of the diversity of the higher education sector with the establishment of the baseline for quality and understanding that institutions are able to innovate and define high quality education above the baseline.

There are a number of questions arising out of the current wording that would require further clarification before we felt able to agree with the proposed B1 condition.

The proposals to extend the ongoing conditions to all higher education courses and provision whether they receive OfS/public funding or not raises a number of questions and could prompt a number of unintended consequences. The analysis of the phase 1 OfS consultation considers some of these issues in para 142-148. We are concerned that the outcomes metrics that the OfS currently use are either not in place, or do not capture the quality of these courses – how do you measure progression and employability outcomes in short courses?

We are concerned that extending the OfS’s remit to these courses would result in a massive expansion in the OfS to develop and monitor these metrics. We would question whether the additional regulatory cost and burden on the sector is proportionate to the risk presented, especially since many of these courses are already regulated by other regulators or industry bodies. We would also seek reassurances that this would not disproportionally affect smaller providers. Additionally, we are concerned that it may negatively impact on the number of partnerships that institutions have and the breadth of an institution’s offer, both of which could limit student choice or indeed it could just result in ever-more complex corporate structures for providers seeking to limit their liability. Paragraph 47 indicates that the condition has been future proofed. However, we find that the detail given in Annex A, condition B1 does not align easily with all types of provision and is more appropriate for taught degrees. This is also the case for the other conditions. It will be important for the OfS to further consider the unintended consequences of this proposal before implementation.

These concerns would also apply to the extension to cover TNE. As a principle we can see the logic, but there are questions about whether the OfS has the processes to allow it form a judgement on this provision. In particular the lack of current data would make this proposal highly difficult to monitor with some outcomes data exceptionally difficult to use in a meaningful way, especially related to employment outcomes. Furthermore, we question whether, even if the metrics were developed, they would enable the regulator to make comparable judgements to other provision that an institution offers given the different national contexts and labour markets (are definitions of professional and managerial jobs the same in different regions of the word?). Much TNE provision is also already regulated by in-country provision and the need to prevent duplication of regulatory burden must be considered and risks damaging UK education exports because of duplicated regulatory burden. The OfS should focus on provision where it is able to make a evidence-based decisions, and not expand to other areas until it is able to do make robust judgements.

Furthermore, there is more clarity needed for courses where there are several regulators responsible for course quality, which regulators will take precedence or will institutions have to provide similar information multiple times for different bodies? We believe that regulatory information should only be provided once and that where there are multiple regulators they should develop processes to deal with this. For example, under the guidance on condition B1.4 para 8.e it refers to teaching in schools, and yet ITT courses are monitored by OfSTED and so clarity on overlapping regulatory responsibility is essential to ensure that there is not double-regulation and that regulation is proportionate. The evidence gathering refers to “or may ask the designated quality body, or another appropriate body or individual, to gather further evidence.” Is this sufficient clarity? There are significant costs of meeting the regulatory requirements of any system, and these costs should not be duplicated – as outlined in the Regulators Code - to meet different needs of different regulators.

As we outlined in our response to the Phase 1 consultation we fundamentally disagree with the proposal to remove references to the Quality Code. This proposal was only agreed to by a “small number of respondents” (para 198, OfS) in the OfS Analysis of the Phase 1 Consultation and a “substantial number of respondents did not agree” (para 199). The Quality Code provides the UK-wide framework that helps provide coherence to the quality systems of the four nations of the UK and strengthens the international reputation of UK HE and should not be disregarded. The Quality Code is not owned by any one agency and was developed by, and for, the sector setting out a sector agreed framework for both quality and standards. The elements relating to standards should therefore be considered as sector recognised standards in the true sense of co-regulation. The Quality Code would likely meet the threshold outlined in HERA as being a sector-recognised standard of both being determined by, and having the confidence of, a broad range of registered higher education providers. The elements relating to standards should therefore be considered as sector recognised standards in the true sense of co-regulation and HERA outlines that the OfS must only assess standards against sector recognised standards

In the guidance relating to B1.4 it refers to coherence of the course including students being secure in foundational topics, if these ongoing conditions are to be relevant to all types of higher education provision it might be helpful to have an example on coherence in relation to micro-credentials or stand-alone small credits.

B1.3.b) describes that “each higher education course provides educational challenge”. There needs to be a much more clearly defined agreed on what is meant by the phrase “educational challenge” and how this is measured. The difficulty of this approach was highlighted in the OfS’ own Learning Gain pilots.

B1.2. refers to “high quality” academic experience and yet these conditions are setting the baseline. Without seeing the B3 consultation it is impossible to know whether that would suggest a very high baseline – which we would need to see the detail before responding - or more likely the baseline would be set at a level that may not be seen as “high” quality by all. Since this is in reference to the baseline we would suggest the removal of “high”, or that this is re-considered in the context of the B3 consultation.

The definition in B1.4 d)i) where it refers to “an appropriate balance between lectures, seminars, group work and practical study, as relevant to the content of the course;” gives an indicative list of activities appears to pre-suppose that these are suitable and possibly sufficient. This could be better expressed by simply referencing an appropriate balance of delivery methods, as relevant to the content of the course (and, potentially, the prior knowledge of the learner).

***Question 1c: Do you have any alternative suggestions to the proposal in Question 1a?***

We would therefore propose limiting the condition to just the provision that is funded by the OfS/public funding.

We recommend that B1.4.d.i) and B1.4.d.ii) which look at “effective delivery” are amended to include reference to learning outcomes and that these are relevant to the level and learning outcomes of the course.

As note in our response above, we suggest a reduction in the level of detail provided against the condition to ensure that it doesn’t become a checklist. The OfS should also ensure that the condition is expressed in such a way as to be applicable to the full range of provision that it is supposed to cover.

**Question 2a: Do you agree or disagree with the proposed introduction of ongoing condition B2 and associated changes to the OfS’s regulatory framework as set out in Annex A?**

Agree Disagree Neither agree not disagree

**Question 2b: Please give the reasons for your answer to Question 2a.**

We would reiterate our response to 1b about our concerns about the extension of the ongoing conditions to all course and provision offered by a provider.

We welcome the focus and clarity on student engagement. We would however note that if this is extended to all TNE, there are some parts of the world where this may create result in challenging some cultural sensitivities and expectations.

We note the previous OfS Chair, Sir Michael Barber, comments about the importance of ‘social value’, which we strongly endorse, and we are concerned that the measure of success will not be sufficiently sophisticated to take account of this. ‘Success’ for students is multi-faceted and this proposal takes a highly reductive approach which focuses only on proxy output measures which do not actually focus on the quality of provision. We recognise that this will be part of the later consultation, but the terminology in this condition is directly linked to its measure, and we do not support it as it stands.

B2.2.a.i and B2.2.b.i both refer to “high quality” academic experience and yet these conditions are setting the baseline. Without seeing the B3 consultation it is impossible to know whether that would suggest a very high baseline – which we would need to see the detail before responding - or more likely the baseline would be set at a level that may not be seen as “high” quality by all. Since this is in reference to the baseline we would suggest the removal of “high”, or that this is re-considered in the context of the B3 consultation.

**Question 2c: Do you have any alternative suggestions to the proposal in Question 2a?**

Under B2.2 it says that the provider must ensure that “each cohort of students registered on each higher education course receives resources and support to ensure: ii) those students succeeding in and beyond higher education;” Whilst providers have a responsibility to ensure that graduates are prepared for life after higher education and equipped to succeed their ability to “ensure…students succeed…beyond higher education” is perhaps overstating the influence of higher education. We can provide all the necessary tools for them to do so, but success within higher education will depend also on the learner; and success beyond higher education depends on a wide variety of factors, as well evidenced in recent research. In the context of succeeding after higher education “enable” might be a better word that “ensure”.

B2.2.a.i and B2.2.b.i both refer to “high quality” in relation to the ongoing conditions which refer to a baseline. This would either suggest a very high baseline – which could cause difficulties for significant parts of higher education provision or more likely the baseline would be set at a level that may not be seen as “high” quality by all. Since this is in reference to the baseline we would suggest the removal of “high”.

B2.3 g.i. this should include some reference to creative spaces such as “studio” in addition to “teaching rooms, libraries and laboratories.”

We recommend adapting 32.a and 32.b of the guidance for B2 to say, ‘have reliable and consistent *access to*’ (matching 32.d) to reflect that both hardware and software may be accessed in different ways – for example, through access to specialist labs and libraries. This is different to a student ‘having’, which implies that they are in possession of the hardware and software.

We would also highlight some of the particular challenges of extending these conditions and guidance to TNE without further clarification and contextualisation. We would not want to see large numbers of TNE courses closed as a result of specific local contexts or different – but equally valid – student outcomes.

B2.3 (p.51) academic misconduct, seems an outlier in this section. If it is to be included it would fit better with condition B4 assessment and awards.

**Question 3a: Do you agree or disagree with the proposed introduction of ongoing condition B4 and associated changes to the OfS’s regulatory framework as set out in Annex A?**

Agree Disagree Neither agree not disagree

**Question 3b: Please give the reasons for your answer to Question 3a.**

B4.3 e under the definitions of “credible” it refers to assessing “relevant awards reflect students’ knowledge and skills,” but then goes on to list the factors it may take into account including “the number of relevant awards granted, and the classifications attached to them, and the way in which this number and/or the classifications change over time and compare with other providers;”. The number of awards is not relevant to whether assessment reflects students knowledge and skills, it may be relevant to qualifications holding their value over time but that is not what the previous text refers to. You should therefore amend to the introductory text in (e) to reference “over time” or similar to ensure coherence of the text.

In the Guidance section, 50e is poorly expressed. We suggest that, if an ‘English language proficiency’ component is to be included, it should reference both spoken and written English (not all higher education is assessed by written examination), however we do not believe that it is appropriate for a principles-based regulator to attempt to prescribe how institutions assess a students language proficiency above the course learning outcomes.

**Question 3c: Do you have any alternative suggestions to the proposal in Question 3a?**

**Proposal 2: impose one general ongoing condition of registration relating to the standards of a provider’s courses**

**Question 4a: Do you agree or disagree with the proposed introduction of ongoing condition B5 and associated changes to the OfS’s regulatory framework as set out in Annex B?**

Agree Disagree Neither agree not disagree

**Question 4b: Please give the reasons for your answer to Question 4a.**

We agree with the use of sector recognised standards and agree with the proposal that where an investigation is required that the DQB will be asked to gather further evidence. GuildHE, along with Universities UK and QAA helped develop the Degree Classification Descriptors on behalf of the UKSCQA and the sector, and in principle we would support the use of the descriptions as a regulatory tool to secure standards and that their use would bring about more consistency in the awarding of degrees across the sector, giving assurance to students, employers and other stakeholders. The concern will be with how an evaluation is made that these standards are being considered and we would expect that any decisions about this would be made by a peer-review process drawing on expert academic judgement of academics in their field able to draw a broad sector-wide view.

Additionally there are practical considerations for how the OfS would be able to consider how standards have been maintained over time. Would there be an expectation on institutions to retain assessments for several years and if yes how long? If this is the expectation how would this apply to creative courses where artworks or other assessed works would take up a lot of space and it would be impossible to store for long periods of time, or indeed for scientific experiments how would these be assessed over time – would there be an expectation of recording these? There are many practical considerations that would need to be worked through for this proposal.

There is an important question about how guidance becomes a “sector-recognised standard”. The process of using a sub-group of sector representatives bodies on the UK Standing Committee for Quality Assessment, followed by a sector consultation, was an appropriate process in the first instance but more consideration needs to be given to the process for this in the future. For example there is a key question about how sector-representative bodies are given time to gauge the views of their members ahead of meetings rather than being rushed into a decision.

**Question 4c: Do you have any alternative suggestions to the proposal in Question 4a?**

No.

**Proposal 3: impose two initial conditions of registration, one relating to the quality of, and one relating to the standards applied to, a provider’s course.**

**Question 5a: Do you agree or disagree with the proposed introduction of initial condition B7 and associated changes to the OfS’s regulatory framework as set out in Annex C**?

Agree Disagree Neither agree not disagree

**Question 5b: Please give the reasons for your answer to Question 5a.**

It is appropriate that new providers are suitably aware and prepared for the responsibilities of delivering degree-level and degree-worthy education.

In the definitions of Credible in relation to B7.3 only refers to a provider’s past performance. In the context of developing a “credible plan” to comply with Conditions B1, 2 and 4 I would expect a “credible” plan to have some evidence detail, evidence and other considerations for these conditions would be met.

**Question 5c: Do you have any alternative suggestions to the proposal in Question 5a?**

**Question 6a: Do you agree or disagree with the proposed introduction of initial condition B8 and associated changes to the OfS’s regulatory framework as set out in Annex C?**

Agree Disagree Neither agree not disagree

**Question 6b: Please give the reasons for your answer to Question 6a.**

It is appropriate that new providers are suitably aware and prepared for the responsibilities of delivering degree-level and degree-worthy education.

**Question 6c: Do you have any alternative suggestions to the proposal in Question 6a?**

**Proposal 4a: commission the designated quality body to provide evidence about compliance with the initial conditions for a provider seeking registration**

**Question 7a: Do you agree or disagree with the approach to information gathering and assessment proposed in paragraphs 85-90 above and as set out in the proposed guidance for initial conditions B7 and B8 in Annex C?**

Agree Disagree Neither agree not disagree

**Question 7b: Please give the reasons for your answer to Question 7a**.

We welcome the clarity to the role of Designated Quality Body. The DQB is an important part of the regulatory system providing an independent assessment drawing on expert academic judgement.

**Question 7c: Do you have any alternative suggestions to the proposal in Question 7a?**

**Proposal 4b: operate a flexible risk-based approach to evidence gathering and investigation for registered providers**

**Question 8a: Do you agree or disagree with the approach to information gathering as part of an investigation proposed in paragraphs 91-98 above and as set out in the proposed guidance for conditions B1, B2, B4 and B5 in Annexes A and B?**

Agree Disagree Neither agree not disagree

**Question 8b: Please give the reasons for your answer to Question 8a.**

In principle we agree with the more flexible and proportionate approach outlined in paras 91-98. However we believe that the DQB is best placed to make decision on both standards but also quality and so where there is need for an investigation – unless subject to another regulator – we would anticipate that the DQB would be best placed to undertake the investigation and so would suggest rephrasing para 95 to “We would usually ask the designated quality body to gather more information, or we may gather more evidence for an investigation ourselves or ask another appropriate body or individual, to gather evidence to inform our investigation.” This would position the DQB as the default investigation agency ensuring consistency of decision-making as well as drawing on experience academic judgement to inform decisions.

**Question 8c: Do you have any alternative suggestions to the proposal in Question 8a?**

**Proposal 4c: take account of a provider’s compliance history in relation to the quality and standards conditions for the purpose of determining eligibility for other benefits of OfS registration**

**Question 9a: Do you agree or disagree with the approach to taking account of a provider’s compliance history for the purpose of determining eligibility for other benefits of OfS registration proposed in paragraphs 103-126 above and as set out in the proposed guidance for conditions B1, B2, B4 and B5 in Annexes A and B?**

Agree Disagree Neither agree not disagree

**Question 9b: Please give the reasons for your answer to Question 9a.**

We agree with many of the proposals outlined in this consultation but it will also be important to consider these in the context of the amended B3 and TEF when these are consulted on in the Autumn to ensure that the coherence remains.

It is important when safeguarding the reputation of the sector to ensure that quality and standards are maintained and so ensuring there is coherence between OfS conditions and other benefits including TEF, funding, DAPs and UT.

**Question 9c: Do you have any alternative suggestions to the proposal in Question 9a?**

**Proposal 5: the OfS will use its role as the body responsible for External Quality Assurance for integrated higher and degree apprenticeships to inform its judgements about condition B4.**

**Question 10a: Do you agree or disagree that the OfS should use its role as EQA provider to inform assessments of condition B4?**

Agree Disagree Neither agree not disagree

**Question 10b: Please give the reasons for your answer to Question 10a.**

We agree that the OfS should use its role as external quality assurance (EQA) provider to inform assessments of condition B4. Apprenticeships above level 4 are in scope of the OfS’s regulatory powers and we recognise this may inform assessments of condition B4. The relationship with the DQB in delivering the EQA will be an important element to this assessment. We are, however, concerned about the complex regulation for degree apprenticeships which places a very high burden on providers.

We would however want to ensure that OfS and IfATE do not have overlapping roles and that this does not result in regulatory duplication for providers. It will be important to ensure that the remit of each body which reviews an element of apprenticeship provision is clearly delineated to avoid potential overlap, contradictory outcomes and excessive burden.

**Question 10c: Do you have any alternative suggestions to the proposal in Question 10a?**

**Question 11: Do you have any comments about the proposed implementation of the proposals in this consultation?**

We agree with many of the proposals outlined in this consultation but it will also be important to consider these in the context of the amended B3 and TEF when these are consulted on in the Autumn to ensure that the coherence remains.

It is difficult to form a judgement on the principles outlined in this document without seeing how these will be implemented in practice. This is important both in terms of the specific baselines that will be proposed and also how these will be investigated taking into account the specific context of the provider and drawing on expert academic judgement. We would also need more information on the actions and sanctions that the OfS will take following investigation, this information needs to be seen in the round before we are able to fully comment in the proposals in this consultation.

There is still a huge degree of uncertainty about the ongoing impact of the pandemic in the Autumn (and beyond), we would argue that this is not the best time to make changes to the regulatory framework. Given that the OfS will be consulting on B3 and TEF in the Autumn it would be better to wait to implement the outcomes of this consultation alongside the outcomes of that consultation to ensure coherence between the proposals and to minimise the impact and disruption to the sector at an exception busy period. Any changes resulting from both consultations must be mindful of the other pressures facing the higher education sector as we build back from the pandemic.

**Question 12: Do you have any comments about any unintended consequences of these proposals, for example for particular types of provider or for any particular types of student?**

**Question 13: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?**

**Question 14: Do you have any other comments about the proposals?**

The points we have raised about the UK Quality Code pose a wider question about the important external perceptions of the UK as a quality system and how we maintain the integrity of the systems across the four nations of the UK. The UK Standing Committee for Quality Assessment has been an important part of that process with sector, student and regulator representation from across the UK and the status of the committee, and its role providing coherence across the quality systems across the UK should not be undermined.

The lack of reference to externality continues to be a concern; this is mentioned in para 103 of the Analysis of Responses, but there is no apparent response to this. The use of external reference points and peer review is an important feature of a sector with highly autonomous institutions and it provides a structured and systematic engagement with peers is a realistic and reasonable way of confirming adherence to sector agreed standards / reference points.