



HOUSE OF LORDS

Industry and Regulators Committee

Corrected oral evidence: The Office for Students

Tuesday 14 March 2023

10.25 am

Watch the meeting

Members present: Baroness Taylor of Bolton (The Chair); Lord Agnew of Oulton; Baroness Bowles of Berkhamsted; Lord Burns; Viscount Chandos; Lord Clement-Jones; Lord Cromwell; Lord Gilbert of Panteg; Baroness McGregor-Smith; Lord Reay.

Evidence Session No. 2

Heard in Public

Questions 18 - 29

Witnesses

[I](#): Rt Hon Lord Johnson of Marylebone, Former Minister for Universities, Science and Innovation; Rt Hon Charles Clarke, Visiting Professor, Lancaster University and King's College London, and Former Education Minister.

Examination of witnesses

Lord Johnson of Marylebone and Charles Clarke.

Q18 The Chair: Good morning. This is the Industry and Regulators Committee of the House of Lords. We are conducting an inquiry into the Office for Students. Our witnesses this morning in our second session are Lord Johnson, Jo Johnson, who was Minister of State for Universities, and Charles Clarke, who was Secretary of State for Education some time ago.

We have a range of questions that draw on your expertise, but, first, can you tell us why you think the Office for Students was established in the first place and whether its statutory duties were appropriate when it was established?

Lord Johnson of Marylebone: Thank you very much. It is a pleasure to be here before you. The OfS was established through the Higher Education and Research Act 2017, following White Papers, Green Papers and all the usual processes. It was established because the world had changed dramatically with the advent of loan-funded tuition and the massification of our higher education system, which meant that the old funding council model was no longer appropriate. Students and taxpayers were making considerable investments in our higher education system, and we had approaching half the population heading into higher education in one form or other. With that level of investment, it was clearly appropriate that it had form of regulation.

There was no regulator. We had a funding council model that had, as its prime responsibility, managing the allocation of resources to providers, not looking after the student or taxpayer interest. That was why we set up the Office for Students. We gave it duties in legislation, first to ensure institutional autonomy. That was its most important duty, but it had a range of others, including promoting value for money, ensuring choice, quality and competition in the sector, and ensuring the financial sustainability of the system.

The Chair: Thank you. Charles, do you want to add your perspective?

Charles Clarke: I am not at all clear that it was as necessary to establish the regulator as Jo suggests. When in 2003 we established the current tuition fees regime, as he described, we established one important regulatory agency—the Office for Fair Access. That was set up because of a wide degree of concern that the regime we were establishing would lead to the exclusion of working-class young people from university. I appointed Sir Martin Harris, who was then vice-chancellor of Manchester University, to lead that, as we wanted to establish the confidence of the sector in that aspect of the regulation. I still defend it and think that element of regulation was necessary.

After the 2010 election, for the reasons Jo clearly described, there was a view that there needed to be wider regulation than purely on the access question. The case for such regulation needs to be made very clearly at

any given point, establishing why you need regulation above and beyond the law of the land to go through a whole set of issues. Nicola Dandridge, the first chief executive of the Office for Students, said, "We are very serious about not being a regulator that imposes unnecessary regulation. When an institution is above regulatory thresholds, we are not going to need to establish a relationship with them—they can go off and achieve their own thing." I think that state of mind of the initial chief executive of the Office for Students was correct. You need to make the case for any regulation. It has now grown and grown into a whole series of areas where such regulation, by a regulator of universities, is unnecessary.

The Chair: We will come to the question of micromanagement later. Do either of you think that the actual duties given to the OfS in the first place were clear enough? Did Parliament ever have a real role in looking at what the OfS does?

Charles Clarke: I do not think it was clear enough, and that remains a cause of difficulty. I cannot recall the degree of parliamentary debate that took place—I am sure Jo can tell us—but I was not convinced that there was substantial parliamentary, as opposed to governmental, engagement in the process. That may be wrong. I defer to Jo on that.

Lord Johnson of Marylebone: It is important that we are having this conversation because it brings flashbacks to me of all the debates we had in 2017 about whether we needed an Office for Students. We have to be clear that the Government will have a student loan book of almost half a trillion pounds by the middle of the 2040s, with a £20 billion annual value of loans going into the system and students making lifetime choices, often ill informed. The idea that we do not need regulation for a sector of this importance for our economy is, to my mind, fanciful.

We are relitigating battles that were won comprehensively back in 2016 and 2017. The sniping at the OfS that we hear a lot of at the moment from the four mission groups who have written to this committee—the Russell group, University Alliance, GuildHE and MillionPlus—reflects the unwillingness of the sector to recognise that there is a case for regulation. Theirs is basically a call for self-regulation, which is simply inappropriate when there are interests of this scale at stake. We need to push back very hard at the idea that there is no case for regulation. That is not serious.

The OfS is establishing itself as a credible regulator. It has very clear duties in the legislation, as I said, with a primary duty to institutional autonomy and a second duty to promote quality, choice and competition, look after value for money and ensure financial sustainability. Those are crystal clear. The OfS is a strong regulator. The sector might not like it, and might prefer self-regulation, but I do not think that is feasible. I certainly do not think it is in the national interest.

Charles Clarke: I do not think this is a question of the sector trying to defend itself. Lord Johnson is quite right that parts of the sector are trying to defend themselves, but this is a major public interest issue. The

grounds for intervention by the OfS have been extended to include unexplained grade inflation, harassment and sexual misconduct, mental health and well-being, freedom of speech and increasing the diversity of provision. Some of those are covered by the law of the land and should be dealt with by the law of the land, without having a separate regulator. In some of the other areas there may be grounds for some kind of advice, but just about every university is big enough and substantial enough, like other major employers in the country, to take responsibility for those kinds of issues itself. In my opinion, that is the right approach.

Q19 Lord Clement-Jones: Moving from the whether to the how, can you describe how the OfS uses its pretty extensive regulatory framework to achieve its statutory duties? Have there been significant changes to the regulatory framework over that time?

Lord Johnson of Marylebone: The regulatory framework was created in 2018, following the passage of the legislation. It was an interpretation of the legislation and a sort of operating manual for the Office for Students. It did a reasonable—not perfect—job in interpreting the duties that Parliament had given it, and it has set about applying that framework over the course of the following five years.

First, it created a register. All higher education institutions wanting access to student finance, grant funding and all the other benefits that OfS membership could bring had to get on to the register. The Office for Students applied conditions of registration that they had to meet to stay on the register and to have access to all the funding that brought. That was the first structural mechanism.

Then the OfS moved from getting institutions on to the register—a very big task—to the second phase of its activity: driving forward progress on some of the duties, particularly around quality and equality of opportunity. That is what it has done in the more recent phase of its activities. Again, from the university and higher education provider perspective, that has been a very different experience from what they were used to with HEFCE. The Office for Students is very focused on quality and on student outcomes, monitoring metrics such as non-continuation drop-out rates, completion rates and the rates at which students progress into good employment. That is a different experience for the sector and it is unsurprising that not all providers like it, but it is absolutely necessary from the point of view of students and of the taxpayers funding the system.

Lord Clement-Jones: The answer is that you think it has made significant changes to the regulatory framework, in that sense.

Lord Johnson of Marylebone: No, I am not saying that. The regulatory framework was published in 2018 and it has not changed much since then. The OfS is moving through a process sequentially of getting on with that, setting the OfS up as a new body and now, as conditions change, balancing its different duties according to how it sees fit.

Lord Clement-Jones: Last year alone, it made seven changes to the framework. To what extent has it maintained a proportionate approach to regulation that follows regulatory best practice and protects the institutional autonomy of providers?

Lord Johnson of Marylebone: The Office for Students is a new organisation. Its first job was to set itself up in distinction from what had gone before and to be clear that it was regulating in the student interest, not in the provider interest. That might have felt unpleasant to institutions and it might have felt heavy-handed at times. I certainly think there is scope for the Office for Students, in its next phase of existence, to take a more collegiate approach and be a bit more of a friendly face to the sector, without losing sight of its core mission to be an independent market regulator. It could provide a bit more helpful advice to institutions when they need it, and a bit more guidance occasionally. It does not need always to lead boots first, but it was essential that it did what it had to in drawing a line on the past.

Charles Clarke: I do not think that Lord Johnson has made the case. He mentioned three specific areas that I accept are all important. First, there is the register of who can or cannot be a university. That had existed in a rather informal and fuzzy way before, particularly around the concept of university title. Lord Johnson is absolutely right that putting that on a correct footing by creating a register and so on was the right thing to do. There was a very obscure Privy Council process, and that was clarified. Yes, that was the right thing to do.

Secondly, on fair access, as I said before, we had established in 2004 the Office for Fair Access, which was widely regarded as having done a pretty good job. You could legitimately say that the Office for Students continued that approach in a new regulatory regime.

The third aspect that Lord Johnson mentioned is much more questionable. The publication of data about universities' performance, for example on job opportunities for people, diversity of entrants to universities and performance on a whole set of measures, is absolutely worth while. It is beneficial to have an independent agency produce data of that kind from which universities themselves and society as a whole can make judgments. It is quite another thing, beyond producing the data, to say, "We think you should do this, that or the other in trying to achieve those things". The OfS role ought to be limited to analysing and publishing the data, and by all means making commentary where universities are not doing certain things well enough. That is perfectly all right and a necessary function. I agree with Lord Johnson that it was not sufficiently done in the past. But going beyond that to say, "You must do this, that or the other", is absolutely mistaken. A lot of the big brouhahas have been around those kinds of questions.

Finally, who is the "student interest"? The National Student Survey that we set up is widely regarded as a worthwhile development and a good way of informing what happens. Apart from that, it appears that the student interest is what Ministers deem it to be. There is no other device,

and no dialogue with student bodies or organisations. The OfS has not had dialogue with its own student organisations to discuss what students look for in this situation. I agree that it is right to look at the students and not at the provider. That is correct and was one of the original purposes of the OfS, but I do not think it has happened.

Lord Clement-Jones: Not to put too fine a point on it, you think there is a threat to institutional autonomy.

Charles Clarke: I do think that. My answer to that, given in a book that I will not advertise but I have a copy here to my left, if you would like one, is for universities to get more cojones in standing up for themselves. The weakness is that university leaderships have to be much more proactive and engaged than they are. There is a serious weakness in many university leaderships where they say, "What are the Government or the regulator going to say next?". That has happened in many other areas of our public life and is very dangerous for all kinds of reasons.

Lord Clement-Jones: I am glad I was able to give you that prompt.

Lord Agnew of Oulton: I want to pick up on Mr Clarke's faith that the sector will look after itself and its students. As we heard from Lord Johnson, half of this debt will never be repaid; therefore, it falls straight back on the taxpayer. The Government have a responsibility to fill the gap when universities are not looking after the interests of wider society.

Charles Clarke: I certainly do not have faith in universities, but I do if I am asked, "Here is a problem. Is it more likely to be solved by the Government or a regulator telling universities what to do, or by getting university leaderships to improve?" I agree completely about the very high public cost of universities and so on at the moment—up to about 50%. The reason for that is very clear: we set the income at which students start repaying at £15,000 a year. That was then increased by the incoming Government in 2010-11 to £21,000 a year. It was then increased by Theresa May, in a party conference gesture in 2017, to £25,000 a year, and I think it is now £25,725. Philip Augar recommended that it go down to £23,000, which I think is not far enough.

The fact is that all those steps reduced the amount of repayment from all students, for little political benefit to the Government, and have led to the enormous debt that Lord Agnew is quite right about. It gives the Treasury the right to say that, if public money is being spent in those areas, it has the right to say things about how that public money is spent. If I were in government, I would say that too. It is a correct position to adopt, but the cause of it are the changes I described that have happened since 2010 in the financing regime. That needs to be reversed to get this in the right place.

Q20 **Lord Reay:** On the OfS's relationship with the Government, to what extent is the OfS's work determined by government? Is the guidance the Government give too prescriptive?

Lord Johnson of Marylebone: The OfS has its duties set out by Parliament. The Government have the ability to give guidance to the Office for Students, to which the OfS must have regard. In giving guidance to the OfS, the Secretary of State must have regard to institutional autonomy. There is a framework of law that is meant to protect universities from undue interference that would affect institutional autonomy. Ministers in the department are very conscious of that and are aware when they give guidance to the Office for Students that it will not necessarily be acted on to the very letter, because the OfS has to balance that guidance with the legal duties it has been given by Parliament. That is undertaken very carefully by the Office for Students in the exercise of its functions.

Lord Reay: Did you find as Minister that sometimes your advice was not necessarily adhered to by the OfS?

Lord Johnson of Marylebone: Yes. Aspects of the OfS's work do not fully reflect the guidance it was given by Ministers or, more importantly, the legislation from Parliament. In that respect, I am concerned that the Office for Students has not fulfilled its duties properly to promote choice and competition in the sector. The agenda we promoted—that quality across the system would be enhanced by student choice, competition and the ability of new entrants to come in and raise the bar for the sector—has fallen by the wayside. Parliament gave the Office for Students that duty, which has not been fully delivered.

On ministerial guidance, there were balances to be struck on occasion. At some points I would have preferred tougher action to be taken on grade inflation. That was a big concern because it was very clear that degrees were not holding their value over time. The Office for Students talked a good game but actually did not deliver much in dealing with grade inflation, and that was a cause of real frustration. There are other examples but that is a good one. A telling chart shows the proportion of students attaining first-class degrees going from 15% in 2009 to getting on for 40% or 50% today. There has been astonishing grade inflation and the Office for Students has not really gripped that agenda. That has undermined the value of UK higher education.

Charles Clarke: At the risk of singing old tunes, when I was Secretary of State for Education we were responsible for about 15 or 20 non-departmental public bodies, including organisations such as HEFCE. The basic rule was that the Secretary of State would write a letter once a year to that agency and maybe have a meeting with the leadership of the agency to discuss any points we had. I repeat that it was once a year and not more frequently. It would be unusual to have ongoing dialogue between Ministers—and, I suspect, the department as a whole—and the agency concerned. To take Jo's example, on a question of grade inflation, the Secretary of State would include in his letter to the OfS, in this case, "We are worried about grade inflation and would like you over the next year to take steps to deal with it, and tell us at the end of the year how you have done". That would be the nature of the relationship.

Are there other formal and informal relationships? There may be in particular circumstances, but I certainly did not see it as my role to try to force the various agencies—Ofsted and so on—to do what I as Secretary of State thought was necessary. I am not saying that crises did not arise and I am not pretending to be holier than thou in all this; I am as familiar as anybody else with the dark arts of government. The fact is that, in principle, organisations such as the OfS ought to stand as independent.

In that respect, I thought it was a serious error to replace Michael Barber with Lord Wharton as the chair of the OfS because he was clearly a party-political appointment. It was reported that he beat Ivor Crewe, who is highly respected in the university world; I knew him extremely well and there was no sense of party partisanship. If somebody is clearly appointed for a purely party purpose to be chair of a body, it is bound to build perceptions across the sector that a political agenda is being set by an otherwise supposedly independent regulatory body. That is a core problem. As we always say, it is not just the facts but the perceptions that are important.

Lord Reay: How would you define the OfS's relationship relative to the sector and government? Is the OfS an independent arbiter, mediator or buffer between the Government and the sector, or an instrument of government policy?

Charles Clarke: It is too strong to say that it is an instrument of government policy, although I wondered when Jo talked in particular about grade inflation whether you saw it at that time as an instrument of government policy. I would not describe it as that generally. It is more a buffer between government and the sector. I do not even think it is an independent mediator. Presumably, that implies mediating between the universities and the Government. I am not sure that is how these relationships should happen. I do not think there is a mediating role to play in that way. It should be, as it was intended to be, a genuinely independent regulator with clearly defined terms of reference that are publicly open, in a way that is transparently independent and transparently not being an agency of government.

Lord Johnson of Marylebone: The language of the regulator being a buffer is backward looking. That was how HEFCE saw itself, as an organisation that could look out for the provider interest and ensure that government did not cause any problems in how universities operated in measuring and assessing the value that they delivered for students and the taxpayer. That was the HEFCE function. The Office for Students function is actively to drive the student interest, and to ensure that taxpayers also get value for money from the whole system. Buffer is the wrong word. It is a strong and independent market regulator. That is how the Office for Students sees itself.

Charles Clarke: I do not think you can describe it purely as a value-for-money organisation. As I mentioned earlier, the OfS deals with a whole string of things—freedom of speech, mental health and a whole set of issues—that are not value-for-money issues. They are conduct-of-

university issues. The conduct of universities should be for universities and not for this regulator.

Lord Cromwell: It has been suggested to us that the OfS is dependent for its existence and future prosperity on government. Do you recognise a temptation there for it to try to anticipate or please the policymakers, rather than being an independent regulator?

Lord Johnson of Marylebone: It is dependent for its financial wherewithal on subscriptions from the sector; universities pay for their own regulation. The Government pay for certain functions undertaken by the Office for Students, including the teaching excellence framework, which is a very important mechanism to drive enhancement above the baseline, the minimum quality standard. Basically, the sector pays for its own regulation. That is a good situation for it to be in.

As I said, the Office for Students has its own duties set out by Parliament. Do executives at the Office for Students anticipate what Ministers will say, want or request of them? I have not seen much evidence of that. Michael Barber, Nicola Dandridge and Susan Lapworth, the current chief executive, are world-class public servants. Rather than sniping at them and harking back to a world of self-regulation that is not coming back, the sector should support the organisation and try to develop a constructive relationship with it.

Charles Clarke: The “pleasing” point depends on who you are trying to please and how they conduct themselves. It is very much down to the Government of the day, whoever they happen to be, whether they try to get their various agencies to please them in whatever respect. The cynical view is that all Governments do that; they want to get their agencies to please them in whatever respects all the time. I do not think that is always the case, by any stretch of the imagination.

The University Grants Committee, which led to all this being set up, was established by Treasury minute in 1912, or something like that, specifically to emphasise the independence of universities in that era from government. As Jo rightly said, the sector has transformed in the number of students going to university and so on. From the outset, the purpose was to find a structure that emphasised the independence of the regulator or funder, as the University Grants Committee and HEFCE were, in that process. My concern is that independence is not manifest now. I do not think that university leaderships, which are concerned about this, are simply ploughing their own furrow. Jo is right to say that some of them do, but I am not sure it is simply from self-interest to get the regulator off their backs. There is also a sense in which they are trying to address what the appropriate role is for universities in our national life.

The way to deal with that is to have a regulatory regime that does not deal with the marginalia or rubbish but focuses on the big things. I agree fundamentally with Lord Cromwell’s point on value for money. As I said to Lord Agnew, if 50% of the cost of universities comes from the state, the state is absolutely entitled to ask whether it is getting value for

money and to have a proper conversation about what that value is. My answer to that question is to reduce the dependence on the state by increasing the amount repaid by students, which I would do by bringing down the initial level at which they contribute. As I said, we started that at £15,000 a year. Obviously, inflation has moved on since then and we are now at £27,000 a year, and it has become a political football. The general election result in 2017 led Theresa May to think they had to do something about that. You actually want a stable process that goes on throughout and is widely recognised. I do not see a great deal of graduate resistance to paying back. You might say that I would say that, wouldn't I, having introduced the system?

Lord Cromwell: We will get on to value for money. I am looking forward to that. Thank you both.

- Q21 **Lord Gilbert of Panteg:** Can we look at how government strategy for the higher education sector has evolved since the Act? Earlier, Lord Johnson, when you had your flashback, you described the introduction of the Act and that seemed quite strategic. You envisaged that an influx of providers would provide greater diversity of courses for students and a larger sector. You saw the need for the regulatory framework you described. How would you characterise government strategy now? Has it evolved or changed on the size of the sector, diversity of courses and diversity of provision, and more generally for the role of higher education?

Lord Johnson of Marylebone: There are two points. The first is on new providers, which is the area where I am most critical of the Office for Students. Otherwise, I have defended it, I hope robustly. I am critical that it slightly mislaid this aspect of its agenda and ignored the duties that Parliament gave it to promote competition and choice for students.

We have seen some great examples of new providers coming in. There is the Dyson Institute of Engineering and Technology—I declare an interest as a board member—and Milton Keynes university. TEDI is a coalition of King's, Arizona State University and the University of New South Wales. There is the London Interdisciplinary School, NMITE in Herefordshire, in a cold spot, and others. They are great innovations, adding value by providing sorely needed engineering skills, but they have really struggled with the combination of processes in the Office for Students and the Quality Assurance Agency, or QAA, to get going and get their own degree-awarding powers. There has been unbelievable bureaucracy and foot-dragging.

The process of getting in high-quality, challenger institutions was meant to have been accelerated by the passage of the Higher Education and Research Act and the subsequent policy guidance that Ministers gave. It has not been and I am really disappointed that that agenda has been neglected over the past few years. Ministers have also not given it as much of a push as I would have wanted.

The second area of big change, which I welcome but which I think will stall unless weaknesses are addressed, is in the shift to lifelong learning. The higher education system is reinventing itself to address the need to get universities to think of themselves as lifelong learning institutions. That is great. The lifelong loan entitlement that the Government are rolling out from 2025-26 will be really important, but there are major design flaws in the lifelong loan entitlement, which the Office for Students is responsible for delivering, and those must be addressed. The proposed minimum units of study are still far too big at 30 credits. The restriction that the content must come only from higher education institutions and not from the world of employers offering work-related courses is crazy and will make higher education institutions the gatekeepers to lifelong learning. That is a major problem. We need to address those design problems. I hope that the Office for Students will do so in the weeks to come.

Charles Clarke: There is a massive reform agenda. I agree with most of what Jo said. After we set up the system in 2003-04 with a maximum fee level of £3,000, we expected significant divergence between universities in the fees they charged for different types of courses. Giving evidence to Lord Browne's review in 2010, I said that was the big failure of our whole change; there was no diversity and there was not a range of different things. You would expect different courses. Do they all have to be three years, are they all basically in person rather than online, and so on? There had not been diversity. Then, lo and behold, the fee level went up to £9,000 and, again, there was absolutely no diversity. You did not get some £9,000 courses, some at £3,000 and some at £6,000, or whatever—with some exceptions. En bloc, it just went straight on. It would really be worth this committee thinking about the cartel nature of the way universities operate in relation to that regime. It has been a failure to date; the diversity has not happened. The OfS has not looked at how one could create more diversity in types of course and study.

Jo is 100% correct on the lifelong learning point. Fundamentally, most universities have been very inflexible in creating their course structures in such a way that people can join at various points throughout their lives. It is still all fundamentally front-loaded on 18 to 21 year-olds, not as much as it was but absolutely predominantly. That requires change, because the modern world requires much more flexible and effective universities. That is not happening. All Governments since 2003 have failed to promote that on a proper basis. The innovation change that Jo mentioned—I declare an interest in relation to the university he mentioned, TEDI, in south London—is a tiny part of the whole university sector in terms of numbers. It is certainly open to doubt whether it will transform practice across the range. It is also true that these new institutions had substantial difficulties in getting themselves going, as Jo described, but there is a bigger problem than just those innovative institutions. How do you promote universities that are far more diverse in the kinds of courses they offer and the people they bring in, and in giving courses to people throughout life as the economy and society change? It is still a very conservative, with a small "c", institutional sector.

Lord Gilbert of Panteg: Jo, I see you want to come back on this. Can you also address the issue of government strategy? Would laying out a clearer strategy for the expansion of the sector help?

Lord Johnson of Marylebone: I will come to government strategy on the expansion of the sector. First, I heartily agree with Charles on this matter. He triggered me by saying “cartel”. I agree; that word was very much at the forefront of my thinking when we were developing the legislation to reduce barriers to high-quality new entrants to the system. One of my biggest frustrations with the OfS has been its failure to tackle the problems with the system of validation that we have at the moment.

Validation is a technical term given to the process by which existing providers operate as sort of gatekeepers to the sector to new entrants who want to come in. That system is fundamentally broken because it means that new entrants have to conform to the mould of the party that validates them. It is an inherent brake on innovation and competition in the system. The Office for Students should look at alternatives to this model of validation. One alternative that we wanted to promote was direct entry into the system without validation, but, as I described earlier, that is unbelievably bureaucratic and difficult for new providers. For institutions that want to come in without being validated by an existing provider, the QAA will still basically require them to show that they are much like a university in every single possible respect, so new providers who want to do something different end up having to conform to the classic model. The system is broken and I wish the Office for Students would address that seriously.

I also agree with Charles’s points about the flexibilities needed if we are to make the lifelong loan entitlement and lifelong learning a reality in this country. The Government’s proposal is for this to apply only to levels 4 to 6. The real skills needs are at level 3 all the way through, if we are to do this properly, to level 7—a master’s degree. Those who are in work and have already done an undergrad degree do not necessarily want to acquire a skill at level 4, 5 or 6—which is what the Government propose. They want some kind of master’s-level qualification, potentially in modular or short-course form. The restriction that we propose for the development of the LLE might save the Treasury some money but will not deliver the skills revolution that the Government say we need.

I think the government strategy for expansion of the sector is a real muddle. Around the developed world, the most highly performing knowledge economies—Canada, Korea, Japan and Israel—have levels of participation in tertiary education far in excess of ours, approaching 70%. This Government are unsure whether they want more or fewer people to go into higher education. They rightly focus on expanding levels 4 and 5 provision, where we are undersupplied in the UK, but they do not have a real philosophy about what level of average educational attainment they want in the UK workforce. They do not have a strategy on that, and it would be helpful if they delivered one.

Charles Clarke: There is a blueprint that Theresa May produced in the form of the Philip Augar report, a very worthwhile document. I do not agree with all aspects of it by any stretch of the imagination, but it is still just lying on the table. I bumped into Philip Augar the other day; there has been no action by the Government since he reported, after Theresa May set that up. The reason for that, as Jo correctly identified, is that there is no strategic approach to deal with it. You can argue over the pros or cons of his particular proposals, but it is at least an agenda for how action could be taken.

Lord Gilbert of Panteg: On strategic approach generally, one criticism we have heard is that the strategic guidance offered by the Government is neither strategic nor guidance. It is detailed and directive. Is that partly because the Government lack a strategic approach and have to address issues one by one annually with guidance?

Charles Clarke: It is knee-jerk. This is not a party-political point, but the fact is that if there is constantly a panic about some aspect of universities in the pages of the papers—free speech or something else—there is an immediate knee-jerk response. We need exactly what you suggest, Lord Gilbert: a point of strategy that says what we are trying to promote in universities, X, Y and Z, against which you can test all these various things. That is not there at all. The universities agenda, up to and including ministerial level, at least recently, has been set by responses to some drama or other that is preoccupying the newspapers.

Baroness Bowles of Berkhamsted: I want to move on to money. Before I do, you talked of the cartel effect. Jo, you said that it effectively meant that a new university had to look like the pattern we already have. Would that mean that you could not have, for example, a university that wanted to offer only lifelong learning and was not heavily focused on the post-school three years as well?

Lord Johnson of Marylebone: At the moment the model is very difficult for new entrants, for the reasons I set out. The Office for Students delegates to the QAA—at least, it will until the end of this month when the QAA ceases to be the designated quality body—the responsibility for ensuring that any new entrant is worthy of their own degree-awarding powers. When the QAA undertakes that assessment for the OfS, it applies a very lengthy and bureaucratic box-ticking exercise to see whether the new entrant corresponds to what it expects a university to look like. That completely frustrates innovation in the system, whether it is of the kind you describe or indeed anything else. That is the nightmarish process that new providers have to overcome to get into the system, and it needs a shake-up.

Charles Clarke: We have a lifelong learning model, the Open University, which was established on that basis. Most of the new universities have tended to be monotechnic in a particular very narrow discipline, whether engineering, business or whatever it might be. That is fine; I have nothing against that. It is perfectly possible, in principle at any rate, to

establish a validation regime that establishes other specialisms and areas, if one wanted to do that.

On the regulation side of the OfS, when it talks about, for example, regulating vice-chancellor salaries—again, a classic newspaper-led point and the kind of panic that happens—is that the right thing for the OfS to do rather than developing a strategy for exactly what you suggest? Which areas of new types of institution or changes in existing types might meet the needs of the country at that time? That would promote some interesting discussion about how it should be done. It has been on the wrong foot.

Q22 **Baroness Bowles of Berkhamsted:** I had better move on to what I am supposed to ask you about. This question is about how the OfS evaluates whether education provides value for money. Can it do so objectively, or do those judgments reflect political or economic priorities? Is it independent or skewed?

Lord Johnson of Marylebone: The OfS tries to get at value for money, which you cannot measure directly, through proxies. Inevitably, those proxies are not perfect. The OfS gets at it through surveys; there is a consistent survey that over time asks students whether they felt their course was value for money. The proportion has gone from roughly a third saying they did not think it gave value for money to a little over 40%, which is a high number. It also gets at it through metrics of outcomes: the proportion of students dropping out, or completing their courses and progressing on to good labour market outcomes, such as getting a skilled job of some sort or going into further study after completing their course. You get at it through such proxies.

There is sometimes a danger that, under pressure from the Treasury, the Office for Students will take a short cut to value for money and equate it with the proportion of a loan that is repaid. A course will therefore be seen as delivering value for money if a very high proportion of the loan is repaid. There is obviously a temptation to do that because the Treasury gets its money back on the loan it provided, but there is clearly a real risk to the diversity and breadth of subjects offered by institutions and a risk of generating a skills shortage in lower-earning career paths that are of great social value and essential for the operation of many of our public services. You have to be careful about a reductive approach to value for money that equates it with the proportion of a loan repaid, but we often see that in the narrative around the loan book and the proportion that is being repaid. We have to remember that it is a deliberate policy choice to have subsidy built into the loan book to enable people to pursue socially useful but low-earning career paths.

Charles Clarke: This is a very difficult question. I find it very difficult to understand what is meant by value for money in this context. If Jo is right, and I think he is, the Treasury sees it as money returned. From the outset I have always been in favour, although I did not win this argument in 2003, of incentivising early repayment of the loan. There is a strong case from the Treasury/public interest point of view to get as much

money back as possible early on, even if there are occasional social inequity issues.

Jo is quite right to use the word “proxies” for a series of different metrics. Take the employability metric. The last time I spoke to a Secretary of State, this one was completely dominating his mind. I am still unclear what is meant by employability. I am perfectly clear that universities ought to produce students who are able to go into the workplace in a whole variety of different ways. I am also perfectly clear that we ought to promote work/university relationships much more substantially than we do. Some universities—I always think of Aston in this context—have been extremely successful in doing that. I am not saying that is not important, but when you talk about measuring employability it is difficult. You get into the rhetorical circle of what a ‘graduate job’ is. The question is whether it counts as a university success, and therefore value for money, only if a graduate goes into a “graduate job”. What is a graduate job these days? There is a set version about professions and so on, but I am very sceptical about that.

To take a different example of value for money, we have not talked this morning so far about the importance of teaching. One of my criticisms of universities is that they are much too focused on research, which is understandable, but what about teaching? The Government, under Jo’s leadership at the time, tried quite rightly to say that universities should think about the quality of their teaching and that we should get that as a factor, but it is very difficult indeed to get a metric that really delivers that. I remain sceptical on the TEF and the idea that a metric has been established that allows a good process to follow. I discussed this with Nicola Dandridge just the other day. I am not sure that metric exists at the moment. The problem all the time is what metrics add up to measuring value for money. I still do not think we are in a good place on that.

Baroness Bowles of Berkhamsted: Could one abandon the overall value-for-money thing and just have the set of other metrics from which you get some validity, such as how many went into vocational work? Does the whole value-for-money thing undermine lifelong vocational courses?

Charles Clarke: There are useful measurements. The dropping-out measure is interesting. People start university and then drop out in their first or second year, or whatever. That gives you a message about how the university is operating and what should be done. There is then a set of debates about what you do about that, but it is quite a useful metric in those circumstances. The overall value-for-money metric is very difficult to get to in any serious way. It is much more intelligent to do what you suggest and have a set of measures of particular things. Going back to the conversation we had earlier, the OfS could produce data on how different universities perform on those different metrics to promote discussion in those institutions and comparisons with other areas. Winding it all up in one metric does not really work.

Lord Johnson of Marylebone: We should not get too depressed about our value-for-money situation. Our system is genuinely world class in many respects. We are world leading on completion rates; in the proportion of students who complete their studies, we are literally top of the pack. Drop-out rates from year 1 to year 2 are sub-10%, notwithstanding the pandemic and all the difficulties that students are having. The graduate premium, which reflects the additional pay that graduates get versus those with similar A-level qualifications or equivalent who have not gone to university, is robust over time, suggesting that real value is added by our educational system. There are lots of reasons not to be gloomy about it.

On teaching, I completely agree with what Charles said. Measuring teaching is difficult, but that does not mean we should not try to get at it through imperfect proxies. I am delighted that the teaching excellence framework is still going, getting on for 10 years after it was first announced in the 2015 manifesto. The next set of TEF results comes out this September and they continue to indicate where high-quality exists in our system. It is not where you would normally expect it. Excellence is found throughout, from the smallest alternative providers run by private operators all the way through to the largest and grandest Russell group institutions. Equally, patchiness in provision is spread throughout the system, so we should not assume that reputation and the gilded image of certain universities corresponds exactly to where high-quality teaching and student outcomes can be found.

Baroness Bowles of Berkhamsted: Continuing with a slightly different value for money, the OfS is funded by fees from providers, which adds to their costs. Of course, that happens with lots of regulators. How does the OfS account for value for money in its own operations? Does it achieve that?

Lord Johnson of Marylebone: It offers a reasonable deal: £12.82 per student in the system is the cost of regulation. In return for that, universities get access to £20 billion of annual tuition fee funding, £8 billion of research funding distributed by UKRI, and a global market that is completely unregulated for international students, which props up our entire system. All that in return for undergoing regulation by the OfS sounds to me like a pretty good deal.

Lord Cromwell: I have a granular point: I agree that value for money is difficult, but it is at least worth trying. Do universities offer a breakdown of how their £9,250 is spent?

Charles Clarke: Certainly not. They would absolutely refuse to do so. I have argued in a whole series of different areas that there is a massive subsidy between the teaching income that universities receive and research. They essentially slush money across from their teaching income to fund research. I think that is an outrage and have argued for a long time that there should be openness about how and where money is spent. Going back to the word "cartel", there is an interesting question about whether the market operates in a way that allows students or

potential students to know where their money will be used, and whether the high fee will be used to give them high teaching in whatever way. I accept, as in all these things, that there are some interesting questions of definition. I have spoken to some leading university finance officers who are completely open about this in private but would be horrified at the suggestion that there should be an open discussion about what happens to teaching income.

Lord Johnson of Marylebone: Universities provide a service regulated under consumer law. They need to be frequently reminded of that by the Office for Students. I wanted to push the idea of student contracts between universities and their students so that students could have a reasonable expectation of getting a certain amount, for example, of teaching time—a certain number of hours of lectures relating to their course of study in a given academic year. Unfortunately, it was very difficult to get consensus on measurement of teaching time and university lecture hours. The complexity of that frustrated me because I wanted to crack on with that whole agenda. It was one of the areas where there was significant push-back from mission groups and university bodies. It is an area where the Office for Students could usefully push harder in months to come.

Q23 Baroness McGregor-Smith: The Office for Students places great emphasis on student interest as a whole, and we have talked a little about value for money and other areas. As a body, does it engage well enough with students? I am particularly focused at the moment on thinking about what it did for students during the pandemic. We watched everything shut down, then a return virtually for many that was the most hopeless experience. What has the OfS done, particularly since the pandemic, on how best to represent students in a very changing education sector? Today many courses are offered only online. I have seen master's degrees being offered by universities purely as online learning. How does the OfS decide what is best for students?

Lord Johnson of Marylebone: It would be helpful if it reinvented itself as the office for lifelong learning, and said, "We are not about just the classic 18 to 21 year-old student doing a first bachelor's degree", and really thought of itself as an organisation whose core mission was to promote reskilling and upskilling throughout someone's working life. That would be a helpful change of focus.

It does engage students at the moment. It is required to have a student on its board representing student interests. All students sit on the teaching excellence framework, TEF, panels that assess the quality of teaching and student outcomes in institutions. The Office for Students funds the National Student Survey that Charles mentioned, which is a big undertaking every year, surveying 300,000 people. It does its best to ensure that it does what it says on the tin; it engages students and promotes their interests. In that respect, it is a substantial change from HEFCE.

Charles Clarke: First, it is not necessarily the case that simply being taught online means a lower quality of university experience. It is an interesting question. Quite before the pandemic, many universities were moving in that direction—the Open University, obviously, but also many others around the world. Universities have been very slow in moving on this. Jo told me this morning that he is associated with FutureLearn, an institution established by the Open University—I was involved in that—to promote online learning in all kinds of universities. That is potentially very positive. Indeed, in trying to have universities reach out to a much wider student body, online learning is the main means of doing that.

You asked the question, quite rightly, about the pandemic. What happened then was that a number of universities went very quickly to online courses without having a foundation to do it. They thought that online learning was basically having a camera on the lecturer and that would do the job. Actually, proper online learning is far more than that, with many different ways of taking it forward. I know some of the online master's courses that you described at universities I have been associated with, and they have completely changed the way in which the education takes place, with feedback from students around the world and so on. It is quite positive but not something you can do just by saying, "Let's get a camera in and sort it out", which is what happened in the pandemic. That led to very unsatisfactory experiences, as you correctly described.

I do not believe there is a proper discussion with students across the range from the OfS. I may have a vested interest as a former president of the National Union of Students; we were always right in everything we said, including that the Labour Government in which I was Secretary of State for Education was wrong in certain respects. Actually, there needs to be a much more sophisticated thing: not just a student on a committee or in a particular place, but a dialogue with students overall about what they are trying to achieve. I do not see much evidence of that coming through.

Baroness McGregor-Smith: Thinking about the student interest, we talked a little about jobs and employability, so how much does the OfS engage with employers and ask them what they think?

Charles Clarke: To be fair to the OfS, that is a massive problem in British education as a whole. My main reflection on my time in office is that the whole dialogue between the education world and the world of work is far less than it ought to be in provision of courses and a whole set of different things. Odd little things happen but it is not systemic in the way that, in my view, it needs to be. The OfS is part of that but it is not a problem unique to the OfS. There is a general weakness in having a proper discussion between employers, and for that matter the employed, and the education world at all levels. That needs to be taken forward much more substantially. If the OfS could do that, it would be great.

Lord Johnson of Marylebone: I echo that. The real risk at the moment is in the delivery of degree apprenticeships, which obviously involve

employers. There, the combined bureaucracy of QAA quality assurance in the degree component and Ofsted quality assurance in the apprenticeship component is paralysing. Degree apprenticeships will not be delivered in the volume and of the quality the Government want unless that double jeopardy of dual regulation is sorted out. It will knock this stone dead unless the Government address it.

Q24 Lord Cromwell: Lord Johnson identified the top objective of the OfS as protecting the autonomy of universities. Protecting the autonomy of the people you are trying to regulate will always be a challenge. How do you characterise the relationship now between the OfS and those it regulates, in particular the balance between the collaboration and challenge required to get that right?

Charles Clarke: I have looked at this mainly at a distance as I have not been in public life substantially in this period, but I have worked with a lot of universities and I believe it is bad and getting worse. A number of university leaders I speak to are extremely negative about the OfS and regard it as unhelpful in the way it operates and bureaucratic in the way it proceeds. They all accept the need for some form of regulation and that regulation is difficult. They all have examples of how OfS engagement did not help in clear regulation or the operation of their institution.

Lord Cromwell: Is that not just them kicking back against someone interfering with them?

Charles Clarke: I was just about to say that a cynic might argue that that is exactly what happens with all professions as they seek to defend themselves against the public interest, however defined. I do not think that is what this is. There is real concern that the OfS is looking at things it need not look at and not looking at things it should look at, and engaging in ways that are essentially tick-box exercises. For example, if you talk to the insurance sector, people will all complain about the tick-box nature of the Financial Conduct Authority in how it operates in different ways. The same thing is coming through here. You have to get a more sophisticated form of regulation than simply ticking boxes. The OfS has not achieved that.

Lord Cromwell: Thank you. Jo is yearning to get in.

Lord Johnson of Marylebone: Well, kind of. I think the sector wants to get back to a nice situation where it has captured the regulator. The sophisticated approach that would involve would mean, basically, that the regulator was in the pocket of the institutions. The Office for Students has been a welcome change in that respect. Obviously, it is not yet perfect. It is a very young organisation. It is not yet fulfilling all the duties that Parliament gave it, and we have talked about some of those, but it has marked a clear break from the past and, in my view, a much-needed one.

Q25 Viscount Chandos: How well resourced and expert is the team at the OfS? Since being set up, it has had a lot on its plate. With the resignation

of the QAA as the designated quality body, that could increase and change quite a lot.

Charles Clarke: The word “expert” is absolutely central. No regulator can work unless it has a very high reputation for high-quality expertise in what it regulates. To go back to Lord Cromwell’s previous question, if it is to gain the respect of the people it regulates, its expertise has to be completely beyond question. I do not think that the OfS is in that position. Why? First, the OfS tries to regulate far too many things. As I said in the examples I gave earlier, whether you are talking about free speech, mental health or diversity in access, let alone the quality of university courses, the solidity of university funding regimes or whatever, this requires a vast range of expertise. It would do far better to try to regulate a smaller number of areas but to go for top-quality expertise in those fields.

There may be some interesting uses of pay in that context. If you are within public service pay constraints, it is often difficult to pay experts at the higher level that may be necessary for them to be seen as extremely competent in those fields. At the moment, the OfS is not seen as expert, and the way to become seen as expert is to reduce the number of subjects it is trying to regulate and consciously to increase the expertise of the people doing the job.

Lord Johnson of Marylebone: The OfS and the country have been lucky to have had public servants of the calibre of Michael Barber, Nicola Dandridge and Susan Lapworth setting up the organisation. They are the finest public servants we could have hoped for to do the task. They have had resources to enable them to embark on delivering their duties; they have a team of 400-odd people looking at our universities—roughly one per institution on the OfS register.

Universities are complex organisms. They undertake many things that we demand of them. It is not surprising that the regulator has to have a wide array of things that it is keeping under its quality assurance and other controls. Yes, it is a complicated organisation and, yes, it is doing many things, but we need to continue to support it, rather than wish it did not exist.

It has been an unhappy episode with the QAA resigning as the quality assurance agency, effectively thrusting that responsibility back on to the Office for Students. As Charles was saying, it is preferable for this function to be undertaken by a body other than the OfS—at a further remove from a non-departmental public body—to continue to ensure that we preserve institutional autonomy. My preference would be a reformed QAA doing it. By reformed, I mean that it does not have conflicts of interests; it cannot at the same time be selling consulting services to the organisations it is quality-assuring. Either a reformed QAA undertakes the quality assurance function on behalf of the OfS or the sector resources another body that does not have those conflicts to do it. One way or another, something has to give. It would not be my long-term wish for the OfS to do this itself.

Charles Clarke: There are six grounds for intervention: unexplained grade inflation requires a set of expertise; harassment and sexual misconduct, and I wonder what expertise the OfS has in that area; mental health and well-being; freedom of speech—a highly difficult one that I am not at all convinced is appropriate for this kind of regulation; and increasing the diversity of provision. That is on top of all the various other aspects. The answer to Jo's problem is to reduce the scope. Jo used the word "control". I do not think that the regulatory regime should be trying to control universities in many of these areas; it should be trying to assist them.

Viscount Chandos: Is the unhappy situation that has emerged between the OfS and QAA not the result of ambiguity about responsibility? You have a quality body responsible for standards and a regulator apparently responsible for quality. It is a bit like Keynes saying that the International Monetary Fund was a sort of bank and the World Bank a sort of fund.

Lord Johnson of Marylebone: I think it is a bit more complicated than that. The QAA is an impressive organisation, but it is a legacy organisation from a different era. To my mind, it is not surprising that things have come to the pass that they have. The QAA embodies the ethos of co-regulation, where the sector manages quality and standards according to its sense of what works, and government funds the sector and does not ask too many questions.

That is the spirit of co-regulation, which clearly will not survive long in an environment where an active market regulator is looking out for the student and taxpayer interest as its primary focus. That is why this relationship has finally come to an end. A different body can be designated as the quality body by the OfS that is more independent of the sector and does not have the ties and conflicts that have been identified.

Charles Clarke: I am sceptical about this whole concept. If you are saying to universities that they cannot be involved in the regulation of themselves and cannot have co-regulation, to use your phrase, they have to be regulated from somewhere else—government or whatever. Government says, "University, you have to run yourself like this". That is a very pernicious and dangerous course of action that I deprecate very strongly. There is no way that a major university is able simply to accept diktats from a regulator that has no "co" element. The "co" element is what it is all about.

If the "co" element means capture by the regulatees—the people being regulated—I do not think that is a fair picture at all. I do not think there was an ill that needed to be addressed, in the way that Jo is suggesting, before the OfS was established, and I do not think that there is an ill that needs to be addressed now either. I do not think there is a question in that area. The challenge to people thinking like Jo is: if you do not have the QAA or the OfS, what other body can come in not to co-regulate—that is not acceptable, apparently—but to regulate 150 universities in

Britain and tell them what they should do? I think this is a horrific picture that you are painting.

- Q26 **Lord Burns:** I turn to some of the financial risks involved in what we have been discussing this morning. The regulatory framework is littered with references to competition and informed choice by students, but we have spent much of the morning discussing how competition is not really taking place and outlining some of the problems of getting new quality institutions in. Institutions have chosen to charge the same fees, so there is no price competition. Little information is available for students to make informed choices. As you say, universities do not disclose how much teaching or supervision students will receive, so what is left of increased competition? Clearly, one could conclude that competition comes in the form of degree inflation; more and more people are being offered higher degrees because it gives the impression that the university is successful. We have had a great press for additional students, and in particular reliance on overseas students, who, as you say, prop up the whole system.

Fees are declining in real terms. Are we likely to see government making any real changes to that? Does this combination not mean that there is now quite a lot of financial vulnerability, when you have a system whereby you have difficulty in getting fee levels up and high reliance on overseas students? Is there a systemic problem, or is it limited to certain types of providers, and which are they?

Charles Clarke: Terry, I think it is a systemic problem. What alerted me to doing things in this field recently, in the past five years, was making a presentation to a university council in London on the challenges it faced. When I thought about it, I realised that the danger was that the whole of its accounts were founded on money from overseas students. As I said to it, there is some risk almost of fraud, because many master's students—I was thinking of many of the Chinese students coming in—were being charged very high fees for not very good-quality courses.

People in the university saw it as a good income stream but not really with a duty to educate those people at the level they were expected to. I thought that was not ~~sustainablegoing to continue~~. Countries around the world are building strong, world-class universities themselves. It has moved slowly but it continues to move forward. One of the reasons is so that students in those countries wanting to go to a world-class university do not have to travel to the UK or the US and pay money there but can do it in that way.

I think, first, that international students are a massive risk to a large number of universities—an underappreciated risk in many of those universities. The second risk goes back to the question raised earlier about the development of online education. That will increase. I welcome it in many respects, but it raises absolutely enormous questions about the cost of providing a university course: you can do it far cheaper online than you can otherwise. Very few universities—definitely a strong

minority of universities—have got hold of what online education means for university students in the future. That is another risk that arises.

Why are universities not as worried about this as I have certainly become? I think it is because they are confident that a university degree from a UK university will remain a very attractive option for students throughout this country, and that people will be prepared to pay for it. All the evidence suggests that is true and that it will hold up. Whether it is value for money for those students is an excellent question, but I do not see the demand for university education going down. I do not meet many parents who think, “We don’t want our children to go to university”. The reverse is the tendency.

You are quite right: there is a massive vulnerability in many university balance sheets, taking a five or 10-year perspective ahead.

Lord Johnson of Marylebone: There is probably a vulnerability before five or 10 years. If tuition fees remain frozen at £9,250, things will start to pinch in a couple of years for quite a large number of institutions. They can make efficiencies and they can change the way they operate, but it will be very difficult sooner than that, increasing the dependency on international students that is already apparent today.

Lord Burns: Charles, you referred to one of the striking things, which is what is happening in the postgraduate world, where there is an enormous hike in fees, particularly for overseas students but also for domestic students. There are some big differences in the cost of courses, leading to substantial imbalances. That tension will, at some point, manifest itself in real problems for some institutions.

Charles Clarke: I do not think that the imbalances in themselves are a wrong thing. It is not obvious to me that it is wrong to say that the fees for a one-year master’s course should vary substantially over a period of time according to the subject you are talking about. Employers pay for their employees on many master’s courses. I think there is insufficient scrutiny—I do not think that the OfS has done that, but maybe it could—of the value for money of some master’s courses, for some nationalities in particular.

Lord Johnson of Marylebone: Our system has regulated fees for up to level 6 and they are unregulated thereafter, for master’s and taught master’s. By and large it works well. We should not forget that it is a great benefit to us as a country to be able to attract international students, who generate £25 billion of annual exports for us—our second-most successful export after financial services. The idea that we want fewer international students mystifies me.

Lord Burns: I am more concerned about the emerging gap between undergraduate fees at under £10,000 and some master’s courses at £25,000 a year for domestic students. This begins to be a tension which—

Lord Johnson of Marylebone: Universities would argue that many undergrad courses are loss-making, capped at £9,250. There are high-cost courses that cost significantly more than that to deliver. The margin might not be as great as you imagine. The universities are charging what the market will bear. It is an unregulated market and the market price is established daily by whether they can find customers—paying students—and they do, so I do not really see the problem.

Lord Burns: There are signs of vulnerability, with risk coming into the system. To run the undergraduate side, one is relying on some stark improved performance in the postgraduate world.

The Chair: It could change very quickly.

Charles Clarke: Do not misunderstand me. I am not in favour of running this down at all; on the contrary, I agree 100% with Jo that it is a massive strength of the UK and it should go much wider. In health education—doctors, paramedics and so on—we could become the educator for the world in those fields, but we are not allowed to do so, not because of the OfS but because of other regulation. We have the reputation. We ought to do it better, and we ought to have higher transparency about what we are offering.

Lord Cromwell: Conversely, you have both highlighted that this could become a serious risk in a few years' time. Some universities might suggest that they are too big to fail; they do not have to worry because the Government will step in if it gets that bad. Do you agree?

Charles Clarke: Ten years ago I had a conversation with a Higher Education Minister in the Conservative Government, before Jo, in which I said, "I predict that you will have to close two or three universities because they are not operating properly". He said, "That won't arise", and he was quite right and I was wrong: no university has failed in that sense.

I do not see anything wrong with a university failing in certain circumstances, if it is not well run, as long as the students are protected, which it is entirely possible to do. At the moment, the assumption that all universities—not just big universities—are too big to fail has been validated as true. It would be worth sharpening that, to some extent, provided that students are protected, which is entirely possible. It would have been entirely possible to protect students from universities thought not to be doing well by transferring their courses to another university and to carry it through. I think that some universities were very badly run.

Lord Johnson of Marylebone: I agree exactly with what Charles said, and I am surprised that we are in agreement on this point. It is very healthy to have a system in which providers can exit the market if they are not delivering value or cannot find enough students to fill their spaces.

The Office for Students is not set up to be an entity that can bail out failing institutions. It does not have pots of money that it can draw on to do that. If Ministers, for political reasons, were to decide that they wanted to save an institution, it would be a matter for the DfE and the Treasury. The OfS would not want to get involved. The function of the OfS, as Charles rightly identified, is to ensure that every institution has a student protection plan to ensure that students can be taught out or moved to another provider if it is running into financial difficulties.

Lord Cromwell: Would you be surprised if the DfE stepped in to bail out a Russell group university?

Lord Johnson of Marylebone: No, I would not be surprised, but that would be a political call and not a matter for the market regulator. Political realities come to bear in such situations.

Charles Clarke: The biggest practical danger is that after my 2003 legislation a large number of institutions got university title in parts of the country where there had not previously been universities. That was a very conscious effort of government policy and I defend it; in many circumstances, many great universities have been formed, but in some areas the university thus created—not a Russell group institution—is in quite a dodgy position over whether it can keep going. There are major implications for the local community of a university closure in a particular locality, which would be dangerous.

Q27 **Lord Agnew of Oulton:** I have been trying to understand the business models of universities beyond hauling in foreign students. For me, it is back to the questions that Terry was asking about the long-term financial viability of the sector. Can either of you enlighten me? Nobody I have met so far in the process has helped me.

Lord Johnson of Marylebone: There are many different business models—it is a diverse sector—ranging from tiny providers with fewer than a couple of hundred students to Russell group or non-Russell group institutions with 40,000 or 50,000 students. There is a massive range of business models, specialisms and so on; there is no one model. You can be absolutely sure that if you regulate domestic fees and cap them indefinitely, sooner or later you will have a financial crunch.

Fees have been frozen for a decade in nominal terms. The real-terms erosion of their value has been about 30% since 2011. Universities have been required to make a big efficiency in how they run themselves. We can do this for a couple more years because government policy is that fees will be frozen for a couple more years, but if we do it indefinitely we will stretch the unit of resource very considerably and that will mean poorer-quality learning and a less well-educated workforce, which is not in the national interest.

Lord Agnew of Oulton: I accept that it is a broad church, with a wide range of institutions. Let us go for a mid-range, 25,000-undergraduate university or whatever it is. I come from secondary education. I knew

exactly how the school system worked financially. How is it that a school system can deliver education for £6,500 a year, for a longer academic year, a far longer academic week and often far smaller groups of students, yet this sector seems able to do it only by hauling in foreign graduates and charging them two or three times as much? It comes to the outrage from—

Lord Johnson of Marylebone: Hold on. This is the web of cross-subsidies that has long been baked into our system; it is not as if it is a secret. It has unfortunately not surfaced to students, but in policy circles everybody in Whitehall knows that there is a massive cross-subsidy from teaching to research.

Lord Agnew of Oulton: Is that not an outrage, as Charles says?

Lord Johnson of Marylebone: It is and it is not. You can get outraged about a lot of things. You can get outraged about the fact that current fees subsidise access operations. The sector is spending £3 billion a year on outreach to schools: universities go into schools and say to people from disadvantaged backgrounds, "Come to Oxford. Come to Cambridge. You're going to fit in here." That is a subsidy from one set of students to the next set of students. Are you outraged about that?

Lord Agnew of Oulton: I am outraged by the financial inefficiency of it. You could offer a straight bursary rather than having endless people driving around in cars. On the effectiveness of it, when I was in the DfE, the University of Leeds said it was not getting value for money.

I do not want to get sidetracked. The point I am trying to make is that we are asking children—young people of 16 or 17—to commit to a very large financial undertaking that will often sit around their necks for the whole of their lives, yet there is no visibility on how the £9,000 they are borrowing, plus the rest, is being spent.

Charles Clarke: First, I agree with that. Secondly, there are systemwide inefficiencies. When I was taking our legislation through Parliament as Secretary of State, the then chairman of HEFCE said I should take powers in the Bill to force universities to merge and to operate in various ways. I decided not to do that because I thought that the university sector would not wear it and that, politically, it would help kill off the Bill.

It is completely ridiculous that we now have, I think, 45 universities in London with no cross-approach to how you should deal with that. I had a delegation from a university chemistry department that was to be closed. They brought a Nobel prize winner and asked, "Will you intervene to stop this chemistry department being closed?". I said, "No, I won't. Do you think there should be a chemistry department in every university in Britain, one in every region in Britain or just one across the country? I'll offer you a deal. If you give me your answer in a brown envelope, I'll do what you say." Of course, they could not agree on that.

The way we allocate our teaching across the country is completely irrational. I argue that we should have a regionally based approach, with serious discussion in a given region about what universities are doing in the region—by consent: all “co”. I rejected the idea that the Secretary of State should take the power to require it.

I have been surprised. I thought there would be more university mergers than there have been. The major one during my time was in Manchester, which was promoted by the Government. We put £2 million into encouraging it to happen, and it was the correct course. The motivation was to build a world-class university in north-west England. The five in south-east England were dominating and we needed to shift the centre of gravity north. I do not think that kind of thought process is happening in the different regions of the country. Major universities right next to each other do not even have common finance departments, let alone plan their courses coherently. That would create the efficiencies you are looking for and make your comparison with what happened in the school system under the local education authority regime.

Lord Johnson of Marylebone: Charles, you might be arguing for two contradictory things. You are arguing for institutional autonomy and for government to back off, but at the same time you are asking for government to plan provision across the entire system.

Charles Clarke: To encourage, not to plan.

Lord Johnson of Marylebone: Those are two completely inconsistent recommendations. We have a demand-led model where funding follows learner choices. It is not perfect. Cold spots occasionally arise in parts of the country that new providers try to address, when they are allowed in. By and large, a demand-led model has led to the expansion of the sector. The UK higher education system remains one of the best in the world according to objective measures such as *Times Higher* rankings, QS rankings and how the OECD sees us. It is not perfect in every respect, but it is not as bad as we are making out.

Charles Clarke: I am sure Jo would acknowledge that all those ranking systems are based fundamentally on research and not on teaching. They are not based on student outcomes. There is a column that looks at some dimension of it—the National Student Survey—but fundamentally all the university rating systems are based on research excellence and not on teaching. The corollary is that parents and students are encouraged to apply to universities that are high in the rankings because they are good at research, which has nothing to do with how good they are, or are not, at teaching.

Lord Johnson of Marylebone: The revealed behaviour of our students is that they want, in increasing numbers, to go to our universities, and if those universities were delivering such poor value for money and such poor outcomes I would be surprised if the trend continued to accelerate, but year after year we see an increase in the proportion of 18 and 19 year-olds seeking access to our higher education system.

Lord Agnew of Oulton: But they are very unsophisticated consumers not being given clear information. Earlier you mentioned wanting to embody consumer law protections in the system, which are not really there. You are dealing with a very naive customer base, often with parents who themselves have not been through the system or with parents who had it all free and were given grants. I respectfully disagree with you on that, but we move on.

I want to deal with the governance of these institutions. Charles does not like the mission creep of the OfS, and I accept that some of it may feel superfluous, but to take just two areas, vice-chancellor pay and grade inflation are direct results of very weak governance in these institutions. What are your views?

Charles Clarke: I agree that they are a result of weak governance in the institutions. If you take the two issues together, who should sort out this problem? If there is weak governance in an institution, who should sort it out? Is it government, regulator or the university itself? I am broadly of the view that it should be the university itself. I have not seen any example of any serious intervention from government or the regulator to change the leadership and management of a university, which would happen in other areas.

I am critical of what some universities pay their vice-chancellors, but I think the issue is overstated. I fundamentally think that is a matter for the individual institution to deal with. There is a case for a transparent system for deciding vice-chancellors' pay, and certainly for encouraging but possibly even forcing universities to have a remuneration committee-type approach that is open and clear, but not for interfering at the level of vice-chancellor pay.

I am much more torn on grade inflation, which is a real issue. I do not think we should have the same proportion of people with first-class degrees in history as we had 30 years ago. We should try to improve the quality of education in universities, and we should hope to increase the number of people who go to them, but in the context of a longitudinal comparison and a comparison that takes account of improvement over time, I am much less bothered about grade inflation than some people are. I know I am unusual in that and plenty of serious people worry about it—Lord Agnew may be one of them—but I am very sceptical about the idea that it is a fundamental challenge to universities. I have never liked the sieve approach to education, at school or university, whereby a sieve decides what proportion of people get through, rather than trying to lift the achievement of school pupils or university students at all levels. We should try to lift for everybody. I do not think grade inflation is a useful thing to talk about.

Lord Johnson of Marylebone: Thankfully, VC pay has largely gone away as an issue because we, as Ministers, asked the OfS to ask universities to account for increases in VC pay and to have a section in their reporting that surfaced the issues and explained why VCs were

being paid the amounts they were. That has had a helpful effect in stopping the rates of inflation.

It was a concern to me at the time because it was undermining student confidence in the loan system. Students complained that they were taking on liabilities to repay loans and felt that the money they were putting into the system was being wasted on fripperies and high salaries. The issue had caught the popular imagination and was toxifying our loan system, which is why we asked the OfS to pay some attention to it and try to stop the rate of inflation.

Charles Clarke: It was the *Daily Mail*, not the popular imagination.

The Chair: It is back to the knee-jerk reaction you were talking about.

Charles Clarke: Indeed.

Lord Johnson of Marylebone: It was a genuine issue that was eroding confidence in the loan system. To that extent, I am glad that it has gone away.

Q28 **Lord Agnew of Oulton:** But it took that intervention, rather than the internal governance of the institutions themselves. I agree with you and, respectfully, not with Charles in that instance, but I share your outrage about where that £9,000 is spent and why there is no visibility of it. We will move on, because, as Jo says, we can get outraged about a great many things.

Do you think the OfS is doing a good job in overseeing the financial sustainability of the sector? Both of you say that we are heading for a crunch, which I accept is highly likely. Is the OfS doing enough?

Lord Johnson of Marylebone: It has a duty under Section 68 of the Act to look at the financial sustainability of providers and provide reports to the Secretary of State on trends and patterns it observes. It has enough meat in its powers to do whatever it needs to do in this respect.

The quality of work that the OfS is doing, by and large, is very good. It goes through individual provider financial positions very thoroughly and those of new entrants exceptionally thoroughly. The only area where it has been a bit slow is with respect to overdependence on international students from a couple of countries, which concentrates the risks in the model we have been talking about. If you are getting a very big chunk of your tuition income from overseas, and of that a big chunk is coming from a couple of major countries, you are running an imprudent financial risk. The OfS has been a bit slow off the mark in actually doing something about that. It is probably easy to identify, but making institutions put in place an action plan to diversify their sources of international income is what we need, not just to observe that it is a risk.

Charles Clarke: I am not saying this as a criticism, but Jo said "making" universities change their plans because there is a risk. By what process does the OfS make universities change their financial plans?

Lord Johnson of Marylebone: The mechanism is very clear. In the regulatory framework, it can attach conditions of registration. An ongoing condition could simply be: "Show us, year by year, how you will diversify your international student intake so that we can be assured that you are not going to fall over".

Charles Clarke: That is not making; that is general reporting. But I agree with you. That is perfectly okay.

Lord Johnson of Marylebone: If they do not come up with a convincing plan, further regulatory steps can be imposed.

The Chair: There is an issue that has not been touched on, and is not touched on by the OfS—university governance and the non-exec role of people on university boards and councils. I see that you are shaking your head already. Do you think that part of the issue is that not enough is done at that level to understand the overall picture?

Charles Clarke: Just as I used to shake my head at you when you were my Chief Whip, Baroness Taylor, I was heartily agreeing with you.

There is a serious problem. I have been asked to be chair of a number of university councils. I have always said no, because it is not remunerated. It is not that I need the money, although I do need the money—buy the book—but that I think it wrong that university chairs are not remunerated. There is insufficient professionalism in the governance of many universities. In many of them, an old boy club type of approach operates in that field, and the roles are seen as principally honorific in many cases.

I am not seeking to besmirch the many good people who play these roles, but I think there should be a proper governance structure, with paid non-executive directors. The councils of the universities should relate to a much clearer executive leadership of the university that holds the highly paid executive—the vice-chancellor, principally—to account. I do not think that happens in a lot of university governance structures. Part of that is the sense that it is a lifetime service, and you operate in that way.

I know that is not true of some universities that have paid chairs of governors. A large number of people I personally know have become university chairs of governors. They are deeply committed, do a very good job and are committed to getting this right. I do not think the concept is right.

Lord Johnson of Marylebone: I echo that. There is huge diversity in the quality of governance in the sector. It should be a major area of focus and reform. I did not have time to get stuck into it, but it has been identified as something to be tackled.

Lord Burns: As far as I can remember, I do not think that there was any mention in the regulatory framework of financial sustainability and financial risk. There are powers in the legislation, but I could not find any

emphasis on it in the regulatory framework.

Lord Johnson of Marylebone: No, there certainly is, Lord Burns. There are extensive sections around student protection plans in the event of providers entering financial difficulties.

Lord Burns: I was thinking more about concentration of risk. I have been through the banking business. I have been supervised and scrutinised about where risk is concentrated. We have seen examples this weekend where concentration of risk—

The Chair: Every university has a risk register. It is the responsibility of the council to keep it under review and to ask questions about it.

Lord Burns: I agree, but should the regulator not also have some oversight?

Lord Johnson of Marylebone: I think that the OfS does in exercising its duties under Section 68. Every year it produces a jumbo report on sector financial health, but behind that sit 413 documents analysing the health of individual providers. The OfS has mechanisms to alert it to issues that are arising with providers—unexplained drops or increases in student numbers; unusual management change; deviation from previous forecasts in actual results. It has a panoply of triggers that it uses to determine when it needs to go in and check that a provider is not going to fall over. In the past couple of years of its operation, it has gone in on a number of occasions to ensure that student protection plans will work in practice.

Lord Clement-Jones: It might be helpful to declare that I am chair of Queen Mary University's governing council.

What stimulates me is the question of university governance. It does not feel to me, as chair of a council, that we do not have a considerable amount of governance. What knowledge do you have of the guidance given by, for instance, the chair of university councils, which is adhered to pretty much across the board?

Charles Clarke: I cannot claim knowledge. I have talked to a large number of chairs of university councils and to vice-chancellors about this question. You might have seen what I said as shooting from the hip rather than being a considered intervention. I have also talked to headhunters for chairs of councils about these kinds of things, but I cannot claim that I have been to a number of university councils and discussed such issues with them. I cannot claim knowledge to contest yours as an acting chair.

Lord Johnson of Marylebone: I agree with Charles.

Lord Clement-Jones: It is a bit of speculation that we have on the governance front, to some degree.

Lord Johnson of Marylebone: I repeat my earlier observation that there is wide variation in the quality of institutional governance. That is not to say that you would find the best governance in Russell group institutions; I do not think that is necessarily the case. In some privately owned operators you will find extremely focused operators delivering extraordinary quality of governance.

Charles Clarke: It is a mistake to believe that Russell group institutions do better than other universities. That is an illusion in life and a problem.

The Chair: Let us not take that on; we could be here all day.

Q29 **Baroness McGregor-Smith:** Going back to the point about financial viability, you talked about diversification of income, with which I completely agree, but what about cost basis? The OfS is looking at a university's profit and loss account. Going forward, and in the last two years, you can see that energy costs alone, and inflationary costs across university infrastructure, will be significant for many. How has the OfS dealt with that? I do not know whether it has. Does it point to the big-trigger risks on costs that could impact financial models in the next three to five years, particularly for some of the larger ones?

Charles Clarke: I am not aware of its doing it; maybe it has been.

Lord Johnson of Marylebone: In its annual report it models sector surpluses, which take into account university cost basis, looks at where inflation in various line items is going and makes projections. The latest annual report dates to June last year. It is not amazingly up to date, given the fast-moving macroenvironment we are in, but there will be another one along soon.

Baroness McGregor-Smith: You think it is covered as a whole in what the OfS does.

Lord Johnson of Marylebone: Yes, I do.

Baroness McGregor-Smith: Do you think it would intervene if it saw something completely outside what it would expect?

Lord Johnson of Marylebone: What do you have in mind?

Baroness McGregor-Smith: If it saw projections for one university looking okay but with risks that it would move into significant deficit in the next few years.

Lord Johnson of Marylebone: Absolutely. The OfS would have a team on the ground ensuring that the provider had a plan to protect its students and to teach them out or shift them to another institution if it looked like it was heading in the wrong direction, but that is the last resort. What it does before that is put in place action plans to require the institution to show what it will do to turn around its financial position and remain viable. That might include reining in loss-making provision in certain areas or shutting down programmes if necessary. It could include

stopping recruiting to programmes. If the OfS felt that it was running real risks to the student interest, it could slam on number controls and say, "We're going to stop you recruiting more or any students for the coming financial year". There are lots of things it can do.

The Chair: Thank you both very much indeed. We all found that extremely interesting, where you agreed as well as where you disagreed. We are never quite sure how witnesses will interact. It has been extremely valuable and we thank you both for coming this morning.