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Dear Lord Hollick

Response to the House of Lords Industry and Regulators Committee Report

Thank you for your report of 13 September on the work of the Office for Students (OfS).

The report delivers a strong critique of the OfS's work, and we will look to act on your findings. Our response is enclosed with this letter and sets out how we plan to address the Committee's recommendations.

While this has been a challenging process for the OfS, your Committee's report offers an opportunity to reflect and to change areas of our work where it is clear we need to do things differently. We are committed to delivering this change.

We would like to thank the Committee for its conscientious work throughout the inquiry and in delivering its final report. We welcome your efforts to ensure you heard a wide range of perspectives and would like to thank everyone – including all witnesses and contributors – who participated in the inquiry.

The higher education sector is critically important to the country's success and wellbeing. It provides people in communities across the country with the opportunity to improve their lives. It generates huge value for the economy and our society. As a regulator with significant powers over such a strategically important sector, the OfS is rightly subject to scrutiny and accountability, which is why we welcomed the Committee's focus on such important issues.

We welcome the strong sentiment from witnesses – students, vice-chancellors, mission groups and sector representatives – that regulation is needed to protect and maintain the standards of this critical national asset.

The report identified several issues in relation to our **engagement with students**. As a result of the Committee's recommendations, we are expanding our existing plans for a review of our approach to student engagement, to consider more broadly the nature of students' experiences in higher education, and to identify where regulation can address the greatest risks to students. We want all our engagement with students to be meaningful and impactful, and our reframing of the role of our student panel is designed to empower students to raise the issues that matter to them.

Similarly, we recognise the challenge on our **relationship with the sector** we regulate. Robust, two-way dialogue is key to regulation that works effectively in the interests of students. We have significantly increased our engagement with institutions in response to feedback, and this will be an ongoing priority. The Committee's report gives further impetus to that work with colleagues across the sector to reset these important relationships.

The Committee's report has rightly given a strong focus to concerns about the current and long-term **financial sustainability** of the higher education sector. We agree that the sector is facing growing risks and we are retesting our approach to financial regulation in this context, including developing the sophistication of our approach to stress-testing the sector's finances.

We look forward to continuing to work with the stakeholders who participated in this inquiry as we progress our work in response to the Committee's recommendations. We see the response we are providing today as the start of a continuing programme of engagement on these important issues. We would be delighted to continue discussions and dialogue with the Committee, through written updates or further meetings with you and Committee members.

Many thanks again for the time and commitment you and your colleagues have given to this inquiry.

Yours sincerely



Lord Wharton of Yarm
Chair



Susan Lapworth
Chief Executive

House of Lords Industry and Regulators Committee Inquiry into the work of the Office for Students

Office for Students response

Publication date: 27 November 2023

OfS response to summary of conclusions and recommendations

The paragraphs in the House of Lords Industry and Regulators Committee report to which we are responding appear verbatim in the yellow boxes below. As in the report itself, standard text represents the Committee's conclusions and bold text represents its recommendations.

The Office for Students' duties and decision-making

[1] It is claimed that the OfS' statutory duties are clearly set out in legislation, but they have been applied inconsistently and unequally. Given that the OfS' duties are "have regard to" duties, with no sense of priorities, the regulator, and by extension the Government, have a large degree of freedom in choosing what to focus on. In our view, this creates confusion over the OfS' objectives. (Paragraph 34)

[2] In particular, the OfS does not appear to have prioritised its duties to protect the institutional autonomy of providers or to have regard to the principles of best regulatory practice, causing friction between the regulator and the sector. (Paragraph 35)

[3] Moreover, the OfS appears to believe that having regard to its duties does not require it to demonstrate that it has given weight to the underlying objectives of those duties. This makes it more difficult for the OfS to be held accountable for its compliance with its duties. (Paragraph 36)

[4] When making changes to its regulatory framework, the OfS should make clear how it has taken its statutory duties into account, and where it has not done so, explain why. It is particularly important that clear reasons are given for any limitation of institutional autonomy. (Paragraph 37)

[5] The OfS should improve adherence to best regulatory practice through closer alignment with the Regulators' Code. It should do so with respect to how it implements its policies and procedures, as well as how it develops them. (Paragraph 38)

[6] The Government should consider whether the OfS should be required to demonstrate that it has taken account of particular objectives, rather than merely stating that it has regard to them. (Paragraph 39)

OfS response

[1-6] The higher education sector is complex, and the interests of students, universities and colleges, and society are not always neatly aligned. This complexity is reflected in the OfS's general duties, which require us to consider different interests and perspectives in everything that we do. The four regulatory objectives in our regulatory framework, for example, focus on the interests of students because the OfS was established to prioritise those interests. But we must approach delivery of our objectives within the boundaries of the statutory framework that Parliament gave to us and recognising other important considerations, such as institutional autonomy.

We understand that institutional autonomy is vitally important for the English higher education sector to flourish and that the ability to exercise autonomy is often, but not always, consistent with the interests of students. A critical component of good regulation is enabling those universities and colleges that meet our requirements to operate and innovate without undue interference. Compliant higher education institutions are best placed to make the right decisions for their students in their particular contexts. Wherever possible we want to unleash the excellence in our sector rather than constrain it and, to regulate effectively and lawfully, we must consider autonomy alongside our other general duties. In doing so, we recognise that different contexts may point to different weightings of these duties. This is therefore an integral part of our role, and we are continuously working to get this balance right.

The evidence the Committee received from witnesses suggests that this aspect of the statutory framework – the obligation to balance general duties rather than see them in a hierarchy – may not always be well understood. When we publish outcomes to our consultations, for example, we endeavour to set out how we have considered our general duties and the reasons we may have prioritised one over another. Typically, any decision that limits institutional autonomy is likely to be a result of weighting other factors more strongly. For example, we may decide to place more weight on promoting quality in the provision of higher education, because of the risks posed to students if unchecked institutional autonomy means poor quality courses continue. As a result of the Committee’s comments, we will consider how we can explain more fully in future how we approach balancing our duties and why we balance them in a particular way in individual decisions across our activities.

Similarly, the Committee’s recommendations are helpful as we ensure we are meeting the requirements placed on the OfS in relation to the Regulators’ Code.

[7] The OfS has now become involved in the micro-management of issues such as freedom of speech and sexual harassment. While undoubtedly important, these matters would be better dealt with by effective review of provider governance and disseminating best practice rather than through prescriptive regulatory requirements and time-consuming processes. (Paragraph 47)

OfS response

[7] The regulation of freedom of speech is a new function given to the OfS following the passing of the Higher Education (Freedom of Speech) Act in Parliament earlier this year. It is not only a statutory requirement but is also in the interest of students. Higher education is not high quality if it is not grounded in freedom of speech and academic freedom. The 2023 National Student Survey found that one in seven students in England feels unable to express their views at university, and this is of concern to us. We are also aware of data suggesting that a majority of undergraduate students support the requirements in the new legislation.¹ We are engaging with the sector on the implementation of these new functions and have set out a phased timetable to allow time for institutions to prepare for the implications of the legislation, with a commitment to minimise regulatory burden wherever we can.

¹ See <https://www.kcl.ac.uk/policy-institute/assets/the-state-of-free-speech-in-uk-universities.pdf>.

Our work on harassment and sexual misconduct is driven by the goal to improve students' experience of higher education. We had already sought to address this issue through self-regulation, such as dissemination of effective practice and a voluntary statement of expectations. Our current consultation on further regulatory steps was launched following an independent evaluation which found that progress had been inconsistent and insufficient.² We know that this lack of progress is in the context of a serious issue in English higher education; in 2020, full-time students were more likely to have experienced sexual assault in the past year than any other occupational group.³

Approximately 17 per cent of responses to our consultation on harassment and sexual misconduct came from students and their representatives. This response rate is significantly higher than we have seen for other consultations, and underlines the importance of these issues to students, who are strongly supportive of further action in this area. Our consultation sets out a range of proposals, designed to ensure institutions can decide for themselves the action that would be effective in their contexts, rather than requiring them to adopt bureaucratic processes. It also discusses issues of regulatory burden as well as the effectiveness of the proposed measures. We are now considering carefully the points institutions and students made in their consultation responses as we consider the options for our future approach.

[8] We note that the Government is committed to a public body review of the OfS. As well as considering whether the OfS' work remains useful and necessary, the Government should review the activities of the OfS with a view to focusing on the strategic issues facing the sector. (Paragraph 48)

[9] The proliferation of regulators in the higher education sector has caused duplication and red tape, increasing the burdens on providers—particularly in the area of graduate apprenticeships, where at least four other regulators have responsibilities in addition to the OfS. This issue is exacerbated by the apparent lack of effective collaboration between regulators. (Paragraph 54)

[10] We welcome the Minister's recognition of the problems created by regulatory duplication in the higher education sector and his willingness to address this issue. In its response to this report, the Department for Education should set out in further detail the steps it is taking to streamline regulatory responsibilities within the sector, including its proposed timetable for this. (Paragraph 55)

OfS response

[8-10] We agree with the Committee's comments that duplication and burden should be reduced wherever possible. We talk to and share information with the Institute for Apprenticeships and

² www.officeforstudents.org.uk/publications/evaluation-of-statement-of-expectations-final-report/.

³ Office for National Statistics, 2021, 'Sexual offences prevalence and victim characteristics, England and Wales'. Available at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/sexualoffencesprevalenceandvictimcharacteristicsenglandandwales>.

Technical Education, the Education and Skills Funding Agency and Ofsted, and use Ofsted reports in our monitoring of quality in order to avoid duplication wherever possible.

We look forward to engaging with the government on the Public Bodies Review of the OfS and on work led by the Department for Education (DfE) to streamline regulation across the various regulators active in the higher education sector.

Financial sustainability

[11] The higher education sector faces several financial risks. These risks are exacerbated by the freezing of tuition fees for home undergraduate students, the sector's main source of income, especially at a time of high inflation. Higher education institutions now make a loss when teaching domestic students and conducting research. These shortfalls have led institutions to become increasingly reliant on cross-subsidy from international and postgraduate students, whose fees are not capped. (Paragraph 96)

[12] The contribution of international students to higher education is valuable and welcome but the sector's dependency on their fees comes with risks. (Paragraph 97)

[13] There is a worrying complacency in some quarters that the premium from overseas students could be banked for the long term. But this takes no account of a) the significant imbalance in where overseas students are coming from, particularly China, which concentrates the risks of geopolitical shifts; and b) an increasingly competitive international environment. It is therefore unclear why a student would pay a substantial premium to study in the UK, whilst in other countries, which may include their own, the quality of the offer is improving. (Paragraph 98)

[14] The current system of higher education funding is not sustainable and will lead to growing issues in the coming years. The decline in the real-terms value of tuition fees has led institutions to make substantial efficiencies already, and the extent to which further efficiencies are possible is unclear. Further funding shortfalls will lead to risks for the breadth and quality of higher education provision. (Paragraph 99)

[15] Given the scale of these challenges, we were surprised by the OfS Chair's assertion that the sector's finances are "in good shape". This is not an assessment that we or most of our witnesses share. In our view, this remark is indicative of the insufficient attention the OfS has paid to the financial risks facing the sector. (Paragraph 100)

[16] While individual institutions are responsible for managing their own finances, the Government controls their main sources of income through the cap on tuition fees for domestic undergraduates, and through research funding, including via its approach to the UK's association with Horizon Europe. It also has an influence over the level of international student recruitment, a key part of providers' business models, through its immigration. (Paragraph 101)

[17] It is therefore the responsibility of the Government to put in place a stable funding model for higher education that enables institutions to plan for the long-term sustainability of the sector. It has yet to do this. (Paragraph 102)

[18]: The Government should review how higher education is funded. In doing so, it must provide sufficient clarity for institutions to plan for the long-term and set sustainable funding and delivery models for the higher education sector. This review should take into account the planned changes to the student finance model under the Lifelong Learning Entitlement. (Paragraph 103)

[19] The OfS' targeted approach can mean it communicates little with institutions whose financial data appears healthy. This limits the regulator's knowledge of providers that are not in financial difficulties, makes it harder to identify risks that are not evident in financial data and means that relationships may have to be built from scratch if difficulties occur. It is welcome that the OfS has recognised this and introduced greater direct engagement with providers this year. (Paragraph 117)

[20] The OfS should prioritise holding discussions with providers more regularly about their financial situation, in particular those that are not considered high-risk. (Paragraph 118)

[21] It is worrying that some institutions would be unwilling to engage with the OfS in the early stages of falling into financial difficulty for fear of a punitive regulatory response, especially given the OfS' risk-based approach to engagement. This hampers the ability of institutions and the regulator to plan together and take early action against emerging financial risks. Trust would be improved by greater mutual engagement between providers and the regulator, which could help improve the willingness of providers to discuss emerging problems. The OfS' publication of case studies, providing more clarity for providers on its approach, is welcome. (Paragraph 136)

[22] The OfS has indicated that its role is not to bail out failing providers but to support their students to continue their studies in other institutions. While this was successful in the case of a recent market exit by a small provider, there are questions as to the practicality of this approach in the event of the failure of large institutions or of large numbers of institutions. In these instances, it would be difficult to ensure alternative places for large numbers of students. (Paragraph 137)

[23] HEFCE, the OfS' predecessor, had the ability to facilitate and broker mergers and consolidations of providers where there were difficulties, facilitating planned solutions rather than disorderly exits. It is not clear whether either the OfS or the Government has taken on any strategic oversight of the sector in this vein, despite an apparent expectation of greater consolidation of providers through mergers. (Paragraph 138)

[24] The Government and the OfS should clarify whether there is any strategic oversight of the higher education sector's long-term financial stability, including whether to encourage mergers and consolidation. If no such function exists, they should consider whether it is necessary and which body should take this responsibility. (Paragraph 139)

OfS response

[11-24] The Committee is right to focus on the risks to the long-term financial sustainability of the higher education sector in England. Our May 2023 publication, based on the data submitted to us

by institutions ('Financial sustainability of higher education providers in England – 2023 update'), highlighted inflationary pressures, cost of living challenges, a decline in the value of undergraduate student fees, and competitive pressures for UK and international students, among others.⁴ While the data showed that, overall, most institutions remained in good financial health, our report made clear that if some of these risks were to materialise individually, or in combination, the financial challenges facing the sector would increase. So, our view in May 2023 was that the overall picture was of a sector in good financial health, but we were concerned about the financial fragility of the system in the future. Six months on from that publication we see many of these risks persisting and continuing to place pressure on institutions.

We believe we have a good understanding of the financial position of individual institutions. But as a result of the increasing risk profile for the sector, and in recognition of the challenges identified in the Committee's report, we are continuing to evolve our approach to monitoring financial risk and will further develop our ability to stress-test the sector's finances. We have commissioned an independent review of the financial information we collect from institutions each year and will be implementing changes to reduce data burden and align data collection more closely with particular risks. We are also changing the way we engage with the sector on these issues; for example, with an increased focus on sensitivity analysis.

To support market-wide stress-testing of the sector's finances, we have begun new engagement activity, such as convening roundtable sessions with finance leaders from across the sector to discuss financial sustainability and the particular risks they are facing. This includes hearing from those that are not experiencing financial difficulties, and using our engagement activity to set expectations for institutions about how they should be assessing their own financial risks given the pressures in the operating environment.

These conversations have helped us to understand in more detail the range of issues that institutions are facing, and the approaches they are taking. They have also provided reassurance: they have not so far identified new risks that were not previously visible to us. This reassurance is no reason for complacency, however, and we are building this engagement into our regular cycle of risk identification and mitigation. We are also reviewing our approach to engagement with institutions after they have submitted their annual financial return.

Our roundtable discussions also provide a valuable opportunity to hear feedback from finance leaders on the OfS's approach in this area. In making changes to our approach, we are conscious of the need to strike an appropriate balance between the desire we share with the sector to reduce regulatory burden and the value – for students, the sector and society – of the regulator having early intelligence about financial risk. In developing this aspect of our work, we will look to learn from regulators that have responded to financial challenges in other sectors.

We agree with the Committee's concerns about the sector's reliance on income from international students. We have consistently highlighted the risks of overly ambitious international recruitment plans and have issued warnings about the need to manage the risk of volatility in this area and the potential impact on institutional-level financial sustainability. In May 2023, we wrote to 23 higher education providers with high levels of recruitment of students from China. We asked those most at risk to share with us their plans to understand and mitigate the impact of any unexpected reduction

⁴ www.officeforstudents.org.uk/publications/financial-sustainability-of-higher-education-providers-in-england-2023-update/.

in student registrations. We are continuing to follow up with individual institutions to ensure they are managing these risks effectively.

Our work on the financial sustainability of individual providers generally happens in private; institutions and their students would be likely to face serious negative consequences if we made emerging financial difficulties visible, and this could be a significant impediment to any potential financial recovery plan. Our engagement with providers in financial distress is supportive but firmly focused on the interests of students, who would be significantly affected if an institution could not continue to operate. The case studies we have published show that our approach is careful – giving providers time and space to resolve financial difficulties – and has not involved the use of tools that the sector might consider punitive.⁵

The Committee's report suggests that institutions would feel reluctant to contact the OfS about financial difficulties and this is of concern to us. It is important that all institutions recognise that they have an obligation to tell us if they foresee financial difficulties – our experience is that the earlier we know about potential financial difficulties, the easier it is to work with an institution to understand the issues and the steps it is taking in response. We also need to rely on providers as autonomous institutions to improve their financial governance and address financial risks proactively, before they materialise and challenges become acute.

In relation to potential market exit cases, we are clear that our role is to use the tools we have to minimise the impact on students if a provider is unable to continue to operate. We do not have the remit, powers or funding to intervene to prevent closure or to facilitate mergers or acquisitions. We do, however, work closely with the government in these circumstances to ensure a joined-up approach and to underpin expert advice for ministers.

As the Committee notes, we intervened successfully during the market exit of a small provider in 2022, with all students offered the opportunity to continue their courses. We share the Committee's concerns about whether the same approach would provide an acceptable level of protection for students in a more complex case; for example, for a larger institution with a more complex portfolio of courses and activities. Our regulatory tools are limited, the system-wide protections for consumers in other sectors such as finance, water or energy are not present, and there is no special administration regime for higher education, as exists for further education colleges. We continue to discuss these issues with the government.

Value for money

[25] Given the financial cost of higher education to students, we welcome that the OfS is focused on ensuring their courses are of sufficient value and lead to positive outcomes. It is likely that this has already had some impact in focusing institutions on improving provision. (Paragraph 162)

⁵ www.officeforstudents.org.uk/publications/financial-sustainability-and-market-exit-cases/.

[26] Value for money in the context of higher education is a subjective concept and is difficult to measure. However, the proxies used by the OfS to indicate positive outcomes, particularly in relation to continuation and completion of courses and graduate outcomes, are simplistic, narrow and fail to reflect the broad value of the higher education experience and the skills needed for the future. (Paragraph 163)

[27] The OfS' proxies also hold providers accountable for their students' subsequent employment outcomes, which are often affected by many factors outside the providers' control, such as students' backgrounds. Focusing too heavily on regulating according to these outcomes has the potential to run counter to efforts to widen access to university, both by penalising institutions that take on students from disadvantaged backgrounds and by underplaying the benefits of courses that are less directly vocational. (Paragraph 164)

[28] The OfS should conduct and publish further work to assess the broader value of the higher education experience, particularly for those from disadvantaged backgrounds. This should involve looking at the potential to measure the wider value added by higher education, as well as the outcomes that follow it. This work must be done in collaboration with stakeholders across the sector, including students. (Paragraph 165)

OfS response

[25-28] Value for money for students in higher education is extremely important and conceptually difficult, and we welcome the Committee's work in highlighting the challenges here. Our first three regulatory objectives – on participation, experience and outcomes – seek to capture what this concept means in regulatory terms.⁶

Building from these objectives, we have a key performance measure (KPM) for value for money.⁷ This KPM consists of a group of indicators that, taken together, represent aspects of students' experiences that contribute to their views about value for money, although we are clear that is, and can only ever be, a proxy. In designing this KPM, we drew on independent work with students that we commissioned and published in 2018. We are expanding and refining these indicators over time and welcome feedback on how to improve this measurement. In light of the Committee's recommendation, we will engage with students and sector representative groups on possible approaches to creating a robust measure of the wider value of higher education, as we seek to understand how this might work conceptually and in terms of practical implementation, such as data collection. This will form part of our work with stakeholders in better understanding the student interest, as discussed on page 16.

Regulating student outcomes is one part of our approach to regulating quality and we take care to ensure that a provider's performance in relation to our indicators is never the sole determinant of whether we judge an institution to be meeting our requirements. We take context and student characteristics into account, when setting performance thresholds and when we make individual assessments.

⁶ www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/.

⁷ www.officeforstudents.org.uk/about/key-performance-measures/kpm-9-value-for-money/.

The relationship between quality and equality of opportunity is extremely important. They are closely connected and mutually reinforcing. We think all students should have a high quality academic experience that equips them for future work or further study. And students – regardless of their background – should be able to benefit from higher education. We do not think that the regulatory system would be credible if it accepted that students from disadvantaged backgrounds could be recruited onto poor courses with weak outcomes at greater rates than students from more advantaged backgrounds. We have set out our view on the importance of the relationship between quality and equality in more detail in our response to our consultation on our student outcomes requirements (condition B3).⁸

[29] It is important to remember that going to university is a very significant financial commitment to make at any time, let alone as a young person. It is therefore imperative that students are given clear, accessible information on what they can expect as part of their course. (Paragraph 183)

[30] We heard that the information provided by higher education institutions can differ greatly in this respect and that it is not clear to students what their rights are or what they can expect from their courses. This lack of transparency is unacceptable given the level of financial commitment involved. (Paragraph 184)

[31] The OfS should ensure that when prospective students apply for a course, they receive clear, digestible general information on the approximate contact hours they can expect to receive; the balance between online and in-person learning; the likely cost of living as a student on the course as it is running, including accommodation and hidden course costs; and the potential costs of student loan repayments over time for those on average graduate earnings. The OfS should hold providers to account for delivering this information, and should consider tougher regulatory consequences for those that do not. The OfS should also ensure that its approach is in alignment with the latest guidance issued by the Competition and Markets Authority on consumer protection. (Paragraph 185)

OfS response

[29-31] We agree that prospective students should have access to the right information to inform their decisions about what and where to study. Universities and colleges are subject to consumer law, and failing to comply with the law could result in enforcement action by the Competition and Markets Authority (CMA) or local authority trading standards services. The CMA's guidance states that information provided to prospective students must be clear, intelligible and unambiguous, and be provided in a timely manner, and that prospective and current students must be provided with the right information at the right time. We recently set up an agreement with National Trading Standards to help protect students' rights as consumers and have referred several cases for action through that partnership.⁹

⁸ www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

⁹ www.officeforstudents.org.uk/news-blog-and-events/press-and-media/new-ofs-national-trading-standards-partnership-to-protect-students-rights-as-consumers/.

We agree with the Committee that there are strong arguments for setting out requirements for more extensive information for students, for example information about the mix of in-person and online learning, and about the wider costs of study. We recognise that the OfS may be better placed to set and enforce these sector-specific norms than those bodies such as the CMA that have a multi-sector remit. However, in considering further regulation in this area, we are mindful that we would need to balance considerations of additional regulatory responsibilities and institutional autonomy with the interests of students that the Committee has rightly identified.

Quality, standards, competition and choice

[32] We are concerned by England's recent shift away from European quality standards, to the point that the QAA was temporarily suspended from the European Quality Assurance Register for Higher Education. Given the financial importance of overseas students to higher education institutions, it is crucial to maintain the international reputation of the sector. However, the regulatory approach in England has unnecessarily raised questions about the quality of higher education provision, including by making it unclear whether quality and standards are being regularly checked. (Paragraph 236)

[33] When the HERA was passed, it was expected that the Quality Assurance Agency for Higher Education (QAA) would fulfil the Designated Quality Body (DQB) role. It is understandable that the OfS and the QAA, which are different bodies in style and philosophy, would have some issues as they adapted to the new framework. (Paragraph 237)

[34] The OfS appears to have taken little responsibility for resolving these issues, despite frequent changes to what it expected to receive from DQB reports. While the OfS has the power to give the DQB general directions, it seems to have given very specific directions with little regard to the expertise and impartiality of the DQB. It is disappointing that the OfS apparently views its own convenience and control as more important than preserving independent oversight of quality and standards. Nor is it clear why the OfS acted in the way that it did. (Paragraph 238)

[35] It is not clear whether the OfS has or will be able to develop the capability to take on the DQB role smoothly. It is clear, however, that the OfS does not have the confidence of the sector in providing an impartial assessment of quality and standards. The current situation has the potential to be both impractical and a threat to academic independence. (Paragraph 239)

[36] The QAA has the confidence of providers and a strong international reputation. By contrast, the OfS' approach to quality has fallen out of alignment with international standards and called into question the international reputation of the sector. However, the circumstances of the QAA's de-designation remain unclear and contested, and the difficulties we faced in getting a clear account of these issues is a problem in and of itself. (Paragraph 240).

[37] The OfS should work urgently to align its framework for quality with international standards, including by publishing all assessment reports and including students on assessment teams. The OfS should explore the extent to which its own assessment of risks as part of its risk-based framework and its broader regulatory activity can count as cyclical review. (Paragraph 241)

[38] The OfS should make the necessary adjustments to its framework to comply with international standards and respect the DQB's need to make impartial assessments of quality and standards, with a view to allowing the QAA or another arms-length body to perform the role. (Paragraph 242)

OfS response

[32-38] Improving quality and protecting standards across the sector for all students is of fundamental importance to the OfS. Students have the right to a high quality academic experience, credible qualifications, and positive outcomes from their study in return for their investment of time and money. These things also matter to taxpayers, and they are directly relevant to the international reputation of the sector, which we have a collective interest in protecting. The OfS's approach to quality and standards therefore focuses on what matters to students and – for the first time – examines what providers are delivering in practice for them.

We have developed a robust system to deliver this important work, including recruiting a pool of high-calibre academic experts from across the sector to work with us on these issues. They are providing independent expert advice about the quality of providers seeking registration and degree awarding powers, as well as for assessments of registered providers where our risk-based monitoring suggests there are issues to explore. The value of their work can be seen in the first quality assessment reports we have published over recent weeks, which show a careful, rigorous and impartial assessment of the quality of courses at those providers selected for assessment.¹⁰ Publication of these reports is building an important resource for learning across the sector and will help improve quality for students, whatever and wherever they study.

Much of our work is concerned with making sure universities and colleges meet our regulatory requirements for quality; above these requirements, we seek to influence and incentivise institutions to strive to continue to improve their provision. For example, we operate the Teaching Excellence Framework (TEF) – a cyclical rating and reporting system – to support student choice, recognise excellence and incentivise improvement.

We understand the Committee's concerns about the alignment of the quality system in England with international expectations. Our view is that, looking at the system in England as a whole, the particular areas of concern identified by the Committee could be addressed – for example, students are full members of our TEF panel, and we will shortly publish reports from the TEF process alongside the reports from our wider quality assessment activities. We therefore consider that these elements of our quality system are aligned with international standards and we are committed to engaging with relevant international agencies to explore these issues further.

The OfS board, drawing on the expert advice from our independent Quality Assessment Committee, was closely involved in discussions about the work of the DQB over a number of years. It took the view that it would prefer to work with a designated body, if that body could provide the OfS with assessment reports that could be used to underpin important regulatory decisions and operate without conflicts of interest. In line with this steer, colleagues at the OfS and the Quality Assurance Agency for Higher Education (QAA) worked hard over many years to try to find a way to make the system work effectively. We were unable to achieve that, and we recognise

¹⁰ <https://www.officeforstudents.org.uk/advice-and-guidance/quality-and-standards/quality-assessments/assessment-reports/>.

that the subsequent changes, with the OfS taking on responsibility for the quality work previously undertaken by QAA, have caused concern in parts of the sector.

Our focus now is on delivering the functions that have reverted to the OfS effectively. We describe above the progress we have made with that work and are proud of the published assessment reports that our teams of independent academic experts have produced. We have always been clear that we will draw on expert academic judgement to inform our regulatory decisions about an institution's compliance with our quality and standards conditions, and this will continue to be an important part of our approach. In parallel, we are renewing our relationship with senior QAA colleagues to ensure we hear what they are learning about practice in the sector as the QAA develops its different role as a membership organisation.

In terms of the potential for a body to be designated in future, we remain open to that possibility. Our discussions with sector bodies over the last year have not identified a body that could be suitable for designation, and this means we are planning on the basis that those functions will remain with the OfS for the time being. We will continue to demonstrate that the OfS is able to deliver credible, impartial assessments under the current arrangements and we hope that increased visibility of this work will build the sector's confidence in our approach.

[39] The OfS should provide a transparent estimate of the additional costs to be incurred by taking on the DQB role and report annually thereafter on the cost and effectiveness of its performance of the role. (Paragraph 243)

OfS response

[39] We agree with the Committee's recommendation. We will publish transparent estimates of the costs incurred by the OfS in relation to the work previously delivered by the DQB. We will also establish and publish operational measures in relation to the delivery of our quality and standards functions to provide transparency about our performance.

[40] It is welcome that the OfS has provided new guidance to new entrants on its registration process. After a suitable period, the OfS should review the impact of this guidance in encouraging new entrants into the sector, with the aim of streamlining the process and increasing innovation in provision, set against realistic targets. In a similar vein, the OfS should produce greater guidance on validation, outlining the likely requirements, costs and timescales of the process. (Paragraph 257)

OfS response

[40] We agree with the Committee's recommendation and will review the impact of our new registration guidance when it has had time to take effect. We want our regulatory system to enable innovation and support high quality new providers to enter the market. At the same time, we know that new businesses can take time to establish and grow, and we recognise in our regulatory approach that the early startup phase for a provider can present risks for students that need to be understood and mitigated. We work hard to find an appropriate balance between the interests of students and of institutions in these situations.

We agree with the Committee's views about the importance of the effective operation of the validation system for the higher education market. We have provided funding to the Open University to build capacity in the validation system, and plan to review the impact of this work in due course. That review will also provide an opportunity to consider further interventions, for example guidance for providers seeking validation. More broadly, our work in this area is currently focused on the risks that can arise for students and taxpayers where courses are delivered through subcontractual partnerships between providers, where we have concerns about quality, student outcomes, and the protection of public funding.

[41] We welcome the proposed introduction of the Lifelong Loan Entitlement. However, there are concerns that the OfS' approach to regulation may stifle innovation and the prospects for a greater diversity of provision. It is also unclear whether the OfS is prepared for this substantial new role. (Paragraph 265)

[42] As it takes on its role in relation to the Lifelong Loan Entitlement, the OfS will need to review whether its approach to assessing student outcomes is flexible enough to accurately cover short courses and diverse forms of provision without overly burdening providers. (Paragraph 266)

OfS response

[41, 42] We agree with the Committee's recommendation and have begun to develop our regulatory approach to ensure it remains appropriate for the implementation of the Lifelong Learning Entitlement (LLE).¹¹ We issued an open call for evidence in July 2023 that sought views about how we could measure student outcomes resulting from modular study. We are also developing work to anticipate the changes to higher education that might arise from the introduction of the LLE, for example in relation to our regulation of access, our approach to funding and our work with the Student Loans Company to ensure that public funds are protected as the LLE is rolled out. We are engaging with the sector to ensure we hear a wide range of perspectives at the early stages of policy development.

The student interest and student engagement

[43] Although the name and role of the OfS places students at the heart of its work, some student concerns, such as the cost of living, are not within its remit or ability to address as a higher education regulator. This is an inevitable limiting factor on its ability to act in students' interests and can fuel a perception that it is not focused on students' priorities. (Paragraph 276)

¹¹ The Lifelong Loan Entitlement was renamed the Lifelong Learning Entitlement following the publication of the Committee's report.

[44] It is far from clear to many in the sector how the OfS defines “the student interest”, and therefore how it addresses it. There is a perception among some that “the student interest” is defined by the OfS in line with the political priorities of Ministers rather than the priorities of students. Its recent focus on freedom of speech issues was cited by witnesses as a key example of this. (Paragraph 277)

[45] The OfS should conduct detailed scoping work on how it defines “the student interest” and how this informs its work. This work should be informed by engagement with students, and the results should be published in a transparent manner. (Paragraph 278)

OfS response

[43-45] We agree with the Committee that a fuller articulation of how we define and deploy the concept of ‘the student interest’ would help students and the sector to understand the scope of the OfS’s role and how and why we make the decisions that we do.

As a result of the Committee’s recommendations, we are expanding our existing plans for a review of our approach to student engagement to consider more broadly the nature of students’ experiences and their interest in higher education, and to identify where regulation can address the greatest risks to students.

We will engage with current, prospective and former students, and other stakeholders, to inform this work. We expect this will result in a more granular expression of what students should expect from their higher education experience, taking account of their different reasons for entering higher education and the different ways they study. This work will allow us to be more explicit and transparent about how and why we target our regulatory interventions in the interests of students. This will improve our decision-making and provide more certainty to providers and students about our likely areas of current focus, and the factors that may result in changes to those areas. This is a longer-term agenda, and as a first step we will publish a plan for developing this work.

[46] The OfS’ mechanisms for engaging students, such as the student board member, Student Panel and the National Student Survey (NSS), are welcome and can provide valuable input. However, it is not clear how this input is used by the OfS or the extent to which it drives its work. The students we spoke to felt that the OfS did not always act on their concerns and suggested that it treated engagement as a tick-box exercise. There was also a perception that the OfS is more likely to take student input on board when it aligns with the OfS’ own direction. (Paragraph 313)

[47] It is positive that the OfS is now considering how the Student Panel can be made more effective and impact more on the OfS’ decision-making. However, it is important that these reforms allow the Panel to continue to focus on student priorities as well as the priorities of the OfS. (Paragraph 314)

[48] It was deeply concerning to hear allegations that the OfS issued veiled threats regarding the future of the Student Panel because members raised issues deemed to be of importance to students. This is precisely the sort of activity that the Student Panel would be expected to do, and it suggests that the OfS is not open or responsive to the feedback it receives from the Panel. (Paragraph 315)

[49] Given the OfS' responsibility for defending student interests, it should refresh its approach to student engagement by opening up more of its work to cocreation with students. It should also consider deepening its engagement with student representative bodies, such as the National Union of Students. (Paragraph 316)

[50] The OfS should set out annually how it has gathered student input and how this has driven its priorities and decision-making, either as part of its Annual Report or in a standalone report. (Paragraph 317)

[51] Student awareness of what the OfS is and what it does appears to be low. The OfS should do more to communicate its work to students, particularly the impact of its student engagement work. (Paragraph 318)

[52] The Student Panel must remain free to raise issues that are of importance to students, including where the views of students diverge from those of the Government. (Paragraph 319)

[53] Although the Student Panel is not designed to be a representative body, the OfS should ensure the Panel encompasses the diversity of the student population to the greatest extent possible, in particular in the balance between undergraduate and postgraduate students. (Paragraph 320)

[54] We recommend that there are at least two student representatives on the OfS' Board, to support those involved in feeling more confident to make contributions. (Paragraph 321)

OfS response

[46-54] We strongly value the perspectives we hear through our engagement with students, in student submissions to the TEF, from our student panel, in the National Student Survey, and through polling and focus groups. We share the Committee's concern about students feeling their views are not being sufficiently heard by the OfS.

Following the Committee's recommendations, we are taking a number of steps to improve how we engage with students. Some steps will happen immediately, while others will need further discussion with our student panel, and students and their representatives more generally.

We plan to reframe our student panel to ensure it operates as a forum in which members can raise issues they want the OfS to know about. We will be clear about whether issues raised by the panel are within the OfS's remit, and, if they are, whether they can be prioritised. Where we are not able to take forward issues raised by the panel, we will be open about the reasons for that.

The panel has always included students with diverse backgrounds and experiences at all stages of study, including prior to higher education, undergraduate, postgraduate (taught and research), and those who have recently graduated. We will continue to make sure the panel membership represents a diverse range of perspectives.

We will also seek to increase transparency about how we weight different student perspectives in our work. The OfS needs to balance the interests of prospective and current students, as well as recent graduates. Sometimes these interests may be in conflict and reaching an appropriate balance between them is an important aspect of regulating higher education. We recognise that we could explain more fully how we do this, and how we draw insight from a wide range of students, which may help to counterbalance the views presented to us through student representatives or the student panel.

The Committee's suggestion that we report annually on student engagement and its influence on our work is helpful and we plan to implement it during this academic year.

In relation to active engagement with student representatives, we share the concerns expressed by the government and other stakeholders about antisemitism within the National Union of Students (NUS), which led to the commissioning of the recent report by Rebecca Tuck KC, and we welcome the NUS's acceptance of all of her recommendations. We consider that further progress on the implementation of those recommendations is needed before we can consider formal involvement of the NUS in OfS activities. In the meantime, our chair and chief executive continue informal engagement with relevant NUS officers and staff, because we consider it appropriate to maintain open lines of communication.

The new duties given to the OfS by the Higher Education (Freedom of Speech) Act 2023 will require expanded engagement with student unions in most registered providers, and we intend to maximise the benefits of that opportunity for our engagement with both officers and staff of those organisations.

Appointments to the OfS board are a matter for the government. We have found that the student board members to date have added significant value to the board's work and look forward to that continuing.

The regulatory framework, sector relations and resources

[55] The OfS' regulatory framework has become increasingly prescriptive over time. It is too willing to direct higher education providers' operations and activities, showing little regard to the need to protect institutional autonomy. (Paragraph 342)

[56] The OfS appears to have given insufficient thought to the impact of its actions, requests and decisions in adding regulatory burdens to providers. The OfS also makes frequent and often ad hoc requests for data that are both burdensome and, at times, duplicative of similar requests from other regulators—including asking providers for the same data submitted to other regulators, but in different formats. (Paragraph 343)

[57] In many areas, it appears unclear to institutions what compliance with the regulatory framework looks like or why the OfS requests data from them. This lack of clarity for providers extends to the OfS' approach to investigations, where it is not clear what has triggered investigations, the process involved or the likely timescales and outcomes. Uncertainty over why the OfS acts in the way that it does has created distrust and friction between the regulator and the sector. (Paragraph 344)

[58] The Department for Education should reconvene the Higher Education Data Reduction Taskforce in order to address duplication and reduce unnecessary burden on providers. (Paragraph 345)

[59] When seeking data from institutions, the OfS should clearly state what use it intends to make of it. When requiring actions, the OfS should give a clear idea of what objectives are being served. A clearer statement of the goals being sought will reduce the need for the OfS to prescribe how to meet them and give institutions more flexibility in taking their own routes to compliance. (Paragraph 346)

OfS response

[55-59] As set out on page 5, we agree that institutional autonomy is important to the success of the sector and is often consistent with the interests of students, and we think carefully about burden in all that we do.

The reasons for each of our routine data collections are published on our website and communicated to individual providers each year.¹² The Committee's report has prompted us to look again at how we present this information to make sure it is sufficiently visible and clear. We are also taking steps to ensure the data we collect supports effective regulation. For example, we have commissioned an independent review of the financial data we collect each year, seeking advice about whether we are collecting the right data and whether we could be more risk-based in our requirements.

We try to minimise requests for information outside the routine annual cycle, and do so only where we consider risk is likely to be increased. Where we do ask for additional information from individual providers – for example more detailed financial information for institutions facing particular risks – we set out the reasons for our request.

Our conditions of registration are framed in a predominantly principles-based way and focus on the outcomes we want to see for students, rather than the particular approach we expect a provider to take. This is designed to give significant latitude to institutions to decide for themselves how they want to approach compliance with our requirements. Our experience is that providers may not always appreciate that there is significant flexibility here and the Committee's report has prompted us to think more about how we can reach a better shared understanding with the sector about this important design feature of the regulatory framework. Like other regulators, we are mindful of the risks of moving to a narrow rules-based approach, because that would not be compatible with the complexity and diversity of the higher education sector.

¹² www.officeforstudents.org.uk/data-and-analysis/data-collection/.

DfE has set out plans to understand the cumulative data burden for the higher education sector as a result of the requirements of all of its arm's length bodies, as well as other aspects of regulatory burden for providers. We understand this project will seek to identify the cost to the sector, as well as the benefit, of responding to each body or regulator, with the aim of allowing government to identify where it could act to reduce unnecessary regulatory burden.

We agree that duplication and burden should be reduced wherever possible and look forward to working with DfE as it takes this work forward.

[60] The OfS should publish its approach to investigations. When the OfS investigates a provider, it should indicate the basis for its concerns and provide what detail it can on the expected timescales and outcomes. (Paragraph 347)

OfS response

[60] We agree with the Committee that it is important for institutions to understand our approach to investigations and how we select a provider for investigation.

We recently published a statement about the categories we will prioritise for the 2023-24 assessment cycle for student outcomes.¹³ This will help institutions to understand where the OfS will focus, and we hope it will provide more certainty about our regulatory priorities for the coming period. We have also set out in detail the approach we take to investigations that relate to student outcomes.¹⁴

As we complete more investigations, we are listening to feedback from the institutions that have been through the process. We will seek to develop the way we operate our regulatory processes, to increase transparency for providers where possible and to build understanding of, and trust in, our investigatory approach.

Regarding timeframes, our experience to date is that it is hard to provide a definitive view about how long an investigation will take. The complexity of individual cases, the need to ensure providers have an opportunity to engage properly with the findings, and our desire to be fair and thorough in our approach, can all have a material impact on timescales. Our current quality investigations are breaking new ground as the first time the higher education sector has been subject to regulatory investigations, as well as being new work for the OfS, and we expect to refine our approach as we learn from these early cases. As we reflect on the feedback from institutions in the first group of cases, our aim is to provide as much information as we can about the approach we take and how a typical case might unfold.

¹³ www.officeforstudents.org.uk/publications/condition-b3-prioritised-categories-for-the-2023-24-assessment-cycle/.

¹⁴ www.officeforstudents.org.uk/publications/regulatory-advice-20-regulating-student-outcomes/.

[61] The OfS's publication of case studies in relation to financial monitoring has been welcomed, as noted in Chapter 3. The OfS should consider the publication of similar case studies in other areas of its regulation to clarify its expectations and approach, with a view to sharing examples of best practice. (Paragraph 348)

OfS response

[61] We welcome the Committee's feedback that the case studies we have published have been helpful, and we will continue to publish similar information as opportunities arise. As set out above, we have begun to publish the reports from our quality assessment visits and these provide a comprehensive account of the issues that have been explored during the assessment, the approach taken, and the judgements reached by the assessment team. We intend that these reports should provide a rich source of information for institutions about our findings and the issues that are likely to cause regulatory concerns. When we have concluded the first group of these reports, we will publish a thematic summary, drawing out the wider lessons from this work.

[62] Relations between the OfS and the higher education sector have been poor, to the point of adversarial. This is in part because the OfS' approach to providers to date has been overly distant and combative, giving the impression that they are looking to punish them rather than support them towards compliance. It is therefore welcome that the OfS has recently recognised the need for better communication and greater engagement with the sector. (Paragraph 364)

[63] It is concerning that providers do not know who to contact at the OfS with concerns and struggle to receive a timely or helpful response when they do. Providers need to be able to contact OfS staff who are responsible for regulating them. (Paragraph 365)

[64] Overall, we are concerned that the OfS focuses too heavily on analysing the huge volume of data it requires from institutions and too little on understanding the context within which that data sits. (Paragraph 366)

[65] It is positive that OfS senior staff now intend to visit higher education providers more regularly, as this kind of informal contact between institutions can provide valuable insights that cannot be gleaned from datasets. (Paragraph 367)

[66] The OfS should establish an annual mechanism for the sector to provide feedback to the regulator, as is established practice within other regulators. This should involve a survey and an annual meeting with providers driven by the sector's priorities, in addition to those of the regulator. (Paragraph 368)

[67] The OfS should rebalance its approach and spend more time engaging with providers, spreading the good practice evident in its approach to access and participation. The OfS should clarify to individual providers who their named contact is and ensure that the contact offers a meeting to each provider at least annually. (Paragraph 369)

OfS response

[62-67] We agree that we need to continue to reset our relationship with the sector we regulate to improve the effectiveness of our work. As the Committee notes, we have significantly expanded our engagement programme across the higher education sector over the past 12 months. We have received positive feedback in doing so, but recognise that there is still more to do. We will build on this and continue to improve our engagement, drawing on feedback from institutions to evaluate what we are doing and identify further opportunities for meaningful two-way dialogue and improvements in day-to-day interactions. In this context we will consider the Committee's suggestion for an annual meeting and survey. Working to establish good and robust relationships with the sector is an ongoing priority for OfS staff and leadership.

We first introduced named senior OfS contacts for each provider during the COVID-19 pandemic. Since January 2023, the email sent every fortnight to the accountable officer of every registered provider from the OfS chief executive has reminded them of their named contact at the OfS, as part of a routine update on our current work and priorities. We encourage any institution that wishes to have a meeting with its OfS contact to get in touch. We have also now introduced calls with new accountable officers as a result of feedback from institutions. We hope institutions are starting to feel the benefits of these changes, and welcome further feedback as we continue to develop this aspect of our work.

[68] Despite its own focus on value for money for students, it appears that the OfS struggles to deliver value for money to providers. OfS registration fees may seem reasonable on a cost per student basis, but the OfS' activities cause a much wider range of compliance costs for institutions, and it is not clear that the OfS is targeting its resources at the highest risk areas or delivering in a timely way for the sector. (Paragraph 382)

[69] It is galling for providers that an increase of up to 12% to the OfS' registration fees for 2023/24 has been proposed, when the sector has faced an environment where home undergraduate student fees have been frozen. (Paragraph 383)

[70] The proposed uplift in fees is driven at least in part by the expected increase in the regulator's responsibilities, including taking on the role of the Designated Quality Body (DQB) and the expansion of its activities into other areas such as freedom of speech and sexual harassment. This is particularly frustrating for providers: the OfS appears to be adding to the regulatory burden they face and then charging them more as a result. (Paragraph 384)

[71] The Government should examine how the OfS targets and uses its resources and how it is held to account for this. (Paragraph 385)

OfS response

[68-71] Our regulatory objectives are focused on the interests of students, and we agree that we should seek to deliver those objectives as efficiently and effectively as possible, without introducing unnecessary regulatory burden for providers. We recognise that OfS registration fees represent a cost to institutions and that any increase in fee levels would be unwelcome, particularly in the context of current financial pressures facing the sector. However, registration with the OfS brings significant financial and other benefits to providers, including access to university title, degree

awarding powers, and the international student market through visa schemes. It also gives access to significant funding, directly from taxpayers, and underwritten by them in the form of student loans. Registration fees should be seen in this context.

As set out on page 5 in our response to the recommendations relating to our duties and decision-making, the introduction of new duties for freedom of speech was a decision of Parliament and we are seeking to implement those requirements through careful engagement with the sector and without creating unnecessary regulatory burden.

Our proposal to move to more active regulation of harassment and sexual misconduct was driven by the interests of students. As set out above, responses to our consultation underline the importance of this issue to students across the sector.

In relation to the costs of the work previously undertaken by the DQB, we are delivering this work in 2023-24 with a net reduction of £0.5 million in the equivalent full annual fee charged to all providers by the DQB.¹⁵

Political independence and role of the government

[72] There is a perception in the sector that the Government's guidance to the OfS in relation to its regulatory activity is overly prescriptive, and that the guidance letters it sends are unusually frequent. (Paragraph 398)

[73] Government guidance on OfS regulation should be less prescriptive, and should be limited to higher level, strategic input. (Paragraph 399)

OfS response

[72, 73] These conclusions and recommendations relate to parliamentary or political matters, which are for the government to cover in its response.

[74] The actions of the OfS and the prioritisation of its duties appear to be reactive and driven by political pressures and input. While there are a small number of cases where the OfS has pushed back against the Government's view, in too many cases the OfS has translated ministerial and media attitudes directly into regulatory demands on providers. (Paragraph 411)

[75] It is vital that regulators not only act with an appropriate degree of independence from the Government, but that they are perceived as doing so. This is evidently not the case for the OfS, where there is a widespread perception among providers, students and other stakeholders that it is not sufficiently independent. (Paragraph 412)

¹⁵ In the 2023-24 financial year the total reduction is £1.24 million; the equivalent figure quoted in the main text accounts for the one-off payment holiday in this financial year of four months, worth approximately £0.7m in savings to the sector.

[76] In their responses to this report, the Government and the OfS should set out the steps they each intend to take to support the OfS' ability to operate independently from the Government. (Paragraph 413)

OfS response

[74-76] We agree that independence is an essential component of the OfS's credibility and effectiveness as a regulator. The legislation governing our work, and public law, require us to make decisions independently of government and of the sector we regulate. We take that obligation seriously in all cases and have structures in place to provide further independent input for our decision-making processes. For example, significant regulatory decisions for individual institutions are normally taken by our Provider Risk Committee, which has independent members with senior regulatory expertise. Similarly, the Higher Education and Research Act 2017 (HERA) requires us to have a Quality Assessment Committee, with independent members drawn from the higher education sector, to provide advice on our approach to assessing quality and standards. And TEF ratings are decided by an independent panel of academic experts and students.

HERA does make provision for government to influence the OfS's work in various ways, for example through statutory guidance under section 2 or general directions under section 77; the use of these powers, including the number and content of statutory guidance letters, is a matter for the government. These statutory arrangements reflect the legitimate interests of ministers in a sector of such importance to the country and in receipt of significant public funding.

We take particular care to reach our decisions independently, and in line with our duties under statute and public law. This means that OfS decisions consider guidance from the Secretary of State as required under HERA but are not otherwise based on government steers. Guidance from the Secretary of State cannot relate to individual providers, and our decisions about individual providers are always made independently.

However, we recognise that the sector has concerns about political interference in the regulation of higher education and that this perception can be damaging. On page 5 we set out our commitment to explaining more fully why we make the decisions we do. In being more transparent we hope to build confidence that we are indeed acting independently and that our approach is appropriate. We will continue to work to address this perception in our ongoing activities.

[77] The perception that the OfS lacks independence from the Government has not been aided by its Chair continuing to take the whip of the governing party in the House of Lords, whilst simultaneously claiming the organisation, as a regulator, is independent of the Government. Although he was under no obligation to do so, it would nevertheless have helped to ease concerns if the Chair had resigned the whip and become non-affiliated for his time in post, as others in similar positions have done in the past. (Paragraph 422)

[78] As a matter of principle, serving politicians should resign any party political whip they hold before becoming Chairs of independent regulators. The Government should consider making this a requirement. (Paragraph 423)

[79] Political instability has meant that the OfS has had to work with seven Education Secretaries and six Universities Ministers since it began operating in 2018. This ministerial churn has contributed to the wider sense of instability in the sector. (Paragraph 428)

[80] We welcome the publication of the Government's response to the higher education policy statement and reform consultation, which was long overdue. It remains to be seen whether this document will assuage previous concerns in some quarters that the Government's higher education policy lacks strategic direction. (Paragraph 438]

OfS response

[77-80] These conclusions and recommendations relate to parliamentary or political matters, which are for the government to cover in its response.