



Industry and Regulators Committee

Corrected oral evidence: The Office for Students

Tuesday 28 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; Lord Leong; Baroness McGregor-Smith.

Evidence Session No. 5

Heard in Public

Questions 48 - 53

Witnesses

[I](#): Vivienne Stern MBE, Chief Executive, Universities UK; Vanessa Wilson, CEO, University Alliance.

Examination of witnesses

Vivienne Stern and Vanessa Wilson.

Q48 The Chair: Good morning. This is the Industry and Regulators Committee. It is a public meeting. We are looking into the Office for Students and have been receiving evidence for some weeks now. This session will be broadcast on parliamentlive.tv and a full transcript will be available later.

Our witnesses this morning are Vivienne Stern, chief executive, Universities UK, and Vanessa Wilson, chief executive officer, University Alliance. Welcome to you both.

The OfS is a big subject. The evidence we have taken shows that we have a lot of work to do. I will start the session by asking you how clear you think the remit is of the OfS. Has there been mission creep or has the remit changed over time? Vivienne, you have had a role in this for some time.

Vivienne Stern: Thanks very much, and thanks for the opportunity to give evidence to the inquiry. In essence, the remit of the OfS is clear. I do not think it is in dispute, despite the fact that you have heard from some other witnesses that the sector would quite like to return to the days of HEFCE. Broadly speaking, there is support for the OfS and for what it is there to do, which is, fundamentally, to provide a mechanism to ensure public confidence in the way that universities operate in terms of quality, value and access to higher education.

The legislative underpinning of it in HERA is clear and the framework itself is reasonably clear, but it has been a little bit like the opposite of a rolling stone. In its five years of existence, the OfS has accreted new responsibilities. Universities are complicated things, and the regulatory framework is necessarily complex and, in essence, rightly demanding. However, over the five years of its existence, the OfS has not only had to establish an entirely new regulatory approach, put in place all the conditions of registration, register new providers and consult on all the elements of its approach, but deal with a revolving door of Ministers and Secretaries of State writing quite frequent letters of instruction and adding new sets of responsibilities. The combination of those factors—the sheer weight of responsibility on the OfS in its start-up phase, plus the political instability and tendency to treat the OfS as a bit like a Christmas tree on which you hang another bauble when you think another issue needs to be addressed—is causing trouble.

Vanessa Wilson: I agree in part with Vivienne. It is a mixed picture. The remit was already large to start with and in some cases quite ambiguous and very ambitious. Promoting value for money is extremely challenging for a regulator to evaluate. I was not working in the sector at the time that the Higher Education and Research Act went through, but it would have been helpful had the Act included a clear vision for the OfS: what is the one thing that we need you to do? It is a huge remit. As Vivienne said, that has been added to over time, which I think is even more

unhelpful. It now has responsibility for sexual harassment, transnational education and freedom of speech. That is a huge brief, which is unhelpful.

The Chair: Vivienne, you said you thought it was a mechanism for public confidence. Does the university and higher education sector have confidence in the OfS?

Vivienne Stern: The initial phase of the establishment of the OfS, which is pretty much coming to a close, has been characterised by fractiousness between the sector and the regulator. We need to get beyond that. There are some practical ways in which the OfS could do more to engage with the sector and increase trust and confidence. Of course, on the other side, the higher education sector will get more used to dealing with the expectations of the OfS. That is what we have to work together towards.

My strong view is that a good OfS in which the sector has confidence, and in which there is public and political confidence, is in all our interests. It is right that parents, students and taxpayers should ask searching questions about whether what happens inside universities can be trusted. Our answer has to be, "Yes, and this is the mechanism that is in place to protect it". The sunlit uplands of the OfS being held up as the answer to those questions, or our progress towards it, has been somewhat frustrated by the character of the relationship between the sector and the OfS, which is characterised by an absence of trust.

There is a mutual lack of understanding. The OfS probably thinks that some of the complaints levelled against it, including those by people who have appeared in front of this committee, are unfounded. From the university sector, there is a feeling that you can express a view but it will not be listened to. We have to get beyond that. The answer is to focus on those practical territories where we can see that some progress could be made to remove some of that fractiousness.

Vanessa Wilson: I agree with Vivienne. This has been a difficult journey. In fact, to its credit, the OfS commissioned research, which was published in January, into how providers view it. That pretty much summarises what Vivienne said about poor engagement and communication, and the state of the relationship between the sector and itself.

Viscount Chandos: You both referred to the amount of government intervention. Ms Stern spoke of frequent letters of instruction. To what extent is the work of the OfS determined by the Government, if not day to day then week to week or month to month? Is that both too prescriptive and more prescriptive than was envisaged when the OfS was set up?

Vivienne Stern: There is a strong sense that the OfS is not sufficiently independent from government. There are reasons why that view is held, not least the political affiliation of the chair. There have been examples of the OfS resisting government instruction. One is that the Secretary of State at the time—I cannot remember who it was—asked the OfS to get

rid of the National Student Survey, or NSS. The OfS resisted that instruction. On the other side, we have seen lots of examples of the OfS appearing to implement an agenda driven by Ministers.

The responsibilities for freedom of speech have a different character because the Government legislated to amend the remit of the OfS. Although it is clear that that instructs the OfS to move into territory dictated in a sense by political priority, it went through the process of parliamentary scrutiny, so I do not think it fits into the same category. What worries me slightly more is that there have been a couple of incidents where a Minister writes a letter to the OfS—these are all published—and very shortly afterwards the OfS issues guidance to the sector. One example of that was in English language—competence in spelling and grammar. It felt as if there was too direct a line of sight between ministerial instruction and the OfS taking action.

This speaks to the point about trust. I am sure we will get on to the quality assurance and DQB role in this session. I think there would be greater trust in the OfS and its ability to exercise a genuinely impartial judgment of what happens in institutions if there were a more obvious separation between the political level and what the OfS does. I hope that, as the OfS acquires maturity and becomes a mature regulator, it will be more confident in its ability to say to Ministers, “This is our responsibility. We will take into account what you ask us to do but we will not necessarily do it in all cases”. I think that would be proper.

Vanessa Wilson: I agree with that. To provide some evidence having worked in an arm’s-length body, we were used to receiving maybe one or two letters a year from the Secretary of State or the Minister of State responsible for our area. The OfS receives, on average, four such letters a year. In 2021, it received 10 letters from the Secretary of State or Minister of State, which is testament to the level of direction.

Viscount Chandos: You said that the remit of the OfS is clear. Behind that, is there enough clarity about policy towards higher education generally? One of the driving forces of HERA was the desire to make it easier for new entrants to the sector. How do you see those issues in the background?

Vivienne Stern: At one level, taking a step back, the strategy pursued in relation to higher education under not only this Government but successive Governments makes sense. We are an advanced economy. Therefore, we need a mass system of higher education. That requires increased capacity and more providers. The philosophy pursued by this Government and their immediate predecessors is based on the idea that greater competition will drive up quality but also bring in new providers that offer a greater degree of choice to students. When you take a step back and look at that, it makes sense. In a modern economy, the idea that students ought to have choice and there should be sufficient capacity in the system to deliver a mass higher education system makes sense.

The inevitable consequence of inviting new and different sorts of providers is that we need a regulatory framework to make sure that we can trust what goes on. Again, that makes sense. The consequence of that as it plays out in practice could be really uncomfortable for an institution that has been around for several hundred years and where there is no objective reason to believe that it is failing in its responsibilities to quality and standards, but it is now subject to the same regulatory architecture intended to allow you to have confidence in a newly set-up institution. That is where some of the discomfort arises. You will hear from universities of a real insistence on the OfS trying to live the principle of risk-based regulation, because, despite that being woven through the regulatory framework and it is in the rhetoric of the chief executive and her predecessor, it does not feel like that in many institutions.

Vanessa Wilson: To answer your question, at the moment we do not actually have a higher education strategy. We have an interim report, following the post-18 education and funding review. We also have manifesto commitments. However, we have an international education strategy, which is interesting given the recent rhetoric on international students, but we work in an absence of government vision for higher education.

Viscount Chandos: Witnesses from the sector said to us in previous sessions that they do not feel that the increasing divergence of undergraduate fees between domestic and international students caused them to focus unduly on attracting international students. I do not doubt their sincerity, but do you worry that the system inexorably skews it in that direction?

Vivienne Stern: We have a problem. Over a very long period of time, we have underinvested in domestic education and research. The current freeze on domestic teaching funding, whether raised by fees or public contribution, is unsustainable. In my view, it is wrong as a matter of strategy for the UK to rely on external sources of income to fund domestic education and research. There is a greater need for political attention. I believe profoundly that international students are great for the UK. We are unbelievably fortunate to be the kind of place where people want to spend their formative years. We benefit enormously from the ability to attract talent, particularly at postgraduate research level. Our domestic students benefit from the opportunity to sit in a classroom next to people of very different backgrounds and experiences. That is a great thing for us.

We also have this amazing reputation around the world. I was the director of the international function in the UK until the beginning of September and spent a lot of time talking to Ministers of Education in other systems. They all thought we had a great higher education system. It was a bit of a shock to come back to my own domestic setting and find that our own Ministers are not so sure. We have this incredible reputation and we should do a lot to preserve it, but it does not mean it is right to

fund domestic education through international sources. That is a vulnerable income stream.

Lord Burns: When you say that everybody wants risk-based regulation, my experience is that usually the people who say that really mean, “We would like you regulate the other people but we are all right because we are low risk”. What major issues do you see in addressing this risk-based regulation?

Vivienne Stern: The regulator’s focus on quality, value and access is right. To come back to the Christmas tree analogy, that is why, when you start putting in harassment or freedom of speech, you dilute the central focus of the regulator. If we get on to it, we will argue about whether graduate outcomes as expressed through earnings is an appropriate measure of quality and value. I would argue that that is too narrow, but I would not argue about continuation and completion rates. Those are appropriate. Student satisfaction measures in the NSS do not give us an absolute measure of quality. There are always odd features in that. I think it has always been true that students in London are generally less satisfied than students elsewhere, which is probably not because all London institutions are terrible. It is because of some of the difficulties in being a student in London.

You would not think of any one of these things as an absolute measure, but, in essence, I do not disagree that a focus on those sorts of objective measures is wrong. I would disagree with a narrow focus on them, such as that just being metrics-based would be right. Actually, that is not what the OfS is trying to do. That takes us into more difficult territory: how does the OfS decide, on the basis of metrics plus other things, when it should intervene? That is perhaps another discussion, but I do not disagree with it in principle.

- Q49 **Lord Cromwell:** Good morning. That segues neatly into value for money, which is often elided wrongly with quality, which is not the same thing. Quality of education can be fantastic, but that does not mean necessarily that it offers good value for money. Based on the name Office for Students, a lot of people, including students and their parents, look to the Office for Students to give them indications of value for money for what they put up. How does the Office for Students evaluate value for money, is it possible anyway, and have you seen any evidence of its findings having an impact on the providers of education?

Vivienne Stern: I can describe that. Basically, the OfS looks at the percentage of students who report that they have received good value for money, who report that the teaching on their course was good or very good, and who are above the thresholds for the three graduate outcome measures I described—continuation, completion and progression. The OfS will talk about the intelligence that it then overlays on those metrics. Is there evidence that that has improved over time? To give one example, the OfS publishes key performance measures. On continuation and completion, and even on value for money, the direction of travel has been good. I have the figures somewhere and will dig them out.

Lord Cromwell: Just to clarify because of my ignorance, does it publish value-for-money statistics?

Vivienne Stern: Yes. A section on the website gives key performance measures. One of those is value for money, which you can dig into. The proportion of students at providers where the relevant indicator for continuation was below the threshold was 5.2% in the last year for which they have figures, with 6.7% for completion and 1.6% for progression. That indicates a pretty healthy and well-performing sector. From the NSS, we have an 80% positive score for teaching and 81% positive for learning resources.

Lord Cromwell: I am sorry to interrupt again, but this is sectoral. Does it provide these figures for individual providers?

Vivienne Stern: It looks at individual providers, but the key performance measures given are the aggregate across the sector.

Lord Cromwell: As an anxious parent, for example, I could not look up the value-for-money score of a particular university.

Vivienne Stern: I do not know the answer to that question. Vanessa might know whether you can.

Vanessa Wilson: I think you can.

Lord Cromwell: I am sorry to keep on interrupting. We will come to Vanessa in a moment. Please go on.

Vivienne Stern: In aggregate, you can see how the OfS measures value. The last measure is the students' report of value. I think the OfS conducted its own survey here and 46% of students agreed that they got value for money. That was up from 33% the previous year. To be fair to the OfS, it asterisked that and said there was a different method of data collection. It is worth pointing out that a HEPI survey reports a slightly lower figure for value for money. It is contested.

In terms of the philosophical debate on value, the real battleground is whether value equals getting a good job with a high salary. We would argue that it does not. Students and graduates also value things such as social contribution, the impact on communities, public service and contribution to culture. It is perhaps wrong to use a personal anecdote, but I often say that if I were a better actor I would not be in a high-paid job. I would be stringing things together and I would have no pension, but I was not a good-enough actor.

Lord Cromwell: That is a useful anecdote, thank you. Is there evidence of impact? How impactful are these findings? Do you see providers changing behaviour as a result of it?

Vivienne Stern: For all the trauma that this causes in institutions—and I have to emphasise that providers find working with the OfS exceptionally difficult in many regards—you look at what universities now do. They pay

very close attention to these indicators. We have gathered case studies of universities acting when they see the provision deteriorating against those benchmarks. It is absolutely influencing provider behaviour and probably a lot of that is positive.

Vanessa Wilson: At University Alliance, we have real issues with value-for-money measures and the proxy metrics used, which Vivienne outlined. As absolute measures, they do not really tell the full story in identifying quality. Other factors contribute to performance in those areas. I am sure the committee is well aware that socioeconomic and family background play a huge part. That is where we would challenge that. I said up front that within the Act the duty on value for money is a difficult area. I would have preferred to see something more on value added. That would have been a positive, progressive area to look at for the higher education system, as has been done in the schools system through Progress 8, because that would demonstrate the value of the sector in educating disadvantaged students and bringing them up to the same levels.

Vivienne Stern: Vanessa makes an important point. On completion and continuation, there are lots of reasons why a student might not complete a course. At the moment, cost of living pressures and the fact that the maintenance loan has not kept pace with inflation mean that there are worrying signs that students do not continue because they have to get a job or they take on too much part-time work and might not successfully complete their course. You do not want to rely on those measures on their own. As Vanessa said, it will be quite variable between different sorts of provider depending on the students they recruit.

Lord Cromwell: I do not want to test our Chair's patience, but I have one supplementary question. On the Office for Students taking its own medicine, who evaluates, and how do they evaluate, the value for money of the Office for Students—and, by the way, do you think it offers value for money?

Vanessa Wilson: It publishes its annual set of accounts so we can all see the income it takes in from the sector and its expenditure. It has income each year of about £30 million, the majority of which goes on staffing. Recently it published its key performance measures, I think last week, but that was the first time in five years. They are published so there can be scrutiny of that. They clearly account for that. From my members' perspective, a lot of deadlines are missed. We go back to the OfS being asked to do an awful lot and resources potentially do not keep up with that. A lot of those areas require significant expertise. We may go on to the quality assurance side of things. I do not think it currently has the capacity to grow and it needs to grow, but perhaps it cannot do so in the current period.

Lord Cromwell: You deftly avoided saying whether you think it offers good value for money. That is fair enough.

Vivienne Stern: The headcount in the OfS is slightly smaller than it was in HEFCE, although HEFCE had a research responsibility, too. The headcount is just under 400. The absolute cost of the regulator per student varies on the size of institution. For a very small institution, that can be quite high per capita. I think the highest figure I have seen is in the low nineties. For institutions in the 500 to 1,000 range, it is about £50 per student. That is probably not outrageous. The proposal to increase the subscription fee by 13% this year went down badly. All universities are having to absorb inflationary cost pressures, so it felt very out of keeping with the time.

The most important thing is not the absolute cost of the OfS but what it generates in institutions. If you look at how much universities have to spend to service the requirements and expectations of the OfS, that is really high. We gathered a little evidence on this recently. One institution said it had 10 members of staff basically more or less working full-time on their regulatory responsibilities. Institutions put the cost of that at anywhere up to £1 million a year. Specific requirements can be extremely expensive to service. One such particular example is a relatively new request to retain five years' worth of assessments. That is an absolute quagmire. It will cost institutions a huge amount of money and it is not entirely clear how they will do that in the case of performances or artworks.

To be fair to the OfS, we flagged that on a number of occasions and the OfS has agreed to try to work with us and the Association of Heads of University Administration to see if there is a way through this. That is what we are looking for: work with us to try to work out how to minimise the costs to institutions from this framework.

Lord Cromwell: Dialogue, yes. Thank you.

Q50 **Baroness McGregor-Smith:** Turning to the relationship the OfS has with students, can you give a specific example of how you thought it engaged with them, particularly over the challenges they faced in the pandemic?

Vanessa Wilson: It has a student panel, a member of which sits on the board. It has other panels that inform other pieces of work, such as the TEF review. It is supposed to engage, or it says it engages, with the NUS. I do not know whether it does so currently, in light of the Department for Education and the former Universities Minister, Michelle Donelan, who had formally disengaged with the NUS over its handling of anti-Semitism. I do not know whether the OfS has actively engaged with the NUS since then.

Vivienne Stern: The committee will probably hear from students at some point in the inquiry. As Vanessa said, the OfS certainly has an infrastructure to do it. I do not know how much students would feel that when they express views those are taken on board. One issue that surfaced for our members is that, when the OfS consults, you put a lot of

effort into a consultation response, but it is sometimes not entirely clear how the responses have influenced the outcome.

To give one example, the OfS consulted on the National Student Survey and proposed removing the summative question on whether students were satisfied overall. Some 90% of respondents said that that question should not be removed but the OfS did it anyway. I do not know how many of that 90% were student responses, and I am not sure that the OfS breaks that down. In conversations that we have had with students, I have heard them describe the same thing: they express a view and they are not always sure it has been listened to. However, the OfS has structures such as the student panel and a student member of the board. The OfS has also increased its emphasis on engagement generally, trying to improve its conversation with stakeholders.

Baroness McGregor-Smith: During the pandemic, did the OfS have a voice in why students were told to stay at home and had no education for a number of months, and why there was no refund of fees to students when they were all sent home early and not everybody was taught? Would a student in that period have thought about speaking to the OfS?

Vivienne Stern: This predates my involvement with the OfS, but there would have been extensive discussion, including at board level and through the student advisory panel. There was lots of exchange during that period with universities. I do not think that anybody wanted to shut down campuses. That decision was made for public health reasons.

Baroness McGregor-Smith: Students were still paying.

Vivienne Stern: They were also still receiving education, albeit through a different mechanism.

Lord Agnew of Oulton: If that is the case, why has it taken them so long to crank it back up again?

Vivienne Stern: I do not think that it has. I am out in universities all the time. I always ask about the mode of teaching. Of course universities have retained some things that worked during the pandemic. A lot of evidence suggests that delivering some sorts of teaching in a recorded fashion works really well. Large-format lectures can be watched back at any time, such as when revising. You can watch it on double-speed if you want to be super-efficient, or at half speed if you want to listen again.

I have a particular interest in international students. Discussions were more inclusive. Students who perhaps did not have a huge amount of confidence to stick their hand up in a room felt they could participate in discussions through the chat. We then saw an effect in degree attainment gaps between certain types of students. If universities saw things that worked well during the pandemic, it would be really wrong to decide not to do those out of a principle that you can deliver effective teaching only by sitting in a room and breathing the same air. In the same way that my work is now hybrid, everybody's work is hybrid. But when I ask

universities if they are teaching face to face, basically the answer is yes, with the exception of a small number of types of teaching that might be delivered for good pedagogical reasons in a different way.

Baroness McGregor-Smith: During the pandemic, students were sent home and there were no refunds of fees. I think there were some refunds for university campuses, but when it was allowed they were pretty isolated. Was there a voice there from the OfS? Did students feel they had a voice or were able to go to the OfS to say, "This is really unfair. Why am I paying this?" Many universities shut down. They did not offer online teaching for ages. They did not all automatically switch to that. Many students were just told, "Don't come back this term". Although this period predates you, are you aware of a strong student voice that felt able to go to the OfS and express their concerns?

Vivienne Stern: The decision to shut down campuses, to socially distance and go into lockdown was a political one. It was not made by the institutions. I refute the statement about universities not effectively delivering teaching rapidly following those first lockdowns. The week before the first lockdown I was at Queen Mary, where Lord Clement-Jones is chair of council. I really felt I should get out of the way, because they were getting all the people together to try to switch everything online, doing something they had never done before, and do it in the next week. That was heroic.

Baroness McGregor-Smith: I do not disagree with that. I do not disagree that many did try, but they did not all try. My son was sent home from university, so I know full well what happened in Scotland. Some were just shut down and told not to come back until the next year. Everyone has different examples of this. My question is not about that. If students had a tough time in that period, is the OfS where they would naturally go?

Vivienne Stern: There are mechanisms for complaints through the institution, via the Office of the Independent Adjudicator, and the OfS has a notification process. So, yes, students can ask the OfS to look at something that they believe has not worked well.

In the academic year 2020-21 the OfS received 19 notifications relating to quality and 33 relating to assessment and standards. Between August 2021 and March 2022, there were a further 11 relating to quality and 18 relating to assessment.

I will write to the committee with a fuller answer on the experience of the pandemic and the way that students were able to do that. Nobody wanted to deliver higher education in that way.

Baroness McGregor-Smith: I am not saying that they did. I am asking a question specifically about experiences.

Vivienne Stern: We had a situation where universities had to do something that would previously have been regarded as impossible within a very small number of weeks. Did everybody get everything right? Probably not. Just as with all of us, we stumbled and we built the plane as we flew it, but the effort was colossal.

Comment [CS]: "In the 2021-22 operational year, the OfS considered 245 notifications. In the academic year 2020-21 there were 19 notifications relating to quality and 33 relating to assessment and standards. Between August 2021 and March 2022, there were a further 11 relating to quality and 18 relating to assessment."

Comment [JB]: Agreed with Charlotte to use the following wording instead:

In the academic year 2020-21 the OfS received 19 notifications relating to quality and 33 relating to assessment and standards. Between August 2021 and March 2022, there were a further 11 relating to quality and 18 relating to assessment.

Baroness McGregor-Smith: But students still had more debt in that period. They still had to pay, whatever it was. The point I am trying to make is more about the student experience in that period and the fact that, regardless of the public health issue, they are still paying for what was very little for some.

Vivienne Stern: My apologies. I do not want to be argumentative, but the universities were still paying their staff.

Baroness McGregor-Smith: I understand that.

Vivienne Stern: They were not only maintaining their facilities but had to invest in new ways to keep them safe. They had to invest in new technology to deliver teaching in a blended mode.

Baroness McGregor-Smith: I do not disagree with any of that. I am talking about the students.

Vivienne Stern: I understand that there might be a view that somehow online should be free. It is not. Universities have accounted pretty well for that.

Baroness McGregor-Smith: I really respect hybrid, so I am fine with that. I was just talking about that period. I have another quick question.

Vivienne Stern: I think Vanessa might want to add to that.

Vanessa Wilson: I have one thing to add. To the credit of the OfS, during that period Sir Michael Barber conducted a blended learning review. For the committee's benefit, it took on an outstanding piece of work to do that and it is a really good report to look at. The OfS reacted in that situation to the debate going on around that. We had a lot of pressure from the Minister the minute that we could open up. I was on the ministerial higher education taskforce at the time. This predates Vivienne's time. The OfS was present at those meetings and heard those discussions. The other mission groups, Universities UK and I fought hard to get our students back. We faced ridiculous situations where you could get a tattoo or your ears pierced but not go to a face-to-face tutorial. We fought for the students to get them back.

Baroness McGregor-Smith: Thank you, that is helpful. Vivienne, you said that many institutions think it is difficult to work with the OfS. What are your top three points on why?

Vivienne Stern: I mentioned the volume of consultations and the feeling that sometimes the views expressed do not necessarily get taken into account. The OfS conducted 33 consultations in the past five years. In January 2022, three ran simultaneously. The deadlines are often very short. I think the government standard expectation is 12 weeks for consultations and the OfS has in the past on occasion consulted for five or eight weeks. Quite often you hear people say, "It doesn't really make any difference. We won't bother responding to the next one because our

views aren't taken into account". That is bad, because you need to encourage providers to engage with those consultations. There is that.

Secondly, you heard a little bit from other witnesses that the way the OfS goes about requiring data can be quite burdensome. Yes, the universities all hold this data but it will be in a different format, and you are asked to provide it in the format specified by the OfS, in a relatively short period of time and a lot of it at once. One institution told us that between January 2021 and August 2022 it had requests for 29 data returns, alongside 13 consultation responses. That feels like a lot.

Then there are investigations. The OfS is just beginning to get under way with its investigatory work and it does not feel as if the institutions that are subject to investigation quite understand the terms of that. Despite the OfS publishing some guidance on this, institutions subject to investigation seem to be quite uncomfortable and do not really know what will happen when, how long it will take or who will make the decisions. There is a sense that they can ask questions but they do not get answers.

I have to reflect the efforts made by the OfS to address that. Susan Lapworth increased her engagement with institutional leaders, with more visits to institutions and round-table discussions. The effort is going on, but we hear a lot that institutions find those two things difficult.

Q51 Lord Gilbert of Panteg: I have a couple of questions, first about capacity, and then we will move on to quality assurance. You anticipated this and I think you will want to unpack that. You described the role of the Office for Students as extremely complex and extensive. Does it have the resources, expertise and powers that it needs to fulfil those roles? If not, does it need more resource or to do less better?

Vanessa Wilson: It has the powers. I do not think there is an issue with that. As I mentioned previously, the remit is too extensive, so you have this regulatory mission creep. On the level of expertise needed to regulate those areas properly, they certainly do not have capacity at the moment and therefore need to grow, which feels wrong. What is possibly required is a re-examination of the one or two things that we need this regulator to properly focus on and therefore resource it. We can then seek expertise in that area to do the best job that they can. As someone who came in from outside the sector, what is missing is: what is the one thing that we absolutely need this regulator to do? What is the goal or vision? Where are we taking the sector? What does "great" look like? Then everybody would be clear on the journey we need to take. I think that clarity is missing in the sector.

Lord Gilbert of Panteg: Is there anything that it is specifically charged with doing that it could cease with no significant impact?

Vanessa Wilson: The additional areas that have been prioritised are not unimportant, but sexual harassment, mental health and well-being are

not priority areas. I am slightly nervous about talking about freedom of speech. We may well go on to that.

We have talked about engagement with students. On the face of it, that is not enough. It does not feel as if students are part and parcel of this body. If you ask students how they feel about freedom of speech—there have been a number of surveys—they do not cite it as a problem at all. In fact, they are extremely positive about being able to express views on campus. HEPI and Advance HE conducted a survey towards the end of 2022 and, unprompted, that did not come up. Students highlight other areas as important to them. Freedom of speech is not one of them. Those areas are not intrinsic to the work of the regulator. There are other mechanisms, potentially in law, where you could address those. I do not see why freedom of speech has come into the higher education box when it is clearly a societal issue that needs to be dealt with—not just for higher education.

Vivienne Stern: You suggested doing less better. I agree with that. There are something like 25 ongoing conditions of registration. I do not think that any of those are unreasonable. You might wonder why some have been loaded into the OfS remit, including the duty of monitoring and compliance with Prevent. We are adding to that a new condition of registration on harassment, which the sector is perfectly capable of sorting out. There could be means short of regulation to address such issues where there is a need to make progress. We do that all the time in the higher education sector.

On freedom of speech, I agree that this is not and should not be the core remit of the regulator. It will be a distraction, placing a huge additional requirement on the OfS. I suspect that it will cause no end of litigation, too. I therefore think it is a mistake. If you look back through the history of the university sector addressing areas where there is a need to improve, we have a system that can be encouraged and incentivised. On occasion, we can get our own house in order.

As an example, we had a period in which universities competing for students during a demographic dip started to engage in some admissions practice that we did not think was right. This was to do with conditional or unconditional offers. We got the sector together through UUK, came to a sector-wide agreement and that has broadly fixed the problem. Government should not reach for the regulatory lever every time it feels that something needs to be done. We ought to charge not only the OfS with reducing the bureaucratic burden but government in terms of the expectations that it loads on the OfS. It makes it much more difficult for the OfS to become an effective regulator. We talked about those 25 letters. In my view, one a year would be plenty.

Lord Gilbert of Panteg: You have already touched on the quality assurance role. The OfS is taking on functions previously carried out by the Quality Assurance Agency for Higher Education. You said you were concerned about that, and implied that partly this was because of the potential for political interference. Could you unpack what is happening

there, as you understand it, and why you are concerned?

Vivienne Stern: I will not go into the parting of company between the OfS and the QAA, and the DQB function. It feels as if there was an organisational falling out that could have been avoided, but it is probably not wise for me to weigh into that. We argued that there should be a DQB. When you look at what the OfS requires of institutions in that quality bucket, it talks about things that require the expert judgment of academics. What constitutes an appropriately rigorous course or up-to-date content? Those of us who see public administration in a global and historical context think that it is important to keep a really clear separation between the Government of the day and what is taught in universities.

Today's Government might not like people being taught about critical race theory, for example, or whatever is current. Yet tomorrow's Government might not like you teaching something else—goodness, I could get myself into so much trouble here. It is not a good idea for politicians to influence curriculum. We should be clear about that separation. Those two things go together. In the capacity of the OfS to draw on expert academic judgment in scrutinising quality and standards, we worry that it is losing what we understand to be expert capacity in the QAA and we are not sure how the OfS will replace that in its new function. That does not mean that it cannot do so; it could, but there is a nervousness there.

Secondly, there is this separation between government, the regulator and what judgments are exercised about who teaches what and how.

Thirdly, earlier I mentioned trust. In future, I do not think we will have a situation where the university sector is so worried about the OfS coming in and beating it round the back of the head. We will get to a point where we feel that we have a common purpose. The regulator will step in when necessary but, generally speaking, we are trying to achieve the same thing. That is not where we are at the moment. There is an absence of trust that leads to concerns that the judgments that will be exercised about rigour, what is an appropriate course and all those kinds of things will be coloured by factors that would not be accepted as legitimate. That is why this is such a fractious debate.

Of course, there is also the four nations dimension. The OfS has a statutory remit in relation to England but it is a terrible shame that there is not more political attention to, and that Ministers do not hold the OfS to account for, the consequences that its approach has in other nations. Scotland, Wales and Northern Ireland rely on a different mechanism for assuring and enhancing quality. The OfS, having moved away from that, creates a real confusion internationally when people engage with our system. They do not quite know what we are any more. I am not saying that is unfixable. It is fixable through explanation and communication, but that is an unnecessary problem. It does not feel as if sufficient thought was given to such consequences for Scotland, Wales and Northern Ireland.

Lord Gilbert of Panteg: To some extent, that is a consequence of devolution. Vanessa, can you think of any remedies or measures that could be taken to avoid the kinds of conflicts that Vivienne described?

Vanessa Wilson: The Higher Education and Research Act made it very clear that we should have a separate designated quality body or DQB. It is important that, while the interim measure is that this role goes to the OfS, the department seeks to take it back out and make it independent. Vivienne said she would not go there but I maybe will: it is very clear what the solution is to those of us in the sector. The QAA is expert in this area and should be the DQB. No other body at the moment could fulfil that role, which is frustrating because it is an important one. We have a world-leading higher education system and quality is inherent in that. We need to not only check quality but push the bar on it, so it is really important, but it is an enhancement role as well. Essentially, we all want the department to sit down with the QAA and OfS to resolve this, so that the QAA can pick up that role again.

Baroness Bowles of Berkhamsted: Who takes account of what employers say, as the end-users of graduates? How does that feed in?

Vivienne Stern: There is an expectation when universities design, validate and review courses, as they do on a regular basis, that employers are involved in the process. Employers are involved in those structures. Obviously, the OfS comes into this picture by looking at outcomes, the progression metrics and how effectively graduates fare once they have completed their course. That is probably the way it works. The institutions do this day to day with individual employers relevant to that course. The OfS is trying to work out whether that produces graduates who then get good jobs. There are of course expectations of things that require professional recognition, for example. It would be a condition of regulation that, if you teach a course in something that requires professional recognition, you must have that.

Q52 **Lord Clement-Jones:** Good morning. First, I declare an interest as chair of the council of Queen Mary University of London. Vivienne referred to that earlier—thank you. Earlier in our evidence gathering, we talked a fair bit about the kinds of financial risks that the higher education sector faces. I will come to a second question about how the OfS tackles that in terms of financial sustainability. First, what risks does the higher education sector currently face? Are those risks limited to a particular group of providers or widespread and systemic in nature across the whole of higher education?

Vanessa Wilson: The No. 1 risk inherent or experienced across the sector is, as Vivienne mentioned earlier, the frozen tuition fee cap. Essentially, the biggest income in the business model comes from that. The other risks are around what I would term restriction of trade, or the potential for where providers can diversify their income streams and that coming under risk.

The first area is international student recruitment and not being able to put on some of their courses. We have an issue currently where some providers have not been accredited to provide teacher training so will no longer be able to do that. That area will stop.

The other risk areas are around the cost base. With inflationary costs, the pay bill is going up. Pensions are extremely volatile for the university sector. My members have described it as a pendulum that can move from £10 million to the other side. That is really volatile and challenging. Then we obviously have energy costs. There is lots of demand on the cost base as well, to fulfil not just teaching requirements but a number of other areas.

Lord Clement-Jones: Thank you. Is that how you see it, Vivienne?

Vivienne Stern: Yes. First, universities are resilient. It is important to say that I do not think there is a risk of systemic failure in the sense that somehow dozens of universities will go bust. I do not think that will happen. However, there is an average loss on research activity. Universities recover about 60p in the pound for research activity. That has been a long-standing problem. On teaching, the average deficit for undergraduate teaching in England is now £1,750 a year. It will be around £4,000 by 2024-25. That is a big problem. Universities have to some extent, and to a varying extent, been able to prop up the financial sustainability of teaching through international recruitment. That should be the cherry on the cake—the income that allows you to enrich what you offer students. It is becoming more like the flower. That is a problem.

The consequences of that, which we have already started to see in the media, are staff-to-student ratios going up and universities posting deficits. About 20 universities are currently in deficit already and I think that number will grow. That will restrict their ability to invest in facilities. There are all those net-zero commitments that universities have made. I keep going to universities and I ask them how they are managing to decarbonise their campuses. The answer is, “We’ve got these targets, but the money we had set aside to double-glaze that building or make something more energy-efficient isn’t there any more”. You also start to see a rationalisation of course provision. Some of that will be quite healthy. Universities will say, “Okay, we can’t run this programme any more, because it’s just not washing its own face”.

Some of the things that will happen will be healthy but some will be unhealthy. My warning is that you can probably get away with it for a few years because the university sector is pretty resilient. If you leave it, we will be back to where we were in the late 1980s and early 1990s where, after a long period of underfunded expansion, the university sector was in real trouble. They are the kinds of things that people regard in other parts of the public sector as unfixable problems because the costs are just so enormous to recover the ground you lost over a long period of underinvestment. That is what we have to avoid. We should not go back to the late 1980s and early 1990s. So much political capital has been spent on ensuring that our system is in robust health and that we can

offer high quality to domestic students. The political capital spent through the introduction of the tuition fee model was a real political mountain to climb. The idea that we would just lose all that fills me with real sadness.

Lord Clement-Jones: Explicitly, it is a cross-sector issue, not limited to non-Russell Group or whatever it may be. It is right across the piece.

Vivienne Stern: It is a cross-sector issue. The major differentiator is the volume of international students in institutions.

Lord Clement-Jones: Coming to the second question, what role should the OfS play in overseeing the financial sustainability of individual higher education providers and the higher education sector more broadly? Is its approach to the issue clear? Is its oversight sufficient to spot potential risks early on and take action accordingly? That is quite a broad question.

Vanessa Wilson: It absolutely is a responsibility. If there were a market failure, students and government would expect to ask, "Why did you not have oversight of this as the regulator?" I think the OfS has absolute responsibility. It requires institutions to put in annual financial returns so that it can look at those finances. One condition of registration is that you need to notify the OfS if any one of a number of triggers is hit. If liquidity falls below 30 days, you are no longer a going concern and you cannot pay your debts, there is a trigger there.

We have had the odd market failure. I came into the sector in 2019 and in the case of the Greenwich School of Management a small provider went bust. Indeed, one of my members stepped in and picked up the students. We have not had market failures. It feels quite light touch. I would go back to the question we had about engagement with the sector and the culture as it is. Looking into the future, I would hope that a provider that perhaps had concerns would be able to have that conversation with the OfS. You do not want to leave it so late in the day. Liquidity falling below 30 days is a big problem and you would probably see an exit. You want a culture where the provider could say, "In two or three years' time I might struggle here, so help me".

Lord Clement-Jones: And whether the OfS raises the red flag itself to government, or whatever it might be.

Vivienne Stern: I agree with the point about 30 days' liquidity. It is too late by the time you get to that point. I also agree with Vanessa's point about the culture of trust. I wonder how willing universities are to go to the OfS and say, "Look, we gave you forecasts but we need to explain that we think this will be quite difficult". At the moment, I think they would fear that the OfS might come in with some sort of punitive response. I am not sure there is evidence that the OfS does that. I have asked finance directors about that. I have also heard of a couple of occasions where the OfS was very supportive to institutions. That lack of trust probably inhibits the frank exchange of information.

I promised that I would try to get through this session without mentioning HEFCE because Jo Johnson reminded us that whinging about HEFCE having disappeared is not a good look. However, HEFCE used to do a bit of forensic analysis of university financial forecasts and work out things such as, "If you all think you'll recruit, is there some reason why we should?" To be honest, I do not know how well it is equipped to overlay the information it gets with that sort of insight.

Lord Cromwell: Points for brevity, but does part of this reflect that the OfS is more comfortable dealing with issues of quality rather than these financial, calculative, accountancy-based analyses of the financial sustainability of the institutions and sector? Is there an expertise gap at the OfS in this area?

Vivienne Stern: I do not know if there is an expertise gap, but it speaks to this sense of whether the OfS is there to punish institutions when they drop below thresholds or to ensure the system is healthy. We expect Susan Lapworth to refute this when she gives evidence to you, but there is a feeling on the university side that it is the former and not the latter. It is there to punish poor performance and not to ensure a healthy system. That is where we would like the direction to go.

Lord Cromwell: Thank you. Vanessa: expertise gap—yes or no?

Vanessa Wilson: I do not know. It would be useful to examine the Greenwich School of Management situation because that was relatively within the period of the OfS. We could ask how that was handled. It was sorted out. That was a very early test in how it managed that. I agree that we do not want market failure, which would be terribly disruptive for students. Testing out whether the OfS would be in early enough to give support and avoid that would be helpful.

Q53 Lord Agnew of Oulton: We have rather run out of time, so perhaps you could give me quick answers now but follow up in writing. For me, one of the most important areas is the financial models, plural—I am not saying there is one—used in the sector. I accept that the elephant in the room is that the system will run out of money if we just have a flat fee while we have inflation. I do not accept what I consider a rather dishonest system where kids are gulled into doing low-grade courses that are very cheap to deliver and the money is then sloshed across to fund the probably better courses that are much more expensive to deliver. It is children signing up to these courses, essentially, with little understanding of what they will get. We had a rather ambiguous answer from an earlier witness about how much clarity was given on the quality of courses that they would get, the number of contact hours and so on. As part of this, you lobby for more money. I respect that, but would it not be much more honest to say that probably 25% of the kids doing these undergraduate courses should not do them because those courses are not worth while? Let us shrink the system but put the same amount of money in so that the 9.5% goes up by 25%, but we are not putting tens of thousands of kids into a lifetime of penury for debt that is never repaid.

Vivienne Stern: There is a lot in what you said. I will try to break that down. First, there is not a lot of cross-subsidy on the domestic teaching front. The idea that universities are making a significant surplus in any area when they are losing some £1,700 per student just is not right. The cross-subsidy does not come from one course to another.

Lord Agnew of Oulton: Could I challenge you on that? As someone in the secondary system, we deliver education at £6,500 a pupil to larger classes for far longer numbers of hours and for a longer academic year. I know that you can deliver teaching for £6,500. I accept that a university is a more complex institution with a bigger infrastructure but I am not convinced by that. Indeed, talking off the record with a lot of senior people in the higher education system, they have admitted to me candidly that that is what goes on.

Vivienne Stern: On the difference between the cost base of a university and a school, I do not know enough about schools to make a comparison. In universities, first, there is competition for talented staff. You want great staff, a lot of them from all over the world, in many cases with research careers, too. You need facilities. For many courses, not just the big sciences but everything from all the allied health disciplines through to digital arts, there must be facilities, equipment, space, professional contact and companies bringing in placement opportunities, as well as wraparound support. Universities that recruit students with relatively poorer academic track records need a lot of support to succeed. Specialist libraries and expert technical assistance are needed to run many of these programmes. They are not big schools. I know that we are under time pressure. The best thing I can offer is that you come with me the next time I visit a university so you can see that.

Lord Agnew of Oulton: Please write to us as I must not stretch my friendship with our Chair and carry on this conversation. This is so important for me. There are maybe links to governance. Perhaps our secretariat could give you my other linked question on governance.

The Chair: Governance is important.

Vanessa Wilson: I agree with everything that Vivienne said. Also, I am sure that primary and secondary head teachers would argue that £6,500 is not enough. I agree that it is comparing apples and pears, and that this is a very different experience, but if we look at what the private sector charges pupils per year in secondary schools, it is double that of the tuition fee.

The Chair: That is an interesting response.

Lord Agnew of Oulton: Yes. I accept that the primary and secondary systems are not adequately funded. I just gave that figure as a benchmark. I do not want to have this rather reductive argument. I notice that Vivienne did not come back to me on my belief that a large proportion of children go into the system who should not. You mentioned the issue of unconditional offers. We got a rather different version of

events from another witness, who basically said that they honoured the spirit of the agreement brokered but some more cynical institutions carried on throwing out unconditional offers. To me, as someone in secondary education, that is disgraceful. It is a disaster for the vast majority. There might be a few exceptions, such as if you had a child with a parent who died during exams or there was some illness, absolutely, but for the vast majority it absolutely suffocates aspiration.

Vivienne Stern: May I respond? I agree that when a student goes into higher education they should be able to make a decision for themselves based on a good understanding of the support they will receive and what they might expect as a result. That is why, over a period of more than two decades, the higher education sector through both legislation and now regulation has increased all the mechanisms to which you might need access to make a good decision: that is, understanding what happened to people who did that course previously in terms of completion, satisfaction, continuation and graduate outcomes, for all the arguments we had about whether earnings are the only measure of that. If students have access to good information, they should be able to choose for themselves. I have seen lots of examples of people in a sense denigrating the choice of an individual student because they do not think that what the student is doing will end up being valuable. They are then proved wrong.

I was in Dundee a few weeks ago and visited Abertay University Dundee. I started in higher education policy about 20 years ago and you always hear the Mickey Mouse argument: "Why are these students doing these Mickey Mouse degrees? They're not going to get good jobs". People used to say that about computer game design: "How on earth could that be a rigorous subject?" Abertay University Dundee, because it has expertise in digital arts and computer game design, has seen the development of probably one of the world's hotspots for the computer games industry. Also, nobody knew that game engines would end up being used in human health to simulate medical procedures. They did not know that those technologies would be applicable to all sorts of areas, not only in the creative industries but right out into social policy. So we should trust people to make good decisions but give them the information to help them make an informed choice. That is our job. Let them choose and, if they want, take a risk.

I come back to what I studied. I went to study English literature at university. I remember my dad's doctor said to me, "You do know you're not guaranteed a job. You do this, you'll read great books for three years and then you will have to make your own way". If I had had my way, I would have been an actor. Is that wrong? No, I do not think so. As an individual—

Lord Agnew of Oulton: I would love to carry on this debate.

The Chair: We all would.

Lord Agnew of Oulton: We have run out of time but I am grateful for

your answers. That was terrific.

The Chair: There is lots to delve into there. Thank you both very much indeed for the evidence you have given us. I am sorry that we do not have more time. We can always correspond and follow up on detail.