HOUSE OF LORDS

Industry and Regulators Committee

Corrected oral evidence: The work of the Office for Students

Tuesday 9 May 2023

10.30 am

Watch the meeting

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

Evidence Session No. 13 Heard in Public Questions 114 - 131

Witnesses

I: Susan Lapworth, Chief Executive, Office for Students; Lord Wharton of Yarm, Chair, Office for Students.

Examination of witnesses

Susan Lapworth and Lord Wharton of Yarm.

Q114 **The Chair:** This is the Industry and Regulators Committee of the House of Lords. We are conducting an inquiry into the Office for Students and our witnesses this morning are Susan Lapworth, who is chief executive of the Office for Students, and Lord Wharton of Yarm, who is the chair of the Office for Students. Good morning and welcome to you both.

I am sure you have been following our deliberations—I think this is our eighth meeting. There have been questions about how clear the remit of the original legislation is. Could we start with the role and purposes of the Office for Students and whether the remit is sufficiently clear?

Lord Wharton of Yarm: The OfS was created by HERA as the independent regulator for higher education in England. The sector is important to individuals, the economy and society more widely and that is why it was determined by Parliament that it needed to have a regulator. It is also an extremely diverse sector: there are 415 registered higher education providers, which includes big multifacility universities, small specialist institutions, private companies, further education colleges offering foundation degrees and vocational courses tailored to specific industries. The student populations in providers also vary widely in numbers from less than 200 to over 20,000. It is a diverse and important sector covering large parts of economic activity and touching the lives of very many people.

We carry out our role by primarily focusing on the interests of students. A regulator with a focus on students was a significant shift for the sector. That was a new concept brought in by HERA. The higher education sector was previously used to having a funding body perhaps championing the interests of institutions sometimes, rather than a regulator with statutory powers that was focused more on consumer interests and students' interests.

If I am honest, I do not think that those significant changes have fully worked through yet. Inside the organisation and particularly in the sector, the OfS still feels like a new regulator, which in many ways it is, but I think the legislation gives us a clear job to do although it is not always easy to use.

Susan Lapworth: I will pick up a bit more detail. HERA importantly does not give us a principal statutory objective or duty. You sometimes see that kind of model in the legislation for other regulators. For instance, we do not have a duty to protect the interests of students written into the legislation, and that means that we have quite a lot of flexibility to decide how we use our powers and what approach to take. You can see that in the regulatory framework, driven by regulatory objectives that are policy objectives that focus on the interests of students.

HERA does give us some specific duties though. It requires us to create a register of higher education providers, to assess quality in some circumstances, to monitor financial sustainability and so on, and it gives us a series of powers. We can impose and enforce conditions of registration, we can authorise a provider to award degrees and we can fund providers. All of those powers and duties come together to make up our core functions and we spend our time doing those things. They are generally quite practical things. I think that you can see over time that the focus has shifted as we have moved from a new regulator using the power to register universities, to a regulator that more recently is interested in its functions to do with enforcing its requirements.

I think that we are clear about our role, we have appropriate flexibility and our job is clear.

The Chair: Your flexibility gives you the choice of what kinds of issues to focus on. How do you focus on the balance of the autonomy of universities as institutions?

Susan Lapworth: I just talked about the practical functions that we perform. HERA also gives us a set of general duties and I think that is directly relevant to your point. We are required to have regard to those general duties as we perform the functions and that "have regard" framing is important. It means that we have to consider those issues as we act, so it is a thinking duty. For instance, we have to think about institutional autonomy, quality and choice for students, competition and so on. There is no hierarchy within those duties. Parliament was quite clear about that as HERA was going through. It is not the case that one is more important than any of the others. Our job is to consider them in turn and balance them as we think appropriate each time we perform those functions. I will give you a couple of examples to show how that works in practice.

We recently updated our requirements for quality. We were using our power to impose conditions of registration and decide how to perform our quality assessment functions. As we did that, we could see that the general duties for quality, value for money and equality of opportunity were particularly relevant to the decisions we were making, but we could also see clearly that the approach we were proposing was likely to have an impact on institutional autonomy. That is because any regulation of that kind is likely to prompt universities to act or not in ways that they perhaps would not have chosen otherwise. In that situation, we gave more weight to quality and choice than we did to institutional autonomy.

The second example is the reverse of that, which is a helpful way to think about it. We proposed a new condition of registration during the pandemic because we could see universities adopting recruitment practices that we thought were probably not in the interests of students. We consulted on a wide-ranging condition of registration that put quite extensive constraints on recruitment activity. Providers told us in their consultation responses that they thought we were proposing too broad an intervention and that we should be focused on the particular circumstances of the pandemic, rather than the long run of those issues. In that case we agreed that institutional autonomy should carry more weight, so we placed weight on autonomy and ended up imposing a much more narrowly drawn requirement that was in place for just a time-limited period.

Those examples show us performing the same function—imposing conditions of registration—but weighing the general duties differently. That balancing, weighing obligation is the job that Parliament gave us to do.

The Chair: Lord Wharton, would you like to comment on institutional autonomy? You referred to HEFCE as perhaps championing the institutions too much. Do you think there is too much institutional autonomy?

Lord Wharton of Yarm: It rather depends what it is used for. We want to ensure that students, who are often taking on significant financial costs to engage in a course, get a course that is of quality, of value to them and delivers what they hope at the end of the programme when they get their degree or whatever it might be. I think that it is quite right for a regulator to have a role in saying that, if you are offering up this product, it has to reach certain quality standards and expect certain things of the institution that is offering it.

We do not try to go into syllabus, the detail of what is taught, and say, "Do not do that" or "do this". We are looking at whether students are getting the value that they ought to get at the end of this likely three years of study, and I think it is quite right that we do that. It sometimes clashes against some of the arguments around autonomy, but I think autonomy has to be used in a way that delivers value for the students that are the primary focus. Where institutions do that, I would never envisage us having a role in trying to amend, interfere with or engage with them in an unconstructive way. We just want to ensure that value is there.

The Chair: We have heard about micromanagement problems or the perception of that from the university side.

Q115 **Baroness McGregor-Smith:** When the OfS was set up, the regulatory framework was quite set but there have been changes to it over time. Would you take us through some of those changes and why they have happened?

Susan Lapworth: We published a regulatory framework right at the beginning in 2018 and that followed quite an extensive public consultation process. The regulatory framework does two main things: it sets out our core regulatory approach and it contains the conditions of registration that providers have to meet to get registered and stay registered. Since it was first published in 2018 we have spent a lot of time implementing that core regulatory approach—how we register providers, how we do risk-based monitoring and how we might use our intervention and enforcement powers. We published guidance on things like registration. We have consulted on implementing some aspects of the core approach, so we consulted on how we might calculate a monetary penalty if we needed to impose one of those, for instance. We have consulted on a refreshed approach to the teaching excellence framework in the way that Parliament had envisaged.

All that activity has been necessary to implement the regulatory framework as it was published in 2018. We could not operate the core system without filling in those practical details. The sector has perhaps felt that as a period of ongoing change, but I would describe it as the set of activities that you would expect from any new regulator. In its fundamentals, the regulatory framework as a statement of how we perform our functions has not changed in that context.

To come back to the conditions of registration, we have made just two significant changes since 2018, and both of them were prompted by things we saw during the pandemic. We introduced a new condition to help us deal more effectively with providers facing closure, and we can come back to that later when we talk about financial sustainability. We also made quite significant reforms to our approach to quality. During the pandemic students brought us issues that looked worrying, but we felt that the conditions that we had were not the right shape to allow us to deal with those issues. They were expressed in quite a woolly fashion and we felt that we probably were not able to use them in anger if we felt we needed to. I will perhaps say some more about that when we talk about value for money.

The other significant issue that has developed since 2018 is the recent changes we have made to our expectations for providers' access and participation plans, refreshing the approach there. I would describe this as implementation and some evolution on the basis of things we have learned as we have gone along, rather than constant change for change's sake.

Baroness McGregor-Smith: Particularly thinking about the period of the pandemic, do you think students got value for money? That is a difficult question.

Susan Lapworth: It is. They had a really tough time. I think that everybody would accept that it was challenging, for everybody but for students in particular. We tried to be clear about our expectations. We removed some regulatory requirements to free universities to focus on the issues that they needed to deal with. We tried to set out expectations for how students should be supported and treated during that period, but it was tricky.

Baroness McGregor-Smith: Were any of the changes that you made during the pandemic kept in place? What were the learnings from the pandemic for what you do to regulate going forward?

Susan Lapworth: I talked about needing to be able to intervene much more rapidly if we are concerned about provider exit. That was a key lesson for us during the pandemic. Making sure that we understood what students were trying to tell us about their experience in general terms has stayed with us.

Lord Wharton of Yarm: I agree with that. I know that one of the issues that has come up is independence, which I am sure we will touch on later in the questions. It is one of the areas where, as a result of the accelerated move into online learning, we undertook a significant blended learning review and were able to issue quite a wide range of best-practice recommendations to institutions to say, "This is what works; this is what does not". It is not a black or white question; there are quite a lot of shades of grey, and a certain approach to blended learning can add value. It could be seen as not being in line with the central message from the Department for Education, which was, "Get back to class, please", but we looked at it objectively.

The review we were able to come forward with added value and identified where it can work and what can give it the best chances of working effectively for students, while also identifying where it does not and should not be used.

Baroness McGregor-Smith: Finally on that point, when you think of the regulatory framework changes you have made and what happened in the pandemic, can you see more changes coming over the next few years or do you think we are in more of a settled state now as the regulator that has been operating for a number of years?

Susan Lapworth: We now have the basic regulatory machine up and running, so that feels stable now. We will constantly think about how we might improve that, but I do not see significant change coming. The conditions of registration feel stable to me now, so we are not anticipating change. The one thing that is likely to come our way is new responsibilities for free speech. That will involve new conditions of registration, us running a complaints scheme and regulating student unions' activities for the first time. I think that is the point at which more change will be visible. Parliament seems likely to give us that job to do and we will get on and do it.

Q116 **Viscount Chandos:** Lord Wharton, you have already mentioned the change from the HEFCE era and in your written evidence you said, "Our approach to engagement necessarily differs from our main predecessor, a funding body with a mission to support institutions to succeed rather than a regulator with a focus on the interests of students". You can debate whether those are really that distinct but we have heard evidence from the sector that there is a distant relationship between providers and the OfS, characterised by the lack of trust. Do you accept that there is a need for the OfS to rebuild trust with the sector? What actions will you be taking to improve the relationship?

Lord Wharton of Yarm: There is truth in the point and then there are elements to it that I think are occasionally a little overegged. My experience with most of the sector is that as a regulator we have good relations. We have positive engagement and good constructive feedback. Yes, there are frustrations and there will always be frustrations for a sector that has not really been regulated before coming up against a new regulator that not only will bring an amount of regulation to it but has to establish and set up that regulation, which is a doubly challenging process.

My very broad-brush assessment of the Office for Students is that it spent the first three to four years of its existence coming into existence, TUPE-ing staff, creating processes, planning and implementing the registration of a very large number of institutions. It is now moving into the phase of using its regulatory powers to ensure that the things that it is there to protect are protected as well as they possibly can be—the investigations, some of the frameworks and some of the consultations. By necessity there has been a relatively large number of consultations in a relatively short time, because we have been establishing things and setting them up.

I am confident that, looking forward, while there will be elements of complaint, we are undertaking a now significantly increased number of investigations and there will be institutions that do not get the results that they like from investigations into some of their activities or the things that have been going on there. That is absolutely necessary if the reputation of the sector as a whole is going to be protected.

At the same time, we are looking at stepping up our engagement as an organisation with the sector. We are not deaf to some of the comments that have been made. I do not think that we can or should go back to the days of HEFCE, when every region had its own co-ordinator, had lots of very close meetings with the universities and institutions. In trying to find a distinction in the two roles that you set out, it was there more to lend a helping hand and a friendly ear than to look in depth at what was going on, to say where they were getting it wrong and require them to improve it. I do not think we can go back to that, not least because we do not have the staffing levels to do that. HEFCE had many fewer responsibilities than the Office for Students and we are about the same size as HEFCE, plus the Office for Fair Access, which we replaced.

We are looking at what we can do to engage better with the sector. We have been listening already. A number of changes, small things, have been brought since I was there. They might seem simple, but they are things the sector was quite keen on such as consolidating correspondence into significantly fewer, more regular and predictable letters and notes from us, rather than ad hoc things being sent to them. We are always reviewing the regulatory burden. I always ask vice-chancellors when I meet them, because they invariably raise the issue of regulatory burden, to send me examples, because I want to challenge internally and the board wants to challenge internally to ensure that we are doing what we need to do but not more.

We recognise that the requirements can sometimes be difficult to comply with, particularly for some of the smaller institutions, but I think that the OfS can be confident in where it has come so far, what it is doing and with the direction it is taking. I hope that with some of the work we have coming up that relationship will and should improve.

Viscount Chandos: My impression is that there is not a week-to-week or month-to-month dialogue between institutions and the OfS, certainly not of the sort that you see between other regulators and the regulated entities. Do you think that you could increase the less formal interaction with HE institutions and reduce some of the formal regulatory burden that you have said you are keen to see highlighted and brought to your attention?

Lord Wharton of Yarm: Absolutely, with the caveat that we cannot and should not, in my view, recreate the HEFCE relationship of the very regular meetings with an individual in a region with whom the institution had a very close direct relationship. We do give every vice-chancellor a named contact. Susan includes that in her correspondence every time she writes to them. As I say, we work to consolidate the correspondence that we send and we try to be as accessible as possible. We have large numbers of meetings with industry bodies, representative bodies, vice-chancellors and so on.

Particularly in my role—and members of the committee will recognise this—my email address is more accessible than the average person's and my emails come straight to my phone. I have willingly encouraged vice-chancellors to do that if they feel there is an issue they want to raise. I am not aware of a single time when it has been done that we have not responded. In the majority of cases, particularly if one is wanted, I am not aware of a request for a meeting that has been declined.

We try to be, from my role as chair right through the organisation, as open and engaging as we can. We are now bringing in a new strategy to send more of our senior staff to visit institutions to ensure that, from our point of view, we have that on-the-ground understanding of what is happening and how it feels, but also that we tackle any feeling that we are distant. It is not what we want to be; we want to be an effective regulator but one where the sector feels it has a good relationship with us.

Susan Lapworth: I will add two points here. The first relates to our risk-based approach to regulation, which HERA requires of us. That means that our engagement with individual providers is shaped by our view of the risk that they represent. We spend more of our time and often quite a lot of time on detailed engagement with those providers where we can see particular patterns of risk. The other side of that, of course, is that if we are not particularly concerned about a provider they may not hear from us very often at all. I can see from the tradition of the HEFCE closeness of the relationship that that might feel quite odd to some universities that suddenly do not hear from the regulatory body in the way that they may have been used to. That risk-based approach is part of the dynamic here and that is deliberate; it is a conscious set of choices about where we spend our time, what we talk about and who we talk to.

The second point I want to pick up—and James has touched on this—is that, around this time last year, I commissioned an independent study of providers' views about our engagement and our relationship with them. There were some positive features that came from that process but there was quite a lot of criticism. My view was that we just had to take that on the chin. We clearly were not getting it right from the perspective of providers. There was a risk that that was making us less effective than we needed to be as a regulator in the interests of students, and we needed to do something about that.

James has talked about some of the changes that we have made. We have put in place a programme of visits to providers for senior colleagues and board members to develop a more sophisticated two-way understanding of the dynamic and the way the OfS is approaching its work. I am also going to hold quarterly online sessions for vice-chancellors to hear about topical issues and things we are doing and, importantly, to ask questions and create spaces for that two-way engagement. We are also thinking very hard about how we can support brand new vice-chancellors who might be completely new to these conversations. Bringing them in, in small groups, and meeting them in person with the team with responsibility for their institution feels as though it will go quite a long way to resetting the relationships. We are spending a lot of time on that now because we have heard the points made by the sector and recognise that there are things we could and should do better.

Lord Wharton of Yarm: I will add a couple of statistics very quickly. Last year we had a large event a month; we had more than 4,000 attendees at OfS events of engagement across the year. Susan writes twice a month to vice-chancellors and of course they have a named contact if they want to engage with someone. John Blake, who is the OfS fair access and participation director, has attended over 70 meetings and conferences since May last year. We plan to do more. We are not deaf to the concerns the sector has but I think that it would be wrong to characterise the OfS as not engaging. We do a lot of work to engage with the sector and to be available to it to raise issues it wishes to raise.

Viscount Chandos: But it is how the OfS engages. If I go back to the section from the written evidence that I quoted, it seems to me that it is quite provocative to say, "We have moved from having a mission to support institutions to succeed rather than a regulator with a focus on the interests of students". Surely an institution succeeds by delivering to its students, but the language does not speak about partnership and it seems to me that you can differentiate from HEFCE without throwing the baby out with the bath-water.

Lord Wharton of Yarm: I agree with you and we do. We have supported institutions and managed to prevent them from financial failure through the work that we have done with them. As an example of an area of work that we do, we try to be as supportive as possible. Of course, part of our regulatory role is to be constructively critical if institutions are falling short and to investigate where there may be problems. I accept your point perhaps on some of the nuances of how the language in that particular comment can be interpreted, but I want to assure you that in everything that I have seen, I am absolutely convinced that we see our role as supporting students by making institutions successful in the way that we regulate them and ensuring that, by making the sector successful and keeping qualities and standards high, the reputation of the sector is upheld as well.

Susan Lapworth: The nub of this to me is that the interests of providers and the interests of students are often not aligned. Our focus in those circumstances is primarily on the interests of students. I can quite see that from the perspective of the sector that feels difficult and awkward, because we are holding them to account for things that might matter more to students. That dynamic has shifted quite considerably since the HEFCE time.

The Chair: Could you give us an example of where the interests of students would differ?

Susan Lapworth: I think you have heard evidence in previous sessions from the sector about its view that we should focus on particular things and not work on things like mental health, harassment and sexual misconduct, and students' consumer rights. Those are the things that students are most likely to tell us matter most to them. We have the sector trying to pull us away from those particular issues and students trying to pull us towards those issues, and we have to find a sensible route through the middle.

The Chair: It is not the fact that universities do not think that they have a responsibility on mental health or harassment; it is a question of how prescriptive you are in how they deal with those issues. Lord Wharton talked about the regulatory framework and best practice. The document that I saw on harassment was very substantial. Would not an alternative have been to point people in the direction of best practice and just make sure that things are being carried out right? Do you have to be prescriptive in how those issues are dealt with?

Susan Lapworth: I think this is a really good example. The concerns of students about sexual misconduct in particular were significant back in 2010, when the NUS started publishing concerns in this area. The OfS, and HEFCE before it, used its funding power. We funded large numbers of projects within and across the sector to develop effective practice to deal with those issues. We evaluated that work and published the outcomes. We have published training modules on our website that providers can take and use in their context.

More recently we did exactly as you just described: we published a voluntary statement of expectations for how we thought institutions should tackle harassment and sexual misconduct. We said to the sector, "Self-regulate. This is what you have told is the right way forward; please do that". We evaluated what happened and the independent evaluation tells us that, although there has been some progress through that voluntary guidance approach, it has not been sufficient or fast enough. In particular students are saying on the ground that they are not feeling the change that they want to see.

There is a very long history on that set of issues that has led us to conclude that there is a compelling case for the sharper, more detailed regulation that you were talking about. It is a good example of us stepping up our activity when we feel that the response from the sector is not as we want and the students need it to be.

Q117 **Lord Reay:** I turn to the topic of the independence of the OfS from government, which is an area that a number of witnesses have expressed concerns about. How do you characterise the relationship between the OfS and government? To what extent does this guidance and the broader political and media priorities influence the OfS's work and decision-making?

Lord Wharton of Yarm: It is always a balance that needs attention to ensure that it is right but, from what I have seen in my time in the chair, it certainly has been in the right place. The OfS rightly has a dialogue with DfE, and regular meetings with Ministers and officials. We have a good working relationship with the department. At the same time, there are things that, as an independent regulator, we of course do and have to do independently. We exist in a world where the Government have levers. They have certain rights, issue guidance letters, appoint the board, appoint me as the chair and appoint the chief executive. The Government and Ministers have the right in statute to do that.

At the same time, I have never seen, and would not expect to see, for example, any interference in individual investigations into institutions. Where we have undertaken pieces of work like our blended learning review, the Government may not have been entirely pleased with some of the conclusions or the direction of travel that it took, but we none the less published it in full and in the way that we found it was best presented. I think that the OfS has a good track record of demonstrating its independence.

We should not pretend that we live in a vacuum. Significant amounts of public money flow through the OfS. Ministers and the Department for Education have significant rights to issue guidance and to influence what the OfS does, but in key areas, an example being individual investigations, I have never seen an attempt or a suggestion—and we would countenance no such thing—to interfere in anything like that, which has to be an entirely independent process.

Lord Reay: In your submission you have described that the volume and frequency of guidance from the Government may be unusually high relative to the other regulators. Do you find yourselves pushing back on government guidance and can you give examples of this?

Lord Wharton of Yarm: We have constructive discussions with the Government about their guidance, of course. I think the volume of it is probably understandable given the relatively young nature of the OfS. If I was to characterise the OfS's lifespan so far, it spent four years establishing itself and registering, and is now moving into the rather challenging phase of investigating and using its regulatory powers on established institutions. You would expect, in an environment where a new regulator is being created, a greater level of interest from the sector, from the Government and from Parliament, which created us under HERA.

There are examples, of course, where the Government view has been one thing and we have determined that what is in the best interests of students is another. I have talked about the blended learning review and another is the National Student Survey. There was quite a lot of frustration with the National Student Survey from the Department for Education. We looked at it and were convinced that it added real value and useful information, and it was an important thing to ask students to comment on their higher education experiences in a structured and appropriate way, and it is still there. We resisted any pressure to remove it.

Yes, there are examples where we act independently. I think it is normal to expect a relatively engaged Department for Education when we are a somewhat newish regulator and in a sometimes challenging environment in higher education, which has undergone a lot of change. However, I do not have any concerns about the independence of the OfS and cannot see any reason that those concerns would come about in the future.

Susan Lapworth: One of the important elements here is that the OfS is a regulator but also a funder—and that is unusual. You do not tend to see other regulators having that significant funding power. That means that Government and Ministers are routinely writing to us about that funding. You have heard from witnesses that we were sent 10 letters in 2021, and of course that is true but seven of those letters were Ministers writing to provide funding, additional funding or additional student places for medicine and dentistry. That is seven letters covering territory that I think would be welcomed by the sector, so it is not quite as it was perhaps painted in this context.

Adding to James's examples of when we have disagreed with Ministers, the obvious example that is in the public domain again relates to the funding power. Ministers asked us to take particular funding decisions about reducing funding for some subject areas and to remove London weighting payments for those institutions in London. We thought that that was not the right thing to do and we said that. Ministers did not agree with us, and they used the formal power that is available to them in HERA to impose terms and conditions on the funding. That is in the public domain and very transparent, so the disagreement is there for everyone to see.

Lord Reay: Lord Wharton, we have heard repeated concerns about your political affiliation and your position as chair, and that it potentially gives rise to questions about the OfS's independence. What steps, if any, have been taken to mitigate this issue?

Lord Wharton of Yarm: I act as an independent chair. You will appreciate, of course, that the chair is appointed by the Secretary of State but there is a basis for appointment set out in the Governance Code on Public Appointments. There is a process that included an appearance before the Education Select Committee and I have, certainly to the best of my knowledge and I am confident, never allowed the fact that I sit as a Conservative Peer in this place to sway or influence a decision that I make in my role. If it is not a little cheeky of me to do so, I make the observation that, in committees like this, Members sit with all different political affiliations and none, but they make independent and sensible judgments on the evidence base put before them. That is what I do in my role as chair.

It was not a statutory requirement when the Act passed through Parliament that the chair resign any political affiliation. I am pleased and proud to play a role as an affiliated Conservative Peer here, just as I am pleased and proud to play a role as an independent chair of the OfS and I take that very seriously.

Susan Lapworth: We have a series of safeguards in place within the OfS to protect James's impartiality and the NAO tests that as part of its assurance work at the end of the financial year. We are alive to the potential for there to be perceptions of a lack of impartiality. None has arisen in practice, but we are very careful to make sure that we can demonstrate that we know that to be the case.

Viscount Chandos: I think the comparison with the committee is specious. This is a committee of Parliament and you are chair of a regulator. I am curious about why you do not think it would be helpful to the OfS for you to conform to the tradition of chairs of bodies becoming non-affiliated during the period of their term of office. Of course that does not mean that you change your outlook on the world, but it seems to me quite an important symbol of independence.

Lord Wharton of Yarm: Susan and I have explained what I believe the position to be. Some people do choose to lose political affiliation; not all do, I believe. It is not a requirement. It is certainly not a requirement in statute. I act entirely independently. I have never hidden the fact that I did not intend and do not intend to resign the Conservative Whip. I said that to the Select Committee and in the interview process. I have been very clear and open about it and, as I say, I do not think any examples have arisen where it has been suggested that I have acted in a non-independent way or that we have had to trigger any of the safeguards that the OfS has in place.

The Chair: Do you accept that there might be a perception that there is a problem on the part of some people?

Lord Wharton of Yarm: There might be a perception that I am a Conservative, I suppose, but it does not make any difference to the way that I act as chair or the way that I vote in the House of Lords. I think it would be more of a window dressing thing to do. I am not required to do it and I do not intend to do so. If Parliament had intended it to be a requirement, it could very easily have included that requirement in the Act.

Q118 **Lord Clement-Jones:** I first declare an interest as chair of the governing body of Queen Mary University of London. I want to ask about Government policy on the OfS. Have the Government provided clarity on their overall policy or strategy for the higher education sector, especially given the absence of the expected influx of providers into the sector following the OfS's establishment? Would greater clarity help provide clear outcomes for the OfS to work towards? In that context, I notice that Susan mentioned the letters from Ministers, although not in quite the same terms as we have heard.

Lord Wharton of Yarm: In my experience in my time as chair, Ministers have been particularly focused on a relatively consistent series of things. In particular, in higher education, they have been very supportive of the OfS's reforms to its approach to quality and our shifting up several gears, I suggest, to do more investigatory work in that area. It seems to me that there has been relatively less emphasis on the significant increase in the number of providers in the sector. The number of providers has increased but it does not seem to be driven in quite the same way, which is a change in policy from when the OfS was first established, but has been consistent in my time in the role.

The Government's lifelong loan entitlement, which they are consulting on and recently published decisions on, will be a significant change for the sector, but it is one that we are involved in and engaged in. The OfS will have an important role in delivering it. I think that there is clarity. People do not always agree with that clarity. A more controversial area is freedom of speech where the Government are taking a very clear line and there will be a statutory requirement on us to undertake additional duties as soon as the legislation passes through Parliament, but there is no doubt in my mind what we are being asked to do.

Susan Lapworth: Shall I pick up market entrants? That might be helpful. We have around 415 registered providers now. About 50 of those are what we call new providers, so they were not regulated in either of the bits of the previous regime. There is quite a range in that group of different types of providers with different models working in different subject areas. Some have new pretty distinctive models, for instance Dyson or NMITE in engineering or Multiverse focusing on apprenticeships. There is evidence of that shift in the sector starting to happen.

We have also used our powers to authorise providers to award their own degrees and we have done for the new providers but also for some of the older providers in the system. We have made around 30 DAPs authorisations since 2019, which is quite a big piece of work for us. That looks like reasonable progress to us.

However, we think that it can be difficult for new providers to get up and running and to scale their activities in the way that is needed to be sustainable. They face the same sort of challenges you might expect of any start-up business and obviously the pandemic has not helped over recent years. Some might think that the financial model is not as attractive as they would like. There are some constraints in the environment for providers that might be interested in joining the system.

On our role, we recognise that we can do more to make it quicker and easier for high-quality providers to join the system. We need to balance easing that route for good providers, so removing barriers to competition, with making sure that we are still rigorous in our assessment. Any provider that we register is recruiting students, drawing down public finance from one route or another, and it is important that we get those decisions right.

We revised our guidance for registration towards the tail end of last year. We wanted to be clearer for providers about what the process entails, the evidence they need to provide and how the process works. We wanted for the first time—and this was at James's prodding—to give a much clearer view of the likely timescale for those applications. Our experience is that often new providers have not understood what it means to be regulated. They are often not able to provide us with the evidence they need. For instance, we often struggle to get good financial information from those providers; they perhaps do not have audited accounts or a well worked-out business plan, so it is difficult to be clear about those things. That has often meant that we enter into a series of ongoing dialogues with a provider to try to get the information we need from it—and that necessarily extends the process.

Our new guidance says that we think it should take around eight to 10 months for registration for a provider that is ready to go and can provide everything that we need. That is a view that feels comfortable for those in the sector that support the new providers. That is progress in an issue where we have focused relatively recently to make sure that we are doing all that we can to make it as easy as it should be for good providers.

Lord Clement-Jones: Thank you, as you have answered my third question that I was going to ask about the disappointment expressed by Lord Johnson of Marylebone. That is very helpful in itself.

I want to come back to the clarity point. To be fair, James said that the Government have essentially de-emphasised the new provider aspect of policy, although you are clearly doing a fair bit in this area still. How much clarity is there along the way? Is this something that just emerges or is it very clear? Is policy determined by every different Secretary of

State who you have had over a period?

Lord Wharton of Yarm: In my experience, the broad thrust of policy from the Government has been consistent and has often focused on areas other than new providers. I do not know whether I would characterise that as de-emphasising it. As Susan said, we have continued to work in that area to make it as easy and straightforward as possible for new providers, while retaining and protecting quality.

The challenge and the reality is that the process of registering existing institutions is necessarily somewhat different to the process of new providers entering the system. For a period of the OfS's life after its creation, it had by necessity to focus on registering existing institutions and getting that right.

I think that we have made progress. As Susan said, there are 50-odd new providers. Some of them are quite innovative. You have Dyson and NMITE and Multiverse, which are doing different and interesting things but we have been able to find a way within our approach to regulation to accommodate and register them. We have issued for the first time—and Susan touched on it—with what you might think is a simple thing, a guideline for new applicants so they can see roughly how long it should take if they are providing the information that is required.

We are continuing to try to do what we can to support this area, while protecting quality and ensuring stability, allowing new entrants to enter the market. But, yes, other issues have arisen with the Government that have perhaps taken away some of the emphasis.

Lord Clement-Jones: How do you both see yourselves? Do you see yourselves as the instrument of government policy? Do you see yourselves as an independent mediator between government and the sector? How do you characterise your relationship?

Lord Wharton of Yarm: It is a very good question. I will describe it as something like this: we sit in a triangle of three broad classes of stakeholders—the Government, the students themselves and the institutions that we regulate. There are overlapping elements and shared and common interests between them.

Our job is to ensure that the regulatory requirements on which we have consulted and which we Ienforce are applied to the institutions. In our discussions with the Government, we try to ensure that they understand the impact of things that they are considering doing, both positive and negative, and have a full understanding of the way that we as a regulator might have to react to change, but also how the sector might have to react to change. With students, it is a constant exercise of working with them, looking at the circumstances in which they find themselves, looking at things like the National Student Survey, identifying the things that will matter to them long term and acting on them.

If I am truthful, one of the challenges with the sector is that it has failed to address obvious problems, which have been raised with it over a long time. An example of that is grade inflation. In about 2010 around 15% of degrees were awarded as firsts; 10 years later it was around 37%; it is now about 32%. This is a significant amount of grade inflation that more and more people are getting firsts. There may be very good reasons for that; we may have cohorts of much brighter students, but there is also a risk that, if everyone gets a first, no one gets a first. As you will appreciate, it could be seen to devalue the award in itself. Students quite like getting firsts, so in the short term individual students who are studying now might quite like their chances being enhanced, but it may well not be in their interests in the long term if it undermines the value of the thing that they have earned and worked so hard for.

To be frank, having not taken sufficient action on it over a very long time, we are now looking at what we can do to take action in that space. This includes investigations and a new requirement to retain an appropriate selection, where appropriate, of graded work from students so that, if we go into an institution, do an investigation and find there is a problem, the evidence is there on which we can build a regulatory case. We are undertaking activities of that type to protect, I suggest, all our stakeholders, but at the time that we do them not all our stakeholders are happy about the activity that we are undertaking on each occasion.

Susan Lapworth: I point you back to my earlier observation that the interests of those three constituencies sometimes align but often do not. Our job is to be the independent regulator and reach our own judgment about how we manage that dynamic.

The Chair: There have been practical concerns about the burden of retaining the kind of graded work that you are talking about. It has caused a great deal of concern that you are asking of universities an almost impossible task. There is genuine concern there.

Lord Wharton of Yarm: I will talk a little bit about what we are doing to mitigate that. We are asking for appropriate work to be retained. Much work is now submitted electronically. I do not think it is an unreasonable ask, but I think we will get to a place where it is a very reasonable ask indeed. Susan might want to talk about some of what we are doing to ensure that we get to a place that is reasonable and appropriate.

I go back to the stark reality that, if the sector had addressed this, we would not be needing to address it as the regulator in the way that we are. If we are going to address it, we need to have the evidence on which we base decisions. If we do not have graded work, it is very difficult for us to undertake that sort of task in a way that is robust and able to legally withstand any significant challenge. We are engaging with them to ensure that it is a reasonable process in so far as it can be.

Susan Lapworth: I talked earlier about some of the conclusions we drew during the pandemic about our quality conditions not being the right shape to allow us to get at the things we needed. Assessment and the grade inflation that people talk about in the sector is a good example. We know that to make judgments about whether the assessment for this group of students in this institution is rigorous and credible we may need to look at samples of student work. That is the driver and that feels perfectly appropriate to me as regulatory policy.

We have not said that providers should keep all work for ever. Our guidance says that we expect them to keep appropriate examples of assessed work for five years, and that is broadly consistent with previous guidance from a sector body, so I do not think there is anything completely new here. As James says, keeping work on that basis is likely to be relatively straightforward where students submit their work electronically, so that feels manageable, but we certainly do not expect universities to store large pieces of art or artefacts for five years. That would not be appropriate in the way that the guidance sets out.

We recognise that the sector wants more explanation about this and for us to be a bit clearer about how we interpret that guidance. That is why we have set up a working group with representatives from the sector to try to work through those practical issues and find a way for us to unpack the guidance a bit more so that we are clearer for everybody about how we interpret "appropriate" in that context. It is an example of us hearing the point, understanding the practical consequences, and being willing to work with the sector to clarify what we mean. We intend that we will end up being able to do the regulatory job that we have set out to do.

Lord Cromwell: On a practical point, I entirely understand the need for evidence to tackle the grade inflation question. I think that some of the institutions we have spoken to seemed to think they had to keep all of it, so that is just a point to clarify. You have also touched on keeping large canvases and artwork is very difficult. I am interested by this "appropriate". If somebody has done, let us say—go easy—10 essays, but two of them were brilliant, one of them was awful and there is a couple in the middle ground. I realise that does not add up to 10; it shows I did not study mathematics but you get my point. What will the university consider appropriate? Will it store the best stuff, because then you are back into grade inflation, or the worst stuff, in which case it is misrepresenting the student? How do you work that one out?

Susan Lapworth: That is a very good point and it is part of the discussion that we need to have. The straightforward answer to your question is keep everything and we will come and sample to make sure that we have a clear view, but that leads you to saying, "Could you keep lots and lots of material for a long time?" We need to be able to understand how students have been marked on a particular module. We want a good sample for the module and that is quite agnostic about individual students and matters less, but we come back and start thinking—

Lord Cromwell: I am sorry to interrupt. Is that not more about quality assurance on the module than grade inflation on the student?

Susan Lapworth: Yes, it is exactly that. One of our regulatory requirements is to ensure that assessment is rigorous and you want to look at that module by module, course by course, but you are right: when you start to think about grade inflation you want to see the run of work and marks for individual students. You want to see how all that adds together and the algorithm the university has used to take those module marks to produce a degree classification. In that situation, you are right: we want to see whole students and we do not want universities to cherry pick the good work and not the less good work, but that is part of the conversation in the working group.

The Chair: Shall we move on to value for money? It is back to you, Lord Cromwell.

Q119 **Lord Cromwell:** Just on your last thing—forgive the phrase—good luck with that but I think it is going to be an interesting one.

I move on to another slippery topic, which is value for money. The "money" bit of that equation is kind of fixed but the "value for" is the slippery part. I am sure you have followed our discussions on this with other people who have given evidence to us. The view has been that it is either mission impossible or that any way that the proxies are used, which is the jobs and salaries people eventually go on to after they graduate, is very narrow and pretty erratic. Have you given further thought to this, do you have further work planned on it or is it just mission impossible?

Lord Wharton of Yarm: I do not think it is mission impossible. It is not a straightforward black and white issue and we know that there has been wide debate around what sort of measures should be used. For example, if you use salary, there are many good professions that people train for in universities that are not that well paid and should not be discounted as not value for money. You have to be very careful to avoid unintended consequences of picking something that is wrong.

The other challenge—and you have quite rightly touched on it—is that we do not have control of the money side of the value for money. The level of fees is not set by the Office for Students. We have found that some of the helpful things that we can do this in space are measuring how students feel about the value that they get, and our work in quality to ensure that they are getting outcomes as they should expect and the quality they should expect. Where they are not, we as a regulator take action to ensure it is addressed.

We have undertaken various polling and questioning of students and we talked a little about the National Student Survey. In 2022, for example, in the Savanta YouthSight poll of 1,063 students, 46% thought university was good value for money. That compared to 38% in 2020 and 33% in 2021. There was a relatively positive outcome, but work is clearly still needed. In the 2022 student academic experience survey, conducted by Advance HE for the Higher Education Policy Institute, just over a third of students felt they received good or very good value, which is an increase of eight percentage points on 2001, but only marginally higher than the 32% who received poor or very poor value.

Clearly, there is work to be done in that space, but we recognise that we have limited tools to do it. It is one reason that we are stepping up our investigations and emphasis on the quality. If we can get the bar for quality to be universally—insofar as a regulator ever can—at a sufficient height, that will impact on value and ensure that students get what they expect on the courses.

Susan Lapworth: Should I pick up the quality theme? That is important here. I will talk here about our—

Lord Cromwell: If I may, will we have other people asking about quality issues specifically in our questions? I do not want to make you double answer.

The Chair: No, you can pursue that a little.

Susan Lapworth: I will focus on outcomes because that is relevant to this bit of the conversation. We use three indicators and we set numerical thresholds for performance in relation to each of them. We look at continuation—students who go from the first year to the second year. We look at completion—students who get to the end of the course as they planned. We also look at progression—students who go on to professional jobs, further study or other positive outcomes.

It is important here to say that we treat quite a wide range of outcomes as positive in that context. It is not just about whether they have a traditional graduate job or are doing a master's course. For instance, self-employment counts as positive, as do certain voluntary roles and building a portfolio career, as we often see from students who graduate from creative and performing arts subjects. We try to capture the breadth of outcomes that we think are genuinely positive for students. Also, we do not have an indicator or threshold for salary. Salaries are not driving this part of our regulation.

Are those measures narrow and incomplete? Yes and no is the answer. If an institution has a strong continuation rate above 90%—and you see that in the best performers—we will not have a regulatory interest in those outcomes. A provider may want to focus on just broader value measures for its students. That is fine and we are happy for that to happen.

But we know that there are cases where these outcome measures are important for students and taxpayers, and our focus is there. The simplicity of the measures helps us focus on areas where we think we should intervene to drive improvement.

If I take continuation, we can see large providers with thousands of students where only 75% of those students get from year 1 to year 2, and even weaker outcomes for some level 4 and 5 courses. That is a lot of students leaving early. That is a problem for those students and also for the taxpayers who, in effect, foot the bill for those courses.

Therefore, those relatively simple indicators set a minimum floor below which performance will attract regulatory attention. We think that that is right. We think that that is a good example of a risk-based approach in action because we should focus there. We have quite a lot of work to do, we can see, on just those three relatively simple indicators. That is our priority for the next little while.

Lord Cromwell: Of the three indicators, the first two are survival rates. This is a rhetorical question, but you will look at what drives that. That leads you back into the quality area, presumably.

Susan Lapworth: You have raised an important point that I should have mentioned. Those numerical thresholds and the numerical performance for a provider are part of the jigsaw. When we see those cases of concern, we always go to the provider and have quite an in-depth conversation about the context in which those outcomes are delivered. This is not a blunt, data-only approach. This approach takes a numerical performance, does quite a lot of work to understand the context and then reaches a rounded judgment about whether that is okay or not for this provider in this context. That then leads us to decide whether we should intervene to try to drive performance forward in that case.

Lord Cromwell: I do not want to take the committee's time or go off-piste too far with this, but are you able to give us a flavour of the main reasons where you see a steep drop-off?

Susan Lapworth: It varies. We can see recruitment trends across the sector over time, in some subject areas in particular—business and management would be a good example—where student numbers have increased quite rapidly in a provider and perhaps staff numbers have not kept up. Students are recruited who are perhaps not the best prepared for higher education and are then not getting the support that they need to do well. We can see that dynamic playing out in all sorts of different providers, some well-established universities but also some of the newer providers that might focus on level 4 or 5 qualifications in just a single subject area. We are particularly interested in that now.

Lord Wharton of Yarm: As a clarification, if required, I was not suggesting a financial measure; I was merely using a salary measure as an example of how challenging it can be to apply relatively blunt tools. You can get unintended outcomes.

Q120 **Lord Cromwell:** This leads naturally to student interests. Students who sign up to university courses typically take on substantial debt and, with all due respect to them, many of them are effectively children who sign up to substantial debt to take on courses that they hope will offer value for money, which we have all agreed is difficult to quantify or measure.

Some questions have been raised. Do they get enough information about what to expect? "This will cost you X, in addition to which you have to find accommodation and so on”. That is probably quite easy to put into a matrix, but do students have a clear idea of how much contact time they will get, what sort of class sizes they will be in and those sorts of metrics? If I could put it crudely, do students get enough information about what they are getting for their money?

Lord Wharton of Yarm: Students get a lot of information. Whether it is as easily digestible as it ought to be is perhaps the key question. The reality is that there is a significant power imbalance between students and universities and higher education institutions, and that does not always lead to the best outcomes for students.

The challenge is that all the providers are subject to consumer protection law. The CMA did a lot of work in this area before the Office for Students came into being. We effectively piggyback that work in our regulatory approach but, to be frank, it is a fairly soft regulatory requirement. It is an area where, with care, more could be done. We do not have some of the powers you might expect to see in a regulator with responsibility for consumers. Compliance with consumer law across the sector is mixed, to be polite about it, so we would like to look at that area but we have to manage where we engage and where we put our resources as much as we can.

Lord Cromwell: Building on that, I am interested to know if you have any plans to increase student awareness about their rights and what their expectations might be. Also, you mentioned earlier the student response and value for money. I would be interested to get 10 of those students in a room and ask them how they worked out the value for money.

Is there any move towards some sort of framework or some sort of metric for them to use—making it simple, “Here are 10 points to consider”—so that you get some consistency across the piece from students evaluating value for money? It could range from, “I ended up with a fantastic job”, to, “Yes, I had a fantastic time with my mates”. It is very broad.

Lord Wharton of Yarm: Yes, you are absolutely right and it is difficult to measure. Again, it can butt up against some of our other priorities. For example, an institution that awards an awful lot more firsts may find it has a larger number of satisfied students, but that does not mean that that is the sort of behaviour that we want to see from the sector in the long term.

Lord Cromwell: What work is planned in that area by OfS?

Susan Lapworth: We are clear and consumer law is clear that students need good information to make informed choices. As James said, there is lots of information out there and I worry that students can be a bit lost in all of that.

We contribute to providing some clarity for students. We operate the Discover Uni website, which is deliberately focused on students making those choices and the people who support them to choose. That is our mechanism to publish impartial information about providers and courses. We surface for students the NSS results for the course they are interested—what previous students have thought of it. We show them some of the indicators I talked about earlier—continuation and graduate outcomes. We include salary data here, because students are interested in that when they make their choices. It is important in that context. We know that careers advisers are important here, too, and so we have done work with bodies that support that kind of activity in the school system. We also work with UCAS, which is the gateway for students making those choices.

Then we try to link the impartial information that we present with the information that providers publish on their recruitment course webpages. We expect them to link through to our information and to be as transparent as possible about what a real student can expect on a particular course: contact hours, time in tutorials and lectures and other kinds of activity, the extent to which courses are delivered online or in person—that kind of information.

There is quite a lot of variability in the quality and the detail of the information that individual providers publish. That is not helpful to students making those tricky choices.

Lord Cromwell: Will OfS press on that?

Susan Lapworth: Yes. We were starting to gear up for more work on this before the pandemic and it got set aside. As we discussed earlier, there were other priorities as we came out of the pandemic.

I am keen that we do more work on this area, and that we set out more clearly for the sector our expectations of the information that students need. Work that we have coming to the boil on unfair terms in student contracts is another aspect that is important and on the list of priorities, and this is another good example of misalignment between the interests of providers and the interests of students.

The moment we start to try to progress this work, there will be a fair amount of grumpiness from the sector, because it will see regulatory burden and regulatory extension into areas it would prefer we did not go into. We will have to navigate all of that quite carefully.

Q121 **Lord Cromwell:** Thank you. That goes back to the partnership questions that were asked earlier about having the right relationship with the providers so that students can, in the time-honoured phase, go compare between the various providers of whatever course they have in mind.

There is one more area from me, I am afraid. Student interest is at the heart of OfS. That is what you are for. How do you decide what the student interest is?

Lord Wharton of Yarm: I do not disagree with you. We are mindful of the fact that "student" is in the name of the OfS and our regulatory approach can create expectations from students that sometimes we may not be able to meet. We do not have the power to do absolutely everything across the sector. We have that issue in our organisational risk register, and we think about it continually and routinely because of the challenge it presents.

There are three aspects here, if I am honest. The first is that students care about a lot of things that are outside the OfS's control: cost of living pressures, for example. We cannot just find or provide more money for students or for providers. That decision is taken outside the OfS. It is not in our remit.

The second aspect is issues that could fall in our remit but which we do not have the capacity to prioritise. That can be difficult. We have to make choices about what we can do and what we can pursue. We have talked already about looking at students' rights as consumers' rights, but the truth is that we have not been able to look at it in the depth that we would like to yet because there are only so many things that we can do at any one time. It is a legitimate challenge, and Susan has talked a bit about what we want to do about it.

There are a lot of issues where a majority of students might take differing views about what we should do. Freedom of speech is a good example. We have some role in freedom of speech already. If Parliament passes the freedom of speech Bill and it becomes an Act, we will have a much increased role. We do not have an option about that; we will be statutorily required to undertake that role. That will mean that some of the resources we have will be directed to address that and we will of course comply with the duties that Parliament puts on us.

We take the student voice seriously. We do surveys, as we have talked about. We have the National Student Survey. We undertake professional polling. We see students as at the heart of what we do. That does not mean that we can do everything that students might want us to do. We have also talked a little about how the interests of students at any one point in time may not be the long-term interests of students in the sector. We have to find a balance between those differing challenges.

Lord Cromwell: Can I pick up on one point there—the idea of saying, "I hear you, but that's not really our remit"? Does OfS not have a role as a voice to the department: "This is a concern that students are raising, even if it is not in our remit to deal with it"?

Lord Wharton of Yarm: That is a difficult question. To some degree, yes, but we are a regulator with certain duties and certain areas in which we can act. If we identify an area in which we think we should have a new duty or a new power, of course we can have that discussion and we do have those discussions. If one is given to us, whether we have requested it or not, of course we will comply with it.

However, we are not a lobbying organisation. Our job is to regulate the higher education sector in line with the duties and powers that have been given to us in the Act, taking into account the three broad stakeholder areas that I have talked about. Of course we give feedback and express views on things that go more broadly than the narrow set of powers that we have, but we have to be a bit careful before going too far down that track as an independent regulator. There is a risk that you start to take a position that not all might agree with and you start to look rather less independent, potentially.

Susan Lapworth: I will pick some specific examples of how students are integrated in our work. There is a lot here, so I might write to you with a bit more detail afterwards. I will give you the highlights here.

It is perhaps helpful to start by saying that the whole organisation from the board down is focused on the interests of students. That is in the air. It is in the conversations. It permeates the organisation. To implement that intent, we have a student engagement strategy, which sets out how we involve students in our work. That is a real and meaningful document rather than something that we wrote and then put on the shelf.

You have heard that we have a board member appointed because of their expertise in representing the interests of students. The Secretary of State makes that appointment and it is a valuable part of the dynamic in the board. That board member chairs our student panel, which then advises us on our work, particularly on student engagement. The panel has done really important work with us over recent times. For instance, it shaped the scope of our review of blended learning that James talked about earlier. Panellists joined the review team. They led the sessions with providers, with students, trying to understand students' experiences and then contributed to the writing of the report. The panel was instrumental in making sure that there was a student submission as part of the teaching excellence framework—it is the first time we have done that—and we have seen nearly 90% of providers include a student submission with their TEF submission. That is a really important step forward.

We have questions in the NSS about mental health, which again is driven by the panel. We talked earlier about students' strong interest in our work over a prolonged period on harassment and sexual misconduct. Again, the student panel has been involved in the iterations of that work, as we have shifted from soft guidance towards sharper regulation. Its input is always valuable and important. We recognise, though, that the student panel is quite small and cannot give us a comprehensive view of what all students think. We have talked about the NSS. We have talked about polling. Those are the mechanisms we use to gather that broader perspective. All that feeds into our regulatory work.

Finally, I talked earlier about students providing evidence into the TEF process, but students are also fully built into the decision-making process for the TEF. We have a TEF panel with 40 academic members, so with academic expertise, and 20 student members, including a student deputy chair. The students are built into the judgment-making process about each provider in exactly the same way as the academic members. So they are driving our views about teaching excellence across the sector. That is an important feature of our approach.

Q122 **Lord Cromwell:** That was helpful. Thank you. I have two more quick questions and a suggestion.

You will have heard a number of comments that we have received that, putting it perhaps rather crudely, OfS listens to the students when they say what it wants to hear. To use James's phrase earlier, is that overegging it or is that a concern? Secondly, could more be done to engage students? I am thinking about resourcing the student panel to do its own research, to engage with other student unions.

Before I let you come back on what I suspect is a fairly contentious first point, could your annual report helpfully include a more clear-cut statement about where students have suggested things and the impact that has had on the actual decision-making of OfS, not least for the optics so that people can see that they are actually having an impact?

Lord Wharton of Yarm: I will pick up part of that. There is always more that you can do. The question is what you can do with the resource that you have. We get a good level of student feedback, but we are presently looking at the way the student panel works and what we can do to expand it. We have a new student panel board member who wants to reform it and to have more focused workstreams to ensure that it can report back in a crisper way and therefore, hopefully, influence more clearly some of the outcomes of the OfS's work.

Lord Cromwell: Would resources go along with that?

Lord Wharton of Yarm: They have a supportive resource team and we will look at what additionally is required, if anything, to do it. Yes, we are taking it very seriously. It seems to be a good effort and drive to increase the productivity and influence the student panel will have, and to increase the structure of that work so that it can tie in more clearly and effectively with the sort of things we have to do as a regulator. Of course, the student panel representative sits on the board of the OfS and, in every meeting, has a report, sometimes written. They are always invited to speak to it, and they can also speak on any other issue and are encouraged to do so.

Lord Cromwell: Is one enough?

Lord Wharton of Yarm: Again, from my point of view, and I think this is true of Susan too, I have had regular meetings with student panel representatives and have always been available when they want to bring up a new idea or have a discussion such as the one I referenced about changing the structure of the panel. The student panel is in a good place doing good work and will be restructured to streamline it into some of the decisions that we make more effectively.

I am happy to look at whether, when it comes to publishing our annual report, we can make crisper and clearer how the student panel's work has influenced the outcomes over the year which the OfS has delivered or the processes that have begun. It seems a sensible idea. Annual reports should always be as clear and crisp as possible. If you are not careful, they can become a little bit waffly and bland in some of what they contain. Ours, of course, is never that, as Susan will attest, but I see no reason why we should not look at that. It is a wise and useful suggestion. I like that idea.

Susan Lapworth: Yes, I like the idea, too. We will take that away and think about it.

The current configuration of the panel has served us reasonably well in that start-up phase, but it is clear, not least from some of the evidence that you have heard, that that will not help us as we push into the next phase of the OfS's development. We want to find ways to extend the reach of the panel and the insight that we can get from its work. Thinking about it more as a student engagement forum that can have tentacles that reach out into the sector would be helpful. We are also thinking about other ways that we can get more structured student insight into the work that we do. The next development is under way in terms of the thinking.

Lord Cromwell: Exciting stuff. Thank you very much. Thank you, Chair, for being patient.

Q123 **Baroness McGregor-Smith:** Turning now to the staff and teams who work in the OfS, clearly one challenge—not just in this sector but across many sectors, particularly coming out of the pandemic—is more high staff turnover. Particularly with some of the changes that you are seeing in the remit, do you have the expertise and experience of people that you need at the moment to fulfil your obligations? Do you have the right people to help you do what you are doing?

Susan Lapworth: If I think back to 2018, the shift to being a regulator was challenging in the OfS as well as for the sector. We took new, slightly unwieldly legislation, worked out how we did it in practice, and created a brand-new organisation from scratch, often without the time and the space to think through some of those things in the way you might like. The pandemic did not help, so the timing was not brilliant. We did not get everything right, and we can certainly identify things that we would have done differently if we had our time again, but we have done a pretty decent job in those circumstances.

In the final years of HEFCE, staff turnover was around 10%. In the early years of the OfS, it was similarly around 10%. It dropped off during the pandemic as people probably sat tight. It has drifted back up a bit since. It is nothing unusual. James talked earlier about the headcount, which is broadly exactly the same as the headcount of the people who came to the OfS from the predecessor bodies, although we have more complex work and a bigger and more diverse sector to deal with.

Going beyond the numbers, my colleagues are excellent. They do a good job in sometimes difficult circumstances. We have a wide range of expertise, including people who understand this sector. I have worked in this sector since the early 1990s. Many colleagues have a similar track record; they have worked in providers, sector bodies, predecessor organisations, often in quite senior jobs. We understand the sector.

We also need people—in a way that HEFCE did not—with regulatory expertise, because Parliament has given us that job. We have needed to grow that from scratch as we have been getting up and running. We have done that through a mix of recruiting and learning from other regulators. We have a new constituency of fellow regulators that is helpful to us. Also, we do quite a lot of work internally on developing the capabilities of staff so that they understand the theory of regulation and how to do that in practice. That is still a work in progress, but we have come quite a long way.

The resourcing envelope has always felt pretty tight, as you can see that from the comparison with the staffing numbers before the OfS and in the OfS. That means that we have needed to prioritise ruthlessly what we do and how we do it. As we said earlier, it has not always been possible to progress the work that we might have liked at the pace we might have liked. That resource squeeze has been challenging for colleagues, who have worked exceptionally hard in quite difficult circumstances for prolonged periods of time. I am grateful to all of them for the work they have done over this tricky start-up phase.

Q124 **Baroness McGregor-Smith:** Moving on to the costs going forward for the OfS, which will go up by 13% next year, which is more of a burden on a sector that has its own challenges now with inflation, capped costs and everything else that it is dealing with, how do you ensure that you are value for money for the sector? What does it think of that?

Lord Wharton of Yarm: I will start by echoing Susan’s comment about the work that the staff have done in recent years. It has been a challenging environment, as we all know, particularly with the pandemic. The staff at the OfS, in my view as chair of the board, have performed excellently. That should go on record.

Our annual operation costs are approximately £30 million, most of which—87%—is funded from the registration fees. The registration fee in 2021-22 came out at £12.82 per full-time equivalent student. It is not huge money per student and we need that money to operate. We face the same challenges as many others, as well as additional challenges in the work that we will undertake. Our registration fees are set by Ministers rather than by the OfS; we do not have the final say in what they will be.

We are expecting significant new functions as a result of the freedom of speech Bill. When it is passed, we will need to undertake a lot of work. It is right and necessary to increase our investigatory work, particularly on the quality of student outcomes. A regulator that does not regulate rather undermines its own position. We take on work from the QAA, which has always been funded by the sector, and of course we are subject to the same cost pressures as everybody else with inflation and the challenges we are all fully aware of in the broader economy.

We have been able to do a number of things to drive value for money as best we can. We have reduced our office space, reducing rent and utility costs. Taking on the quality work from the QAA will generate a saving to the sector of around £500,000. We do all the things you would expect of an organisation—procurement, business planning and looking at more efficient ways of working. We also publish performance measures on efficient regulation. That includes some of the measures of our operational performance and a measure of the average registration fee paid by each provider per student, which has reduced in recent years.

Nobody wants to put fees up or to be in a situation where it is necessary. For the reasons I have set out, it is necessary and we are certainly not living it large on that. We make our own cost savings to try to deliver what is required of us in the interests of the sector. I hope it will be recognised across the sector that the financial impact on individual institutions is relatively small, but I do not deny that some people will feel that any increase is another challenge in difficult times.

Q125 **Lord Burns:** I would like to ask about the designated quality body. The curious dispute between the QAA and the OfS has led to concerns in the sector that England's regulatory framework for quality and standards no longer meets international standards as reflected in the European standards and guidelines. Do you worry that this departure from international standards risks the international reputation of the sector, which relies so heavily on overseas students?

Lord Wharton of Yarm: We care very much about the international reputation of the sector, of course. It is important in its own right and it is also a significant trade contributor to the sector in the UK because the sector is quite big.

There are two important aspects to your question. First, the reputation of higher education in England is based on excellent teaching and research at universities and colleges. That is what attracts international students and staff. Reputation is not based on any particular quality assurance process. That said, we need to ensure quality ultimately. To do that as a regulator, we need to get the sorts of reports and information from the assurer that will allow us to take regulatory action. Hopefully, we are moving towards a place where we will be able to take robust regulatory action with reports and with information that allows us to mitigate the risk of legal challenge. We intend to be a proactive regulator on quality, and this will allow us to do that.

It is important, though, that international partners and prospective students understand that the sector is well regulated. I am confident that it is. The sector does not claim that it is too lightly regulated in this area. Quality is an important area of regulation. That is the message that I expect the OfS, the sector, UUK and the QAA to robustly and proactively present to international audiences. We have a world-leading higher education sector. As the regulator, our job is to regulate and, on quality, we intend to do so and to step up our activity. There have been some shifts that not everyone may have liked, but they will allow us to do that more effectively and will lead ultimately to better-quality outcomes for students.

Susan Lapworth: A second area of challenge here is the particular approach that the European expectations put in place and the extent to which we can see a mismatch between those expectations and what HERA requires of us. The obvious example here is that the European approach does not properly accommodate a risk-based system. You have heard from witnesses that the sector wants us to be more risk-based rather than less. The European model does not do that. It pushes us towards having a cyclical review process for all providers regardless of our judgment of risk. That does not fit with the legislation.

My personal reflection is that the family sector history tells us that that universal cyclical review process can generate a significant burden for institutions that does not necessarily add value to its work. I am not generally persuaded by arguments that we should stop being risk-based and be more universal in that sense.

The European expectations focus on a particular quality agency and its work, not the quality arrangements in a country as a whole. In our context, it looks at the QAA and its work rather than at the whole regulatory system. HERA divides up responsibility for quality. Whether we have a DQB or not, only the OfS can set requirements and conditions of registration and decide whether those requirements are met and whether to use its enforcement powers. The DQB does the bit in the middle about assessing an individual provider. That means that the European focus only on the work of the QAA misses those important parts of the wider framework.

Generally, we think that the European model needs modernising and updating to accommodate more diversity in the way that different national systems operate. We have written to EQAR on some of those points and we are keen to understand its perspective.

Q126 **Lord Burns:** Your evidence says that the QAA was removed. It said that it stood down. You mentioned in your evidence that the quality of assessment reports, the methods of assessing quality and standards, conflicts of interest and so on were factors behind this. I have been trying to find out by talking to others as well. What is this about? Can you provide more detail about this? We keep getting these phrases repeated, but we are puzzled about what lies in them.

Lord Wharton of Yarm: It is very important, and thank you for the opportunity to answer that question. There is no ambiguity about the OfS's position on this important issue, particularly in light of some of the evidence that you have heard at this committee.

We cannot see a credible route for the QAA to return to the role of the designated quality body in England. We set out our reasons for that in the lengthy report, of 168 pages, that we are required to send to the Secretary of State about the QAA's suitability for the role. In summary, the key issues were that its reports were not good enough for us to use to make regulatory decisions. Across a four-year period, we could not use around two-thirds of the QAA's reports the first time they were submitted.

There is a significant difference of views about how quality should be regulated. The QAA still feels too much part of the old system which the OfS was set up to replace, and we have found it difficult—indeed, it has not been possible—to move past that. A conflict of interest is built into the QAA's work. It is not credible for a body to operate in the interests of paying members and make judgments to inform potentially high-stakes regulatory decisions about those same providers.

There have been suggestions that there were no real issues with the QAA's work. That is just not right. The OfS is a serious organisation and we have a serious job to do. It is not credible to suggest that we would concoct significant concerns about the work where none existed. I talked about how the scale of the reports that we found were not suitable for the use for which we needed them on the first submission.

We have, though, wanted the QAA from the beginning to deliver what we needed so that we could make effective regulatory decisions and impose regulatory penalties where appropriate. That is not what happened. The QAA has acknowledged to us at various points that there have been issues with its work. We understand there is a strong preference in the sector for a designated body, but HERA does not require one. Regulators in other sectors operate with in-house quality functions, as does the Australian higher education regulator.

If we are to deliver robust investigations, reports and—where appropriate—penalties on issues of quality, this was necessary and had to happen. That, ultimately, will be in the interests of the sector, its reputation and, very importantly, the students.

Susan Lapworth: I will pick up two themes. One is the independence of a designated body. Then I will give you a bit more detail on the performance issues. That might be helpful.

I talked about the way HERA divides up responsibility for quality, with the OfS doing the bits at either side and the designated body doing the bit in the middle. That means that the DQB's assessments have to be done in a way that fits properly and securely within that wider statutory and regulatory context. We know that is right, because HERA gives the OfS an express duty to oversee the performance of the designated body, and that includes the ability to issue directions about how the DQB works. HERA deliberately curtails the independence of the DQB to make sure that it fits within that wider statutory scheme.

That dynamic is not well understood in the sector. When we hear about the independence of the QAA, it feels as though people do not understand the absolute importance of the QAA's work fitting in the wider whole that the OfS has responsibility for. It is that tension between the OfS's legitimate need to have assessments that we can use to make, as James says, high-stakes regulatory decisions and the QAA's preference for greater independence. That is what has played out here.

On the performance issues, James has given you the top-line number. We commissioned over the four-year period 88 assessment reports of various kinds from the QAA. We could not use 58 of those—so around two-thirds—in regulatory decisions the first time they came in. That pattern was consistent across the four-year period. In the most recent year, we felt that we could not use around 64%.

Lord Burns: Did you give them ongoing feedback about those reports and why you could not use them?

Susan Lapworth: Yes. The team working on these issues gave extensive feedback, often on a report-by-report basis, sometimes thematic comments across a range of reports.

HERA requires the OfS to have a quality assessment committee, an independent committee with membership from the sector, experts in these issues. That committee has met with the QAA not quite at every meeting but regularly. There has been open and frank discussion about the QAA's work. That committee has provided detailed feedback. It has been very clear when it wants to express concerns, and I am confident that those concerns have been conveyed and shared.

There has been a lot of feedback, and a lot of work on both sides to try to make it work. We took the view that trying to make it work was right, and in the end we just could not. As James said, we have to regulate quality rigorously and in a way that we can explain and defend to a provider if we are thinking, for instance, of refusing registration. We need a report that sets out the judgment, the evidence that the QAA assessors have looked at, and the reasons why that evidence stacks up to that judgment. If we cannot see that in the report, we cannot explain that to a provider when we are thinking about refusing registration. The provider, quite rightly, will think that that is a problem and we will find ourselves in court, no doubt. We could not continue with that dynamic.

Lord Burns: Did Parliament envisage that you would take over the DQB role for the long term, or is this a short-term move? What body will carry out this role?

Susan Lapworth: From memory, lots of the conversation in Parliament was framed with an assumption that that would be the QAA, and indeed that is where we ended up in 2018, although back in 2018 the OfS board flagged some of these concerns that would need to be addressed. HERA is clear that there does not have to be a DQB. The functions revert to the OfS. As James says, that is not unusual in other regulated sectors and it is not an in-principle problem. In lots of ways, it makes it easier for us to practically operate because we can work closely with the academic experts who do the work for us. We can make sure that there is a clear shared view of what the regulatory system needs from that activity.

You are right that there is no obvious body that could take up that role. We are open to that changing, but our focus just now is on standing up the work that we need to deliver to pick up the activities from the QAA. That is our focus in the medium run.

Lord Burns: The case was built in—this happens with other regulators—that if this body was not able to do it, you would do it yourselves in the short term. Why did Parliament put in the notion of a separate DQB and actually spend some time making that decision simply for you then to take it over on a long-term basis afterwards, which you now imply you will do?

Susan Lapworth: As I have explained, the logic of having a separate body was facilitated by the legislation, but the legislation does not say that there must be a designated body. Otherwise, we would not be here; we would be in a different position. Parliament must have intended it to be okay for us to do the work. We are acting within the boundaries of the legislation.

The legislation is framed to point to a particular type of body with a particular set of activities being suitable for designation. As we look across the sector, there is no other body. The sector could design another body. The QAA could fundamentally change its approach and the way it works to resolve our concerns, although I agree with James that that feels unlikely. We are open to there being another body in future, but it is difficult now to see where that might come from. We can do the job. We know what needs to happen. I am confident that we can do that effectively.

Q127 **Viscount Chandos:** You say that you can do the job. Does that mean that you can reassure the committee that the absence of rigorous quality regulation that you saw in the QAA’s services will not be repeated and will be improved under the OfS? How will you do that when, in previous answers to the committee, you have acknowledged that the OfS has wider responsibilities than HEFCE and that its resources are stretched?

The Chair: Yes, do you have the expertise?

Susan Lapworth: I am confident and comfortable in reassuring you that we will do a good job on this. That is not of concern to me.

On the capabilities, first, the in-house OfS team is excellent. We have a mix of senior academic and professional staff with years of experience of working in the sector, in learning and teaching roles and in quality. That team is at least as strong and experienced as the colleagues who had been working in the QAA on these activities.

The second aspect is the pool of academic experts we need to give us independent judgments about individual providers. We recognise that that is an important part of regulating quality. That is perhaps not the impression you were given in an earlier session, but we see that as really important. We have been busy since around this time last year recruiting, training and supporting teams of those academic assessors. Primarily, we did that to stand up our programme of quality investigations that we have talked about. More recently, we have expanded the recruitment so that we can take on that work from the QAA. We are finalising the latest batch of appointments and we are at around 150 or 160 now. We are building that capacity.

I am particularly pleased, as we have done that, by the calibre of the academics we have recruited. For our business and management investigations, we have been joined by academic colleagues from management schools with strong international reputations. We are making sure that we get the best possible advice and that that advice will be independent in relation to those particular cases.

We recognise that there is a big chunk of work here to get that activity up and running, but we are well on track to achieving that, and I am confident that we will deliver it in practice.

Q128 **Lord Cromwell:** Like Lord Burns, I am curious. I do not want to intrude unnecessarily on private grief between the two organisations, because it feels rather like a clash of cultures or empires has occurred. Nevertheless, the QAA effectively was working as consultants to you. I have run consultant organisations. The key is to get the terms of reference right, which often include the detail of what should be included in a report. I cannot understand what went wrong with them sending you the wrong reports. Either the terms of reference were not correct or they were ignoring them. I am surprised that that could not have been worked out, but that is slightly water under the bridge now.

I have two questions. One is a cheeky one. How many of their staff have you now recruited into your own organisation, if any? More fundamentally, how do you respond to the statement made by quite a number of people who have given evidence to us that quality assurance should be run as an arm's-length outside body and not in OfS?

Susan Lapworth: I will start with the specification. I talked earlier about our quality assessment committee. As part of its job to oversee the QAA's work, it set out our requirements and expectations. There were KPMs in place, most of which were about the quality of the outputs and some of which were about the timeliness of the outputs. There was a clearly expressed view of what we needed. As I described earlier, we gave feedback each time to try to drive improvement in the reports. We did all that we reasonably could to be clear. We asked the QAA whether it was clear on what we needed, and it said yes. Something else was clearly going on there.

You asked whether we had recruited any QAA staff. We have staff who have previously worked in the QAA. We have colleagues with that kind of background. We have not been joined by any more recently. We said that we would be happy to bring people into the OfS but, for whatever reason, that has not happened.

I have lost the thread of the third part of your question.

Lord Wharton of Yarm: I can respond on the third, which is a view that has been expressed by some that it should be an arm's-length body. I have talked already about the challenge of the conflicts in the QAA itself and its links to the sector.

Lord Cromwell: Leave aside whether there is a QAA or not.

Lord Wharton of Yarm: I accept that. The challenge is that we must be able to regulate and enforce quality. If the body we had was not able to give us what we needed, this is what we need to do to be able to do it. As Susan has already set out, if another body is or can be created or becomes available, we would be happy to look at that. If it can provide what we need, we will be happy to look at whether that is the right answer. But we were in a position where we could not robustly and rigorously undertake the duties we were required to undertake and ensure that quality investigations had successful outcomes. That must be our overriding objective, which is why we are where we are today.

Lord Cromwell: Thank you. In principle you do not seem to feel that an arm's-length body is necessary, because you are quickly building one within your own walls to do the job.

Susan Lapworth: We are, because the work has to happen, so we have no choice. So, in that sense, that is true. The OfS board has talked about these issues right the way through the period and each time has been clear that its preference is to work with a designated body, not least because then we do not need to do that work. But it has been equally clear that the arrangement and relationship with the body has to give us exactly what we need to regulate effectively, as James has described. That is where, in the end, we could not make it work.

Q129 **Lord Clement-Jones:** I come to the question of the financial health of the sector. What financial risks does the higher education sector face? Are these risks limited to particular groups of providers, or are they widespread or systemic in nature? Is there a growing crisis in the finances of higher education providers?

Lord Wharton of Yarm: We would not use the word "crisis". Overall, the sector's finances are in good shape. That does not mean that there are not significant pressures, and we see significant variation with some individual providers in less robust shape than others. We can also see that financial performance is forecast by most providers to reduce significantly in the short term as cost pressures mount, and in general forecasts it remains lower than historic levels for a period.

The risks that we see are the real-terms decline in income from fees. We have had a £250 increase in fees in 2017 but effectively a fixed upper rate of fees since 2012. Rising costs, as we have talked about earlier, affect everybody as a result of inflation, including pay, pensions, energy bills and so on. UK students have competitive pressures. Some selective providers have increased recruitment, which that puts pressure on other providers as students may choose to go somewhere else. Less selective providers may be squeezed.

Some providers are in danger of overrelying on income from overseas students, particularly when that might focus on one country. Issues can arise quite quickly outside a provider's control that can impact on those income streams. There is the always ongoing challenge of the maintenance and improvement of facilities and buildings, the quality of some of the buildings and ensuring that they are suitable for purpose. One challenge we have found is that access to borrowing when a provider faces difficulty is not always straightforward. There may be a way of navigating a path through to survival if the borrowing is available, but it is not always as easy as we might hope it will be.

Some of these risks will affect most providers, like inflation costs, rising energy costs and so on. Others, like pensions costs or student recruitment risks, are focused on particular parts of the sector. We look at that. We look at each registered provider. We look at financial health. We step in where we believe it is necessary, and have done so successfully in the past to avert providers failing. We have been able to assist them to find a route through financial difficulty. We will publish our annual report on the financial sustainability of the sector in the next week or so, which will set our current view of the patterns and risks that we can see from the data and information that we receive.

Lord Clement-Jones: Thank you. That is a fair catalogue. Could you go into a bit more detail on how you oversee the financial sustainability of individual HE providers and the sector more broadly? Are you confident that you can spot potential risks early on and act accordingly in respect of individual providers?

Susan Lapworth: We have a statutory duty to monitor and report on the financial sustainability of providers. That is clear. We have also imposed a condition of registration that requires providers to be financially viable and sustainable. We test that at registration, as we talked about earlier, and on an ongoing basis.

We are clear that it is for individual institutions to run their finances effectively. That is not our job. Our approach is therefore designed to accommodate the huge diversity in the sector that we have talked about. We do not have a view, for instance, about the level of surplus that providers should generate or the amount of borrowing that we might be comfortable with. HEFCE used to do those sorts of things and was much more interventionist. We have taken those out of the regulatory system because we think institutional autonomy should carry the day, broadly, in relation to those issues.

Our approach has two components. We identify and model risk at a sector level to try to understand the risks and where they might crystallise. Then we look in detail at the position and forecast for individual providers. Those two things come together because we want to overlay our view of sector risks on to the individual cases. We collect an annual financial return from each of the providers that are relevant in this context. That covers recent years and then forecasts out to give us a five-year horizon. We look quite a way ahead.

We impose the same minimum data requirements on providers. That is important to make sure that they use common definitions and reporting conventions so that we can have a comparable view of key financial information right the way across the sector. We also collect audited financial statements, student recruitment forecasts and commentaries from providers to explain their financial approach and the risks that they can see.

Then we use a risk-based approach to monitor those. A provider goes through various stages depending on our judgment of risk and we filter out the ones we are not concerned about at each stage. We start with a triage process and we create indicators from the data such as the ability of a provider to generate cash from its operations, its balance sheet strength and borrowing. We identify through that process those that need a more detailed look. We ended up with just over 100 or so that needed a more detailed look last year.

We dive into the detail and the complexity for those. We look at plans and forecasts. We look at the uncertainty over the forecast period and we look at how the provider says it will mitigate risk. Often that will resolve our interest, but for some it does not, so we might engage with providers after that stage—there were around 50 last year. We try to have a conversation to make sure we have understood the providers' approach.

Then we end up with a relatively small group of around 30 where we do formal monitoring. That will range from us putting a flag on the provider's record to remind us to have another look at something on a particular date through to cases where we are quite worried and we require quite a lot of additional financial monitoring information to come through on a regular basis—management accounts, cashflow forecasts and so on. It is quite a spread across that risk-based approach.

You asked whether we are confident that we can spot risks early. Yes, while noting that this is a deliberately risk-based system and we do not look in detail at every provider every year. It is perhaps also helpful to say here that the OfS colleagues who work on these issues have a huge amount of experience. They are qualified accountants, and many have worked on these issues for HEFCE and so are familiar with the range of financial models and challenges in the sector. We are in safe hands here.

Q130 **Lord Burns:** You say that you are about to produce a report on sustainability. Can we hear the headlines? Is the present situation sustainable? We have fixed undergraduate fees. We have heavy crosssubsidy from postgraduate and international students. How far is this an issue for the Government and how far is this an issue for the OfS?

Lord Wharton of Yarm: That is a reasonable question. Our role to a great extent is to monitor the situation. As I have said, we feel that overall the sector's finances are in good shape, but that does not mean there are not challenges, I suspect. Insofar as I can give a flavour of what might come out in a future report, I anticipate it to be an iteration of that observation, which is how we see it at this current time.

The Government control significant parts of the funding environment for the sector directly or indirectly. Ministers decide the shape of the undergraduate funding system and the balance between student and taxpayer contributions. They decide the level of tuition fees for students. Ministers determine the basis on which international students can come and study in the UK. They are matters for the Government, not the OfS. Our role is to keep a close eye on the impact of decisions or changing circumstances, and to intervene where we appropriately can to assist institutions that are struggling, but it is not our role to fix their problems. It is their business and their business model, but we try to flag problems that may be coming down the track and help them where we can.

Of course, an important role that we undertake when an institution does fail is that we do what we can to ensure that the impact on students of a failure is significantly mitigated. In a recent example of that, working with the institution and other institutions, we ensured that students had alternatives and options rather than seeing their own institution disappear half way through a course.

Q131 **The Chair:** You say that you monitor 30. You will have seen speculation in the press that quite a few universities are quite severely challenged at the moment for the reasons that Lord Burns outlined.

Can you say a word about what happens when there is a potential failure and how you manage that? We heard from one vice-chancellor that, if he could see problems on the horizon, he would be reluctant to tell the OfS about it, because you might be down on him like a ton of bricks. If there is a problem, how co-operative can you be, or is that the old HEFCE style that you have pushed to one side? Do you involve Ministers when there might be a difficulty and an institution in trouble?

Lord Wharton of Yarm: I certainly hope a vice-chancellor would not feel that and I hope that they might reconsider.

We monitor and try to pick up where problems might be, and we may identify them before institutions themselves. But where institutions have problems or face difficulties, it is not our role to run their business. They are independent in themselves and how they do that. But we have quite a lot of experience in the OfS in this area and we have been able in the past to assist with finding solutions that have helped us to get into a position where we have had so few failures.

I say to anyone nervous of reporting worries or problems that they might have not to be. We will have to protect students if it looks like there is a danger to them or to their courses. We will start to put measures in place where appropriate to ensure that students are protected as best as possible. But we will also help institutions where we can and offer guidance, support and some of the experience we have had in dealing with other institutions.

Where there is a failure, yes, we talk with DfE. Most of our engagement with DfE is at official level, but of course Ministers have an oversight of these things and will be briefed on, and occasionally no doubt make decisions on, submissions on them. In meetings with Ministers, these issues arise if they are live. There have been mercifully few. Where we have seen it happen, we have been able to make a tangible difference to ensuring that students were not simply cast out with nowhere to go, which is a sign that the approach has been working.

There is a challenge, I will not deny it. If the financial climate deteriorates and we see larger numbers of institutions struggling to the point of potential failure, it becomes more difficult. So far, we do not think that that is the case, although we can identify the risks. Where there have been problems, we have been able to address them with some success, either avoiding a failure or ensuring that the students are appropriately protected when a failure could not be avoided. But this area clearly warrants a careful watching eye and there is the potential, for all sorts of the reasons we have talked about, for real challenges to arise that could seriously impact on students both financially and educationally.

Susan Lapworth: This area of our work perhaps feels more HEFCE-like, if I can take that point. It often happens behind closed doors. We do not do this in the public gaze, for obvious reasons. We do not want to make the situation worse for a provider.

Our experience is that our close engagement is useful. It sometimes forces a provider and its governing body to properly face financial challenges in a way that perhaps does not feel terribly comfortable. We have also had cases where we have engaged with a provider’s lenders to try to smooth some of those conversations. We are confident that we can do that properly behind the scenes, often without having to use our formal powers. As James says, the formal powers become helpful if we think the provider is at material risk of exit. Our interest then is to intervene to make sure that student protection measures are in place.

A few weeks ago, we published three case studies of providers in these circumstances. One was a provider that closed, and we explained how that worked. Two of the other case studies are anonymous because they came out of the other side of those financial difficulties. The case studies show how we engaged and how we worked, and how we were sensitive to the particular circumstances and the need to be proportionate and reasonable in the way we did our job.

The Chair: Presumably, and I think I know the answer to this from what you have been saying, there is this idea that students need to know when they go to an institution that it is secure for the future. If they are on your watchlist, you keep that quiet and they may end up as part of a student protection plan, but the dangers of disclosure outweigh the need to inform students. I assume you would say that.

Susan Lapworth: Yes. It is a tricky balance. Providers obviously do not want us to talk about financial difficulties in public. They are trying to save the business. You can see it might not look like that to prospective students and their parents, who perhaps would want to know.

The group that is forgotten in this dynamic are the current students of the provider. If we were to say something that precipitates the financial failure, those current students are at risk of a disorderly exit with no one to scoop them up and to make sure that they have options. We made that call in those three case studies that I talked about. The fact that two of them are anonymous tells you that we did not say anything and it came good. In the third one, we carefully chose our moment to talk to the current students. We brought them into the conversation at the point that we were able to say, "This is what is happening. These are the choices for you. They are good choices. Here is the support, advice and guidance that you need to navigate your way through that". I think we got that right in all three cases.

The Chair: Thank you. We have had a long session. Thank you both very much for the time that you have given us this morning.