



HOUSE OF LORDS

Industry and Regulators Committee

Corrected oral evidence: The Office for Students

Tuesday 25 April 2023

11.30 am

Watch the meeting

Members present: Lord Burns (The Chair); Baroness Bowles of Berkhamsted; Lord Clement-Jones; Lord Cromwell; Baroness McGregor-Smith; Lord Reay.

Evidence Session No. 10

Heard in Public

Questions 87 - 94

Witnesses

[I](#): Vicki Stott, Chief Executive, Quality Assurance Agency for Higher Education; Professor Simon Gaskell, Chair, Quality Assurance Agency for Higher Education.

Examination of witnesses

Vicki Stott and Professor Simon Gaskell.

Q87 The Chair: Good morning, and welcome to our two witnesses from the Quality Assurance Agency for Higher Education: Vicki Stott, chief executive, and Professor Simon Gaskell, the chair. We are very pleased to see you.

Can I begin by asking you to explain how the QAA came to its decision to demit its status as the Office for Students' designated quality body, and how and why the regulatory approach clashed with the QAA's operation of quality and standards oversight? We have read the statement that was put out by the QAA. We have also read the triennial review from the OfS and some of the reasons it gave. I am not sure that I feel a great deal wiser as a result, and I hope that you can explain to us and set out for us what has happened, the reasons that have been given and, in a sense, some of your responses to those reasons.

Professor Simon Gaskell: Good morning, and thank you very much for the invitation to present evidence to you. I hope we will be able to be helpful in our replies to your questions. As you say, I am the chair of the board of the QAA. Until I retired in 2017, I was principal and president of Queen Mary University of London, and I am currently the chair of the board of the University of Plymouth.

With respect to your question, the important point that we wish to make is that the decision to demit as the designated quality body was entirely based on the suspension from the European Quality Assurance Register. That suspension, we were told by EQAR, was due to non-compliance with certain aspects of internationally accepted good practice—good practice, I might add, that is based in large part on the practice developed over many years in the UK. There were three aspects of that, the details of which I will leave to Vicki to describe.

It is very important to recognise that the decision to demit bore no relation to the content of the triennial report. Indeed, in the light of the draft report, Lord Wharton invited the QAA voluntarily to demit, and on 26 May 2022 I wrote to Lord Wharton indicating that we did not believe that it was in the interests of English higher education students or the institutions to so demit and that we would not do so on the basis of the triennial report, much of the content of which we found erroneous or misleading. That was the position on 26 May, which subsequently changed because of the decision by the European register to suspend the QAA. I will leave Vicki, if I may, to give more detail on that and to explain why registration with the European register is so important to the work of the QAA.

Vicki Stott: Thank you, Simon, and thank you very much, Chair, for inviting us this morning.

We do a considerable amount of work across the UK and internationally, as I am sure the committee is aware. For scale and context, that work,

taken together, forms about 75% of our income and is integral to our satisfying our charitable objectives. We were much more than simply the DQB; we are an agency that is also a registered charity with 25 years of experience, working, as I say, across the UK and internationally. It is a prerequisite for all of that work that we are listed on the European register, EQAR, which is the body that oversees the conditions that the Government have committed to as part of the Bologna process. One of those conditions is commitment to a common approach to quality and standards across higher education. EQAR is, effectively, to the QAA what the OfS register is to higher education providers. It is the thing that allows us to operate across most of our business.

We were, as Simon says, notified in the summer that our registration was being temporarily suspended because EQAR had a number of concerns that hinged around our independence, our ability to operate independently, because of the English regulatory system. The examples that it gave of its concerns for independence centred around our inability to put students on to assessment teams and our inability to publish our own reports. There was also a longer-term worry about cyclical review. To safeguard our independence and to be able to continue to operate across the rest of our business, we had to step away from the designated quality body role.

It is important for me to reinforce at this point that we care about international standards because they align with our principles and the way that we believe quality and standards are monitored in best practice. It is not simply blind adherence to a bureaucratic process.

The Chair: Presumably, you put those two points to the OfS—

Vicki Stott: We did indeed.

The Chair: —about student representation and publication of reports. What was its response to you about that and why it was not possible to meet those standards?

Vicki Stott: We discussed this a number of times with the OfS. Its point about publication of reports was a hesitation that hinged around a concern about legal pushback if it was to publish reports that contained negative judgments or negative opinions. Clearly, it is the regulator, and it is absolutely its prerogative to decide what it can and cannot do; as I said, it is a regulator, and it has a statutory obligation to regulate. Part of that includes a necessity to be transparent to the sector that you are regulating, not only for good practice purposes but so that the rest of the sector, apart from the provider under consideration, can learn from that process, and can learn from the findings and the discussion in the report, how to improve its own provision. It was worried, I think, about being defamatory.

It is important to say that our position was that by the time we submitted a report to the OfS it had already been looked at by the provider under consideration. It had had an opportunity to fact-check it and to appeal

any judgments or opinions that it felt were wrong, and it had the opportunity to appeal that all the way to judicial review. By the time the OfS received the report, there had already been, either taken or passed up on, a considerable amount of opportunity for providers to challenge it through the legal system.

Nobody during our time as DQB decided to take our reports to judicial review, and we had only a very small number of appeals, so I felt that that was not a substantial reason. The issue of students on review teams centred around expense and OfS concerns that students did not have sufficient academic expertise to be able to make judgments about academic standards.

The Chair: We will want to go into it in some more detail in some of the questions, so could you give me a headline about how you responded to the triennial report on performance? Basically, it says that if you had not stood down, you would have been stood down for a number of reasons. Did that come as a surprise?

Professor Simon Gaskell: Not entirely. It was flagged in advance that the report would be negative in its overall judgment. The problems that we had, and still have, with it are that there are errors of fact and unjustified implications in it. To give you an example of the latter, the OfS indicated that when the DQB set up its work the OfS had little confidence in the QAA's estimate of the costs, and the report says that it therefore engaged an independent adviser, London Economics, to look into that.

What is not said in the report is, first, that it was the suggestion of the QAA that that independent adviser should be commissioned, and, more importantly, the fact that the report by London Economics indicated that the estimates made by the QAA had been accurate to within 2%. That did not find its way into the report—only the suggestion that there was a lack of faith in the costings, which, of course, was not justified by the subsequent facts.

Vicki Stott: I am really grateful for the opportunity to answer this question. You know that we have commented publicly that we would refrain from rebutting and that we did not want to get into a protracted debate with the OfS, but this is important for your understanding of how we ended up where we have ended up. I want to reinforce Simon's point that we fundamentally disagree with both the conclusion and a great deal of the content of the report that the OfS submitted to the Secretary of State. We submitted a considerable representation against that report, containing a number of rebuttals backed up by a substantial amount of evidence.

It is interesting to note that, even after the OfS had said the things that it said in its report, it continued actively to commission us to conduct assessments of providers. Indeed, after we had given notice of our demission, we were commissioned for a higher volume of assessments than we had ever been commissioned for before. The OfS has used our

reports to make regulatory decisions, despite the claims in the triennial review. As recently as a fortnight ago, it issued regulatory judgments based on our reports.

It is important to say that the OfS view is an anomaly, and it is at odds with other stakeholders for whom we do work, who have expressed their confidence in us. Whatever the triennial report says, our sole reason for stepping away from the DQB role was the issue of international compliance.

Q88 Baroness McGregor-Smith: I am trying to understand. Is part of what I will call the changing relationship you had with the OfS philosophical differences about what constitute quality and standards? Is it about a failure of practical working relationships, or is it indeed a mixture? As always, hindsight is a great thing. Are there things that both sides could have done differently to make sure that this situation did not happen?

Professor Simon Gaskell: The answer to your final question is yes. May I add a little more background? The QAA and the majority of the sector are clear that there needs to be a regulator. In fact, in 2015 I chaired, on behalf of Universities UK, a working group that produced a report on university regulation. One of the top suggestions in that report was the establishment of a new regulator to oversee a register of accredited providers. That is not in doubt, and we certainly would not argue to the contrary.

It is clear that when the OfS was set up it was very much feeling its way, understandably. It was a new regulator, and it was following a different approach—different from what had been standard practice in the English sector previously. Indeed, when you heard from Nicola Dandridge, the former chief executive, she emphasised the point that in the first two or three years there were changes in practice. What that meant for the interactions between the OfS and the QAA was that there was some toing and froing about what exactly the OfS needed and whether what the QAA was providing in response to those perceived needs was exactly what the OfS needed. It is no surprise and there is no dispute that we did not get that exactly right from the outset. There were examples where the OfS would change its mind about what it needed between the commissioning of a report and the receipt of that report, so it was sometimes difficult to keep up with OfS thinking. Again, I would excuse that on the basis that the OfS was a new regulator and it was feeling its way.

The underlying philosophy is right; there needs to be a regulator. Part of the wisdom of the drafters of the 2017 Bill, and subsequent Act, was to recognise that the regulator would maintain respect and be most effective if in the area of quality and standards it sought advice from an independent agency. The position then was, and I believe still is, that the QAA is pre-eminently the qualified agency to provide that advice. We have seen over a period of several years a move away from the philosophy of an independent advising agency to the regulator. That is one of the concerns that underlies much of what we have done and the

difficulties that have arisen in working with the OfS. Vicki, do you want to add to that?

Vicki Stott: To pick up quickly on the elements of the question, the relationship at working level was actually quite collegiate. Between officers, there was a good series of communications, understanding and a good approach to working together. There is no philosophical difference about what constitutes quality and standards. The only philosophical difference is in how you embody an approach to assessing quality and standards. The difference there centred around the departure from good practice internationally in how those assessment functions should be undertaken, and we have covered that. Simon is right; all the differences were ultimately surmountable apart from the non-compliance issue.

Q89 **Lord Clement-Jones:** Good morning. I have a couple of questions relating to OfS claims, and you have partially touched on those. It claimed that it struggled to make regulatory decisions on the basis of DQB reports. Do you believe that to be a valid claim? To the extent that DQB reports have been used by the OfS to make regulatory decisions, does that subsequent claim open the OfS to potential legal challenges to those decisions? You have partially answered that, but I have made it rather broader.

Professor Simon Gaskell: Perhaps I could begin and Vicki will add to it. We cannot speak to the extent that the OfS was struggling, of course. The fact is that regulatory decisions were made on the basis of reports from the QAA. The fact also is that on occasion it came back and asked for additional evidence. Those requests were not always consistent. Sometimes it would ask for more evidence and sometimes for less. There was a certain toing and froing to aid it in its decision-making process. Only it can say the extent to which it struggled, but, as I say, the fact is that decisions were made.

If the OfS is casting doubt on the value of the QAA reports that were used for making decisions, and says that they were inadequate but that it nevertheless made decisions on the basis of those reports, it would appear as though there is a case for those who were unfavourably judged to come back to it. I am not a lawyer, unlike yourself, sir, so I cannot speak directly to the likelihood of legal action.

Lord Clement-Jones: Is there any indication that that might be the case?

Professor Simon Gaskell: Not that we have heard directly, no.

Lord Clement-Jones: The second claim is that the QAA's other work for the higher education sector meant that there was a conflict of interest between that work and its role as the DQB. How do you respond to that? Do you accept the fact that it may look odd for a membership body that provides consulting services to oversee those members from a regulatory perspective, or do you see that as an advantage, to the extent that the QAA was given the DQB role because of its work with the sector as a

whole?

Vicki Stott: No, we do not think that there is a conflict. You are absolutely right; the whole of our work is what allowed us to command the confidence of the sector, which is one of the conditions of being suitable to hold the designated quality body role. On an operational level, we have very strict firewalls and ethical barriers around all the areas of our business, such that the DQB and the rest of the business are completely blind to each other, so there can be no evidence or element of conflict of interest between those two elements of the business.

There are several precedents in other sectors of bodies that hold some regulatory responsibility and a membership function. It is not an uncommon model. We see it in the Institute for Chartered Accountants in England and Wales, in the GMC, in the Solicitors Regulation Authority and so on, so there is good precedent for that kind of behaviour. Membership is a mechanism for us to provide some consistency across the nations of the UK. Quality enhancement is deeply embedded in the regulatory systems in Scotland and Wales. The membership offering that we have in England is a funding mechanism to allow us to do that quality enhancement work. To be clear, the quality enhancement work sits above the regulatory baseline. It says nothing about compliance with the OfS's regulatory framework. Nor does it address individual providers; it is general advice and guidance to the sector as a whole.

To step back a little, that element of UK-wide consistency is quite important. Internationally, the four nations are seen as one system for higher education, and the elements of consistency between them are fewer and further between as the regulatory systems diverge, so anything that brings them together and allows there to be some coherence is very useful. We are not a member representative body. We do not advocate or lobby on behalf of our members—that is a role for the sector bodies and the mission groups—so there is a clear distinction. We were in the process of setting up an independent board and deepening the ethical barriers between the designated quality body and the rest of the business, purely in order to reassure the OfS that that was a live barrier that could not be jumped in any way, shape or form.

Professor Simon Gaskell: It might be helpful to add some flavour to the key aspect of enhancement and work for the sector. During the pandemic, the QAA was able to use its convening power to bring together institutions and the professional bodies that accredit many courses at English universities, to work out how under the constraints of the pandemic the professional bodies could still have assurance in the quality and standards applied in courses. That was a function that I believe the QAA was uniquely placed to fulfil.

Another example that may be particularly pertinent is that our work on academic integrity—these are issues that are pan-sector—has been very strongly influenced, and indeed in some respects led, by our student networks, our student strategic advisory committee and the network of student unions. They have had key input in deciding how we address

issues of academic integrity, particularly the challenges posed by digital capabilities. That is the sort of area that is uniquely covered by the QAA in England through the membership model. In the other nations, it is more integrated in the overall provision provided by the agency.

Lord Clement-Jones: Can I ask you perhaps a more leading question? Do you think that those two claims in particular, among others, were erected to justify a decision that had already been made?

Professor Simon Gaskell: I suppose we would be disingenuous if we suggested that the possibility had not occurred to us.

Lord Clement-Jones: Thank you.

Q90 **Baroness McGregor-Smith:** What are the potential consequences for the higher education sector in England of not being aligned with international norms in relation to quality and standards? With what has happened, do you have any concerns about that? Do you think that is about data collection and actual standard processes, or do you think that there will be a more concrete impact on the sector from what has happened?

Vicki Stott: Thank you. That is a really good question. We do an awful lot of work internationally. We are an internationally renowned expert body in academic quality and standards, so those are things that people talk to us about. I am afraid that there could well be concrete impacts on both the sector's reputation and its financial sustainability. That leads to two major risks, and I will give you an example of them. The first risk is around transnational education. It is about providers' ability to set up branch campuses or have presences in other nations. The other is about international student recruitment.

I have heard two pieces of evidence on each of those things recently. On transnational education, I talked to a provider the other day that has been for some time in the throes of opening a branch campus in Asia. That is not an uncommon business model. It is very good for the reputation of UK higher education and for the English export power of higher education. It is also obviously very good for the financial sustainability and academic reputation of individual providers. A number of providers follow that model. In this particular case, a large campus in Asia was in the process of going through due diligence, and the process was going very well until it suddenly ground to a halt because the Government in the particular country where the provider was looking to open became concerned that they could not see a recent enough quality report on the individual provider.

Other Governments and quality agencies are used to being able to see periodic quality reports that enable them to do due diligence on a provider looking to set up a business in their territory. Some of those reports are now nine or 10 years old. Indeed, we are in the process of asking providers to remove from their websites reports that are older than five years because we think they are misleading and no longer

relevant in the new regulatory framework. That is causing a due diligence problem internationally, as I say.

The perception of this particular Government was that TEF will not work for them as a substitute for periodic review because they see it as too blunt an instrument. The TEF panel is appointed by the OfS, and TEF judgments are not reinforced by independent assessors, so they do not see it as an independent peer review. That impression is deepened by the fact that Shirley Pearce, in the Pearce report, explicitly says that it is not an independent peer review.

My second example is from a Middle Eastern Government that I visited two or three weeks ago. They had recently made available a substantial pot of money to provide campuses for international universities to operate in their territory. That would have been fully funded. They would have provided all the infrastructure costs and so on. There was another pot of money for them to offer some very generous studentships for their students to study internationally. They have now had campuses built by European universities and by American universities, but they told me that they had not made that money available to English providers because they were worried about the impact of who assesses quality in England if they cannot see periodic review reports; they are worried that there is no oversight.

We work very hard to reassure international partners that the vast majority of English provision is still of excellent quality and that there really is no worry about quality, but, because they cannot see that unfolding and because the system has changed very suddenly, without any kind of explanatory narrative, away from a system that the UK has promoted over a number of decades as the gold standard, where you have an independent assessment periodically of quality in a provider, they worry that it indicates that there is a problem with English quality. They read things like the political rhetoric about low-quality provision and the press reports about standards of assessment and so on, and they see nothing that reassures them that is published about individual providers, and they worry.

Baroness McGregor-Smith: I assume that you have had that conversation with the OfS.

Vicki Stott: Yes.

Baroness McGregor-Smith: What did it say? Can you tell us?

Vicki Stott: The OfS takes the view that it is reviewing a wide landscape of intelligence and data on an annual basis and that that counts as periodic review. There is an argument there. I certainly would not disagree with it in principle, but the fact is that it is not visible externally.

Q91 **Baroness Bowles of Berkhamsted:** Moving on from visibility and perception, which I think you have answered quite well, do you believe that the OfS has the capability to take on the DQB role, on either an

interim or a permanent basis? Do the provisions announced by the OfS provide sufficient reassurance about its ability to take on that role successfully? What impact will result from any shortcomings in its capacity? I can see that it will be quite difficult to separate that from the perception argument that you have been through, but do your best.

Professor Simon Gaskell: I will turn to Vicki in a moment to give details on the magnitude of the operation that is involved in carrying out that function. We have doubts about the OfS's capability for doing so. That is grafted on to the concerns that it is not perceived as an independent source of advice. We will take that as read. We have made that point quite clearly. I think the question you are asking is about practicality and whether the OfS simply has the capability to take it on. Vicki is the one to give you chapter and verse on exactly what is involved in undertaking that function.

Vicki Stott: It is quite difficult to say. Obviously, we cannot speak for the OfS, and it has released only a limited amount of information about its capacity and capability, so I cannot say authoritatively whether it has either of those things, but I can give you an illustrative example.

Let me give you an idea of the sort of capacity that we needed to fulfil the designated quality body functions. At the peak of the period after we had given our notice of demission, we were doing 30 simultaneous reviews, which included quality and standards reviews, assessments for degree-awarding powers, and the end-point quality assessment of integrated degree apprenticeships. If you assume as a base minimum that each review needs two assessors and then you think that a review could be commissioned across any one of 35 subject areas, according to the categorisation of subjects used by the OfS, you already have some idea that you need to have a considerable pool of assessors to draw from to meet demand for reviews in any particular area, given that you do not know what is coming in the pipeline.

Assessors are not people who are directly employed. They have their own jobs and their own lives. They are employed in higher education institutions or in professional, statutory and regulatory bodies, or they are students. You cannot guarantee that they will have the capacity to do the work when you call on any one of them, so you need some redundancy in your reviewer pool. All of that is to get round to saying that we had a pool of about 250 assessors. I know that the OfS has recently been recruiting, but it took us a number of years to get to that number, and each assessor needs a considerable amount of training, so there may well be a capability issue in the short term simply in resource.

We could also say that capability could be evidenced by publishing reports. The OfS has told us that it has been doing quality reviews itself since 2019, but, as far as I am aware, there are no reports published so far that would give us an indication of capacity or capability to undertake the assessments. It also said, in its publication *Regulatory Advice 3*, that it does not think that it is necessary to have academic expertise to assess quality, and in terms of international compliance that would concern us.

You asked what the impact would be of any shortcoming. The short-term impact would be that there would be further delay in the system, and providers that might already have waited a considerable amount of time for admission to the register, or for their application for degree-awarding powers to be considered, may well be waiting longer.

Professor Simon Gaskell: It might be illustrative and helpful to point out that shortly after the QAA announced its decision to demit as the designated quality body there was a surge of requests from the OfS to conduct reviews, and the guidelines given to the QAA by the OfS for those reviews suggested that it wished to see some streamlining of the processes in ways that had been previously suggested by the QAA but rejected by the OfS. The OfS response to the demission announcement was to try to push through as many reviews as possible, which might suggest that it had some nervousness about taking the function in-house.

Lord Clement-Jones: Can I follow up? You made what I thought was an extraordinary point by saying that the OfS does not believe that it needs any academic expertise in order to assess quality. Is it actually on the record as saying that to you directly?

Vicki Stott: It is in its publication, its *Regulatory Advice 3* note.

Lord Clement-Jones: How is that possible? Does any other quality assessment body take that view worldwide?

Vicki Stott: It seems to me that the assessment of quality intrinsically requires academic judgment.

Professor Simon Gaskell: Indeed, international practice in this area has been guided for many years by previous practice in the UK where it is axiomatic that academic expertise is required.

Lord Clement-Jones: I think the word “axiomatic” is absolutely apposite. It would seem so.

Baroness Bowles of Berkhamsted: It is a very sorry tale that we are hearing. Is there any prospect of a rapprochement? What would be necessary in the OfS approach to enable the QAA to consent to return or to be reappointed? It seems that it is a two-way thing.

Professor Simon Gaskell: We should be clear, and we thank you for the opportunity to be so clear, that we believe that it is in the best interests of English higher education and English higher education students for there to be an independent advisory body on quality and standards, and we believe that the QAA is pre-eminently suited to conduct that role. We would be very keen to see a restoration of the position where the OfS relies on an independent adviser in the area of quality and standards. That was the clear intent of the 2017 Act.

As I said earlier, it was part of the wisdom of the drafters of that Bill and subsequent Act to incorporate that as a point of general approach. Given that that is our position, of course we would be very willing to take on

that role again if the principles of the Act were followed clearly, and if there was willingness to recognise the importance of flexibility in adapting to international guidelines. I think the OfS would say in response to that that it is trying to operate a risk-based approach, and that does not require periodic review.

I do not think that it requires a great deal of diplomacy to recognise that there is compatibility between those two positions. If you take a risk-based approach, clearly there is a need for periodic assessment of what the risk is. The difference between that position and a position of periodic review, as it has been understood by the European Quality Assurance Register, is not very great. We suggest that there is indeed a clear resolution of this position in the interests of higher education students in England, with the exercise of a modest degree of diplomacy on the part of the Office for Students.

Baroness Bowles of Berkhamsted: Is there a cost issue? Does it all come down to money, or is there some kind of principle? I still have not got my head round that.

Vicki Stott: Perhaps it is a combination of both. You might expect that a risk-based targeted system would only result in cost where cost is needed. The cost would be driven towards addressing risk and protecting from harm. That is predominantly true when the burden of regulation reduces across the sector because there is no periodic review, and I do not think that that is what providers have seen, although I understand you will be speaking to some providers that will be able to offer more concrete evidence about that in a later session. It is also true that cyclical review does many wonderful things, particularly in spreading learning across the sector and allowing providers insight into best practice in other providers' practices, but it does not necessarily identify the subtle risks that you might expect from a data landscape and a review of the landscape. There are philosophical and cost elements.

Q92 **Lord Reay:** You touched on this previously, but perhaps you could elaborate. Has the OfS stayed true to the principles and approach set out in HERA in relation to quality and standards? Has the OfS strayed from HERA, or was HERA open to interpretation in a way that allowed the OfS to pursue its own approach?

Professor Simon Gaskell: I recall that at the time of the 2017 Bill there was a great deal of comment and discussion, not least in the House of Lords, as to the extent to which it was flexible and open to interpretation. There were two schools of thought. The first was that you needed a highly prescriptive Act that made sure that everything was set out very clearly. The counterview—I remember David Willetts advocating this at the time—was that you need to keep it flexible because it needs to be open to interpretation in a positive sense. For those in the David Willetts camp, the Bill and the Act were appropriately flexible, but there were some underlying principles, some of which we touched on. The one that is most relevant to the QAA is the principle of independent advice on quality and standards to be given to the regulator. An outcome of the flexibility

afforded by the Act is that different interpretations can be made as to how it should be implemented.

We have indicated that there was no question in our minds, or in many people's minds, about the importance of having a regulator. It is a question of how the regulator exercises those functions and whether within the spirit and letter of the Act it is making appropriate use of independent advice. We would say that the OfS is entitled to regulate the sector, and should indeed be regulating it, but it has not stayed within the spirit of the Act in seeking external independent advice.

Vicki Stott: Perhaps I might offer you an example of that. HERA is very flexible, obviously, and the OfS has a statutory obligation to regulate and therefore needs to make its own interpretation of HERA. The intent of HERA is that the regulator should set expectations for quality, and I would say that the OfS has gone beyond that in becoming overly prescriptive about the way that it manages the designated quality body.

The example that I offer is one of the metrics that was set for our performance in the early days of the regulatory framework. The metric was that when the leadership and staff of the QAA make statements in public fora or to representatives of regulated providers they support the OfS's approach to regulation in England. You may think that does not seem an unreasonable thing to ask, but it seems to me that if you are using your independent advisers as trusted collaborators in designing the system for assessing quality, you would not need to ask them to be supportive because they would have bought into the system.

If you have not used them in that way, it strikes me that it is still not unreasonable to ask them to be supportive, but to set that as a demand by which you measure their success in delivering assessment of quality seems to me unduly prescriptive. That is one of the things that led to the questioning of our independence and our ability to act autonomously.

Professor Simon Gaskell: It follows from what we have said, and relates to some of the earlier discussion, that the position is entirely recoverable. We have an Act that is essentially fit for purpose. We have common agreement on the need for a regulator with broadly the powers that it has. What is required is a relatively minor reset—minor in difficulty, I would suggest, but major with respect to the philosophy involved. It is a recoverable position, not least, as Vicki emphasised, because the day-to-day interactions between QAA staff and OfS staff were very collegial and very collaborative. The reset that is required is not, we believe, that difficult to achieve.

Lord Reay: Is the OfS sufficiently independent from government, in your view? Has government intervention in the OfS's work contributed to the differences between the OfS and the QAA?

Professor Simon Gaskell: It is a little difficult for us to answer that. We do not know, of course, the extent to which the OfS has been directed by government. We are one step removed from that, and appropriately so.

The common perception is that the annual letters of direction from the Minister have become increasingly prescriptive, and that perhaps inevitably results in a little bit of tacking to and fro by the regulator in response to those directions. I do not think either of us can speak to whether there has been direct pressure on the OfS unless, Vicki, you have an example that you want to cite. Perhaps you have.

Vicki Stott: Not necessarily about direct government intervention. We are not immune to the concerns of the sector that the regulator is not always transparent about why it takes the actions that it takes, and that can lead to a perception that it is responding to political imperatives, concerns expressed through the press perhaps or reports of concerns from government.

An example of that is the boots on the ground investigations, as they are known, that are happening at the moment. Those are being conducted with very little transparency. Indeed, it is not clear who is being investigated or what the concerns that have triggered the investigations are. That does two things. It reinforces the sector's concern that those things have been triggered by rhetoric politically about low-quality courses and by reports in the press, and it removes an opportunity for the sector to learn from the regulator's actions.

If the regulator could be more transparent about why it was conducting those investigations, everybody else offering courses in that area could reflect on their own practices, and perhaps improve them, if they deemed that there was a marginal risk to themselves or to their students. The need to learn from regulation for the sector and the need to understand the regulator's concerns and why it is acting on them are quite important for effective regulation.

Q93 **Lord Reay:** Moving to the topic of new providers, HERA incorporated in its vision for the sector increased competition from the addition of new entrants, but we have heard that the OfS and the QAA processes are seen as overly bureaucratic, opaque and slow. It seems as though new entrants require similar processes and structures in place on day 1 in institutions that have been operational for generations. How would you respond to that, and what efforts has the QAA made to enable new providers to enter the sector?

Professor Simon Gaskell: You are right, of course, that the principal motivation behind the 2017 Act was to open the sector and introduce different types of provider perceived, rightly or wrongly, as a useful source of innovation in higher education. It is right, of course, that the strictures placed on new providers should exactly parallel the standards that are applied across the board. It is clear that a new provider has less history, if any, to point to as evidence of the quality and standards in its provision, in comparison with established universities that may have tens or hundreds of years of experience to point to, so it is right that there should be a rigorous process. It is right that there should be equal treatment for new providers and established providers.

It is important to recognise that the process, which Vicki might usefully outline in more detail in a moment, involves a submission to the OfS, which then decides what it wants to do with that submission. At some stage, it commissions, or has done previously, the designated quality body, which makes a report that goes back to the OfS, which then takes whatever time it feels it needs to reach a decision. As far as the provider is concerned, the applicant for degree-awarding powers or entry on the register or whatever, what it sees is the overall process, but it has those three stages, only the middle one of which is under the control of the QAA.

Lord Reay: As I understand it, the provider does not know which stage of the process it is in. It is very opaque.

Professor Simon Gaskell: The direct interaction is with the OfS, not the QAA.

Vicki Stott: When we take over our part, the central part, of that overall process, on the day that we receive the referral from the OfS we contact both the OfS and the provider. At that point, the provider knows where it is, and we then negotiate and discuss timelines with the OfS and with the provider for whichever process it is going through. Sometimes those timelines have to be extended depending on the state of readiness of the provider or what we discover as we go through the assessment process. The timelines for the bits that we do are understood by both the OfS and the provider while we are going through them.

It is worth saying that the criteria for assessment were set by the OfS. For an assessment of degree-awarding powers, for example, a provider has to submit evidence for 58 criteria. Because the regulatory framework, quite rightly, allows providers complete autonomy in deciding how they satisfy the criteria for registration, there is no sense of what providers need to submit in order to demonstrate that they meet the criteria for the process that they are going through. We found that meant that providers would offer a significant amount of evidence, and it would take some time for us to look through and evaluate that. It would not always be directly relevant, so it would need some careful and quite fine academic judgments to be applied to make decisions about the balance of judgment on things where we had perhaps been offered slightly conflicting evidence and so on.

There are a number of things in your question. On the idea that you have to meet the same criteria whether you are a brand-new provider or an 800 year-old provider, probably nobody in this room would disagree that the standards you have to reach need to be high. The bar for entry should be high. There is considerable responsibility that attaches to being on the register or to having degree-awarding powers, but the process that allows you to get over that bar should be smooth.

We have been able to review in-prospect providers, people who have nothing but a plan in place, with no experience, no facilities and no students yet. We have been able to make assessments of their plans and

make judgments about whether they should be admitted to the register. We have also been able to review providers that have had some experience of providing teaching and learning on a validated basis or some other arrangement. Our approach to the processes is sufficiently agile to be able to look at new entrants at various stages of development.

Lord Reay: You feel that the system could be just as rigorous but streamlined and made quicker. It would be possible. There is no reason why it could not be done in that way.

Vicki Stott: I think it is possible to make it quicker. You would have to take the three parts of the system together in that. It is also important that any provider applying for any of those—admission to the register, degree-awarding powers or whatever it might be—needs to jump over an equivalent set of hurdles. I do not think that making things quicker or more streamlined should be at the expense of ensuring that there are consistent standards applied to everybody who comes to ask.

Lord Reay: We have heard concerns that there is a lack of a higher education strategy in England. The Government do not seem to be sure whether they want to encourage more students or reduce the number entering higher education. Would a higher education strategy from the Government regarding a direction of travel help the sector and the regulator to work together more fruitfully?

Professor Simon Gaskell: The short answer is yes. We should recognise, of course, that we are—we are often able to say this in the world of education—living through quite extraordinary times of change. We have extraordinary changes in the way students are able to learn and the way they choose to learn. There are changes in society's expectations of students and universities, all of which suggest that there is indeed a need for an overarching strategy.

I mentioned earlier that the annual letters of direction generate the risk of pushing the regulator in one direction and then tacking back and so on. The ideal would be to have an overarching strategy that addressed issues such as what we mean by higher education, which to me is a process of discovery for individuals, how we think we can deliver that not through a single, homogeneous method but through a variety of mechanisms, all of which are appropriate and valid, and how long that education process lasts. Should it be the traditional three or four years, ages 18 to 21, or should it be a process that can continue through life, as is now much more broadly accepted?

Those are quite fundamental questions that, to me, suggest that there should indeed be a higher education strategy that draws some of the strands together, not to pretend that we know what the latest development and capability will be in three years' time or five years' time, but so that we have an underlying philosophical strategy that tells us that this is what we want to achieve for the benefit of individuals in higher education and, as important, for the benefit of society, which at least in part will support that education.

Q94 The Chair: Could I end by asking you how you feel the QAA's experience of working with the OfS has been in comparison with working with similar bodies in the devolved nations? Have they raised similar concerns about the QAA?

Vicki Stott: No is the very brief and honest answer. Our experience of working with other nations differs enormously. In Scotland and Wales, and in the system that is being designed in Northern Ireland, they all take an enhancement approach in their regulatory and funding approaches. They are all interested in quality enhancement and systems of continuous improvement, and we are seen as partners integral to that. The relationship that we have reflects the value of having independent quality assessment. Indeed, we were extremely grateful to the funders and regulators in Scotland, Wales and Northern Ireland for issuing a joint statement of support and confidence in us at the time when the OfS published its triennial report. It is fair to say that the concerns that the OfS has expressed are anomalous in our relationships both in the UK and internationally.

Professor Simon Gaskell: I am sure those points are entirely valid, but it is worth emphasising that we have a somewhat heterogeneous system across the UK. One of the ironies is that the average international student, or prospective international student, thinks of the UK as a rather homogeneous system, but it is not. In Scotland, for example, the context is slightly different. The breadth of type of provider is nothing like as great as in England. That is an entirely valid approach, but it is a distinct one. We need different solutions in England, and that is indeed what has been incorporated.

One can look for some common features that one would expect in a successful regulatory system regardless of the precise details of the context. One of those is the confidence of the regulated bodies, which is very clear in Scotland and decreasingly clear in England. That is something that we need to aim to restore, in addition to the principle, in fact embedded in law in Scotland and Wales, that there should be independent bodies from which advice is sought, and that advice should be valued in large part because of its independence and because it derives from decades of experience in the area.

The Chair: Do you think that those bodies are more independent of government in Scotland and in Wales than they are in England?

Professor Simon Gaskell: Are you speaking of the regulator?

The Chair: Yes, the regulator.

Professor Simon Gaskell: The regulator is arguably somewhat closer to government in Scotland, but it still has embedded in its legislation the need to look for independent advice in quality and standards.

The Chair: Thank you very much. You have been very helpful in all of this. I still cannot help but feel that a very unnecessary argument has been going on. We are still trying to find the motive for why it has taken

place. It appears to be something that has come about for reasons that we cannot quite identify.

Maybe I should not ask this, but do you think that the OfS has always wanted to take this function under its own umbrella and that that is part of the reason for many of the events that have taken place? Do you think that it would rather have greater control over it, and that if it means having the operation in-house it will do it? Where will it find another external body that is able to undertake the work if it decides that it should not be done in-house?

Professor Simon Gaskell: You will no doubt ask the OfS the same question. We have suspected that the objective, at least on the part of some at the OfS, has been to prefer to bring the function in-house, which is allowed for, of course, by the Higher Education and Research Act if no independent body is in a position to undertake it. The fact is that there is an independent body in a position to take it on. The reasons why we felt, as the QAA, that we had to demit from that role are issues that are resolvable, and therefore we would argue that the intent of the Higher Education and Research Act is best followed by restoring that position and restoring the commitment to seeking independent advice on quality and standards. A direct answer to your question is, yes, we suspect that there has been a feeling among some, no doubt not all, at the OfS that they would prefer to do that in-house, presumably, because they would feel a greater level of control over the assessment of quality and standards.

Vicki Stott: To pick up the question about whether we are aware of any other body that can take it on, no, I do not think we are.

The Chair: Of course, they would have to be bodies that were prepared to operate on the basis that you were not prepared to operate on.

Vicki Stott: Yes, indeed, and they would need to satisfy the conditions set out in HERA. I do not think that there is another one that does that and that could operate without conflict under the terms where the OfS was concerned that we might have conflict. Of course, there are a number of professional consultancy firms that operate in the public sector that might consider it, but the complication for them is that the designated quality body cannot make money; it can only cover its own costs. For a shareholder-owned operation, that might be unattractive.

The Chair: Thank you so much for being so clear about a very puzzling and a very unfortunate state of affairs. We are very grateful to you for being so open and for giving us the evidence that you have given.

Vicki Stott: Thank you very much for inviting us.

Professor Simon Gaskell: Thank you very much.

The Chair: Thank you.