



Department  
for Education

# **House of Lords Industry and Regulators Committee Inquiry into the work of the Office for Students Government response**

**November 2023**

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## Introduction

Earlier this year, the Industry and Regulators Committee (the Committee) launched an inquiry into the work of the Office for Students (OfS). On 13 September 2023, the Committee published their report 'Must do better: the Office for Students and the looming crisis facing higher education' (the report). This document sets out the government's response to that report.

The report made a series of conclusions and recommendations based on what the report calls "seven key issues":

1. OfS duties and decision making;
2. Financial sustainability;
3. Value for money;
4. Quality, standards, choice and competition;
5. The student interest and student engagement;
6. The regulatory framework, sector relations and resources;
7. Political independence and role of the government.

As the government set out in its original evidence to the Committee, alongside delivering an intellectually stimulating education and driving innovation and research, the purpose of higher education (HE) is threefold. It must:

- meet the skills needs of the economy;
- provide high-quality qualifications leading to excellent jobs; and
- advance social justice.

This approach ensures that everyone, regardless of background, can not only access a high-quality education, but is also supported to complete their studies and develop the skills and knowledge they need to move up the ladder of opportunity.

The OfS has an important part to play in delivering on those priorities.

This government is clear that having a rigorous and independent HE regulator remains essential given the sector's significance to the individual students who invest heavily in it, as well as its importance to the wider economy and the taxpayer.

The government therefore maintains its strong support for the OfS and its continuing important work to protect the interests of students.

The government recognises the vital importance of a sustainable, world-class HE sector which develops academic talents and produces world-class research. The sector is also key to advancing social justice, ensuring that all students, regardless of background achieve high quality outcomes that will meet the skills needs of the economy.

In this context, we must always look for ways that government, or its arms-length bodies, can change and improve. The government therefore welcomes the Committee's detailed scrutiny of a wide range of important issues linked to the HE sector and the OfS as its regulator. The government and the OfS have identified a number of areas in which further improvements could be delivered as a result of the report and evidence.

Although the Committee will recognise that many of the conclusions and recommendations in its report are ultimately for the OfS to consider, the government has shared its view on them where it is appropriate to do so, as well as signposting work which the OfS is already undertaking to address some of the Committee's concerns. A detailed response to each conclusion and recommendation is provided below and the government understands that the OfS is also replying to the report separately.

Alongside the Committee's Inquiry, the government has been preparing for its scheduled Public Bodies Review of the OfS and is in the process of appointing an independent reviewer to lead the process. If further consideration and reflection would be useful, some of the same issues considered by the Committee may also be considered as part of that review.

## Government response to the conclusions and recommendations of the Committee's report:

The government response below consists of the House of Lords Industry and Regulators Committee report conclusions, which are in bold text, and recommendations, which are in bold italic text. Our response to each recommendation and conclusion is preceded by 'Government response'.

### 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.**

**[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.**

**[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.**

#### Government response:

The government's view remains that the OfS's statutory duties are clearly set out in the Higher Education and Research Act 2017 (HERA). HERA deliberately does not give the OfS primary objectives or prioritised duties, nor does it require the OfS to prioritise the need to protect institutional autonomy over the other matters specified in section 2(1) of HERA.

The government believes that this remains the right policy position: Institutional autonomy is an important principle, given significant protection under HERA. However, it should not always be prioritised over and above other important considerations, such as the need to promote quality, value for money, or greater

choice and opportunities for students. It is right for the OfS to consider and balance these matters when making regulatory decisions. This is not evidence of inconsistency by the OfS, but a matter of it properly applying its duties in line with the requirements of HERA.

The OfS clearly gives weight to the objectives underpinning its duties and this is apparent from its public consultations and responses, where the OfS sets out the reasons and purpose behind its major strands of work. The OfS regulatory framework provides detailed guidance on its approach to regulation, including how it seeks to deliver its primary objectives. It also sets out the reasoning for its approach and findings in individual cases: the quality assessment reports, published in September, October and November 2023, are a recent example. As a public body it is required to act reasonably and is subject to the usual principles of public law, which ensures accountability.

In addition, the OfS's objectives are clearly set out in its published strategy, which the government anticipates should avoid confusion for providers on its areas of focus over the next three years.

The government, of course, agrees with the committee that the OfS should follow regulatory best practice, which we believe it does, and while there is always room for improvement for any regulator, the OfS is clear that it meets its obligations under the Regulators' Code in full.

As part of its wider review programme for public bodies, the government plans shortly to commence an independent review of the effectiveness and efficiency of the OfS in meeting its statutory responsibilities, and the government expects the independent lead reviewer to consider the OfS's approach to regulation as part of that review.

***[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)***

### **Government response:**

This is principally a matter for the OfS as a public body and regulator. We and the OfS agree that it should set out the reasons for its regulatory decisions, including

where it changes the regulatory framework<sup>1</sup>. It already does so in its published consultation outcomes and responses and welcomes ongoing feedback on how these processes can be further improved.

***[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)***

### **Government response:**

The government clearly agrees that the OfS should meet its obligations in relation to the Regulators' Code<sup>2</sup> and follow regulatory best practice. As the Committee rightly points out, the OfS is required to have regard to the Regulators' Code when developing its policies or principles<sup>3</sup> but not when implementing them. Whether the OfS wishes to go above and beyond the Regulators' Code is a matter for the OfS.

While there is always room for improvement for every regulator, the OfS is clear that the principles of the Regulators' Code are already embedded in its approach to policy development. However, the OfS has indicated that it will consider whether there are improvements it could make across its regulatory approach.

***[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)***

### **Government response:**

Parliament carefully considered and debated the framing of the OfS's general duties during the passage of HERA. HERA requires the OfS to take a range of considerations into account when performing its functions, and it is for the OfS to judge how best to balance these on a case-by-case basis. This balancing and weighing exercise is part of the role which Parliament gave the OfS under HERA.

An express, statutory provision requiring the OfS to demonstrate that it has taken account of particular objectives would necessitate primary legislation to amend HERA. The government considers that such a duty would not provide any additional

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<sup>1</sup> [Securing student success: Regulatory framework for higher education in England \(officeforstudents.org.uk\)](https://www.officeforstudents.org.uk)

<sup>2</sup> [Regulators' Code \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>3</sup> [Legislative and Regulatory Reform Act 2006, section 22.](#)

benefit for students, whose interests are at the heart of the regulatory regime and, could in fact, increase the complexity and administrative burden involved in OfS regulation.

**[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)**

### **Government response:**

The government is clear that both protection of freedom of speech within the law, and protection of students from harassment and sexual misconduct, are matters of the utmost importance and should be subject to independent regulation.

In relation to freedom of speech, the recent National Student Survey (NSS)<sup>4</sup> results show that only 86% of students considered themselves free to express their ideas, opinions, and beliefs during their studies. The prevalence of concerns about freedom of speech suggests that providers were not enforcing or reforming their own governance to take steps to secure freedom of speech. The government takes the view that a review of provider governance would not have been an effective alternative to strengthened statutory duties on providers and delivered on a manifesto commitment to legislate. Parliament therefore passed legislation<sup>5</sup> which gave the OfS important new duties and powers in relation to freedom of speech.

As regards sexual harassment, the government fully supports the OfS's position on the need to regulate, although it is for the OfS to decide how it takes forward these proposals. As Susan Lapworth set out for the Committee when she gave evidence, this has been a live issue since 2010, before the existence of the OfS. The OfS's predecessor body, HEFCE, funded projects within the sector to enable it to develop effective practice and published the outcomes of this work. It also published training modules for providers to use. Finally, in April 2021, the OfS published a voluntary

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<sup>4</sup> [National Student Survey data - Office for Students.](#)

<sup>5</sup> [Higher Education \(Freedom of Speech\) Act 2023.](#)



statement of expectations on harassment and sexual misconduct<sup>6</sup> to enable the sector to self-regulate. However, an independent evaluation of the voluntary approach showed that insufficient progress had been made. In response to the Women and Equalities Select Committee hearing in 2022, the OfS undertook to conduct a survey to better establish the extent of sexual misconduct in HE. A pilot survey of 170,000 students was launched in September 2023; the results are expected during the Winter 2023-24.

After thirteen years of best practice advice and setting expectations rather than mandatory requirements, the OfS has decided, rightly in the government's view, that regulation is the most effective way to protect students on this important issue, and it has consulted on a new registration condition. Providers have had a full opportunity to contribute to the development of the new condition through the consultation conducted from February to May 2023.

On the basis set out above, the government does not agree that the OfS is micro-managing either freedom of speech or sexual harassment.

***[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)***

### **Government response:**

The government can confirm that a Public Bodies Review of the OfS will start shortly. The Cabinet Office guidance makes clear that the review should focus on the efficiency, effectiveness, governance and assurance of the relevant arm's-length body. As such, while the independent lead reviewer will undoubtedly want to hear the views of the sector on the impact and challenges of regulation, the government does not consider that the review is the right place to focus on the strategic issues facing the sector. We expect the focus of the review to be on the OfS's effectiveness in performing its regulatory functions and protecting the interests of students.

**[9] The proliferation of regulators in the higher education sector has caused duplication and red tape, increasing the burdens on providers—particularly in**

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<sup>6</sup> [OfS statement of expectations for preventing and addressing harassment and sexual misconduct \(officeforstudents.org.uk\)](https://www.officeforstudents.org.uk).

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)*

### **Government response:**

The government fully acknowledges and accepts the need to reduce regulatory duplication in the HE sector. In setting up the OfS, the government was alive to the risk of additional burden and duplication, so set it up to be risk-based, proportionate and data driven, ensuring that providers that pose the lowest risks to students, taxpayers and the wider sector should, and do, experience lower levels of regulatory burden.

The government published a policy paper on 10 September 2020: 'Reducing bureaucratic burden in research, innovation and higher education',<sup>7</sup> setting out the changes government wanted to see across all parts of HE, including research. This was followed up by strategic guidance to the OfS to ensure both the regulator and the sector were clear about our vision.<sup>8</sup> As Minister Halfon made clear to the Committee in his evidence, he is determined to continue to reduce regulatory burden and duplication in the HE sector, to build on steps taken in recent years, such as:

- Supporting the OfS and the Education and Skills Funding Agency to set up a Provider Data Forum, with a sample of further education colleges who provide HE, to highlight and tackle specific data burden and duplication issues that affect them, and to identify actions to take to reduce this. The first Forum met in October 2023 and will continue to meet up to four times a year.

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<sup>7</sup> [Reducing bureaucratic burden: higher education - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/reducing-bureaucratic-burden-in-research-innovation-and-higher-education).

<sup>8</sup> [ofs-strategic-guidance-14092020.pdf \(officeforstudents.org.uk\)](https://www.officeforstudents.org.uk/media/2020/09/08/ofs-strategic-guidance-14092020.pdf).

- Looking at how we can streamline regulation, inspection, and audit across DfE, ESFA, OfS and Ofsted, to minimise regulatory burden whilst upholding quality.
- Working with HE providers as part of our commitment to simplifying the delivery of apprenticeships to identify barriers to delivery and prioritise improvements that will support our ambitions to grow all apprenticeships, including degree apprenticeships.
- Building on the changes we have already made to market entry and end point assessment, the government intends to further reduce bureaucracy and regulation for HE providers, delivering apprenticeships so they can spend more time getting on with delivering high quality apprenticeships, including degree apprenticeships.
- A longer-term piece of work, to deliver in summer 2024, to identify and set out the full scope of data burden across the HE sector from all arm's length bodies, as well as the self-imposed regulatory burden which some HE providers adopt for a variety of reasons. It will also identify the cost to the sector of responding to each element of burden, as well as the benefit to each regulator or arm's length body. This will allow the government to act more quickly to reduce unnecessary regulatory burden, identifying specific areas where focussed work is needed, and to maximise the costs reduction to the 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)**

### **Government response:**

The government believes that continuing the fee freeze through to the end of academic year 2024/25 achieves the best balance between ensuring that the HE system remains sustainable and offers good value for taxpayers. We also recognise students face cost of living challenges. By keeping tuition fees at current levels, we will avoid increasing the initial amount of debt they need to take on to pay for their HE course.

The government is clear that international students bring significant economic and social benefits to the UK. We have an active international education strategy to welcome these students to our country. For the past two years we have met our international education strategy ambition of recruiting 600,000 international students per year by 2030, and we have also seen increased student numbers from priority

markets including India and Nigeria as well as an increase in students from the USA. The government agrees with the Committee that international student recruitment does come with risks and we have made clear, within our International Education Strategy<sup>9</sup>, that the diversification and sustainable recruitment of international students remain strategic priorities.

HE providers are well aware of the risks of over-reliance on a single source of funding, and the government is pleased that the latest figures show that providers are diversifying their recruitment of international students, with many increasing their intake from priority countries outlined in the International Education Strategy. The government's International Education Champion, Sir Steve Smith, has worked extensively in several countries, including India and Nigeria, in recent years to promote the UK's HE sector and the government has seen increases in student numbers from these countries.

In addition, in its role as the independent regulator, the OfS actively monitors the financial sustainability of the sector, and has identified instances of overreliance on international students, particularly from a single country. It has written to providers that are particularly exposed to this risk to ask them to share their contingency plans with it.

The UK continues to be an extremely attractive destination for international students, with an array of world-class universities, a competitive post-study work offer in the Graduate Route and a welcoming environment.

**[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**

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<sup>9</sup> [International Education Strategy 2021 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/90222/international-education-strategy-2021.pdf).

**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)***

### **Government response:**

The government clearly recognises the importance of a strong and financially stable HE sector. Sustainable, high-quality HE plays a crucial role in providing opportunity, producing world-class research, and meeting the skills needs of the economy.

The government has set out a clear plan for funding the HE sector for this Parliament. This comprises more than £17 billion of annual support, including substantial additional funding through the Strategic Priorities Grant to support high quality teaching and facilities.

The government will set out its longer-term funding plans for the HE sector at or ahead of the next Spending Review – in line with the approach to long-term public spending commitments across government.

The government agrees with the Committee that it is vital to ensure we have a robust mechanism in place, to monitor and assess strategic risks to the financial position of the HE sector, while also respecting institutional autonomy. This is the responsibility of the OfS as regulator, and it will intervene with individual providers where appropriate. The OfS takes a risk-based approach to monitoring the financial sustainability of registered providers closely, sharing information with DfE, as necessary.

These risks were clearly set out in its latest report on the financial sustainability of the sector from May 2023. The OfS noted that there is significant variation between providers, and, while its analysis continues to show that the majority of the HE sector is financially sound, it also noted the increasing risk for some providers over the longer term. Both the OfS and government take an active approach to identifying and monitoring the risks where concerns are identified, and the government keeps the effectiveness of the funding system under continual review. The government believes that the OfS has paid sufficient attention to the financial risks facing HE providers, although it has indicated that it is continuing to evolve its monitoring approach.

A policy response to conclusion 16 is provided in the previous section on international students (conclusions 11-13).

***[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)***

#### **Government response:**

In line with the approach to public spending across government, the government will set out its long-term approach to the funding of the HE sector at or ahead of the next Spending Review.

***[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)**

### **Government response:**

Recommendations 19, 20 and 21 are for the OfS to respond to in the first instance, in its capacity as independent regulator. The OfS already has robust processes in place to monitor the financial sustainability of the sector and it continues to engage with providers regarding their financial position, to ensure a timely and effective assessment of risk can be made. The government notes that the OfS has already refreshed its approach to engaging with the sector and has added roundtables with finance directors to its financial monitoring activities to discuss the risks and issues the sector is facing. The government is committed to working with the sector and the OfS to ensure ongoing improvement.

**[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)***

### **Government Response:**

The government keeps the HE system under review, including the financial and funding landscape. This includes the overall funding position of the sector, which it plans to consider ahead of the next Spending Review.

The government's policy position is that, in the event of a financial failure, it would work with the OfS, the provider in question and other government departments to ensure students' interests are protected, rather than to prevent a sector exit.

For example, in the case of the Academy of Live & Recorded Arts (ALRA), DfE supported the OfS and ALRA's advisers to identify a solution to support students to complete their studies; that is why every student was offered an alternative place at Rose Bruford College.

The OfS, as the independent regulator, is responsible for monitoring and reporting on the financial sustainability of the sector.<sup>10</sup> It oversees the actions being taken by providers facing financial failure and works with DfE, where needed, to protect the interests of students.

The OfS may probe a provider's thinking about potential merger and acquisition options, where these may be in the interests of students, and will engage with providers considering such options where appropriate.<sup>11</sup>

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<sup>10</sup> [Higher Education and Research Act 2017, section 68.](#)

## 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)**

**[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)**

### **Government response:**

The government agrees that both students and the taxpayer make a considerable investment in HE and deserve to see a good return. The government has seen several examples of providers increasing their monitoring of projected student outcomes, following the introduction of the new condition B3 thresholds. This behaviour change will benefit students and providers alike.

There is no single way in which quality, standards, and outcomes of HE can be measured. The OfS has been very clear that it will take wider context into account, beyond just looking at the metrics, when it undertakes investigations and assessments. The government does not agree that the continuation and completion measures are simplistic, and there was extensive consultation on these measures before they were implemented by the OfS. Whilst the government recognises that HE has many other benefits for students and society, it is vital for both the student and the taxpayer that students are supported to continue and complete courses and are able to find good graduate employment on finishing. The OfS has already made clear to the HE sector that it intends to review its approach to condition B3 in 2025-26.

The government does agree, however, that there may be scope to further refine the outcomes measures. We know the OfS is planning a review of the B3 metrics for

student outcomes in the next few years, and we are actively feeding in our views on the scope and timing of that.

**[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)**

### **Government response:**

The government rejects this conclusion. It is important that HE leads to positive employment outcomes or further study. The government recognises that many factors can influence employment outcomes and that the employment trajectory for some subjects is different to others. However, the government does believe that graduates should be achieving outcomes consistent with the HE qualifications they have completed and paid for.

The OfS takes contextual information, such as student backgrounds, into account when investigating courses that fall below condition B3 thresholds. Breaches can be identified where there is no justifiable explanatory context. This should ensure that institutions which take students from disadvantaged backgrounds are not inappropriately penalised. However, the government is completely clear that we should have the same high expectations for all students, regardless of background or circumstances. Our mission is to close the gap, not to make excuses for it.

To supplement the existing employment measures, the government has commissioned the Institute for Fiscal Studies (IFS) to develop a new way to measure graduate earnings at course level. The government will ask the OfS to consider how to use this metric to further hold providers to account for ensuring their students go on to gainful employment. Raising the visibility of course level earnings will also help students to make well-informed choices about what they study based upon the salaries they can expect to earn. This will help to ensure value for money for the student and the taxpayer.

The IFS will consider geographical variation as well as students' background characteristics in the modelling to ensure any resulting regulatory activity does not unfairly penalise providers serving more disadvantaged students or students with protected characteristics. Provider representative bodies will be joining the advisory group supporting this work to ensure sector views are taken into account in the metric development.

***[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)***

### **Government response:**

The OfS aims to ensure that every student, whatever their background, has a fulfilling HE experience that enriches their lives and careers. The OfS has a duty to have regard to the need to promote equality of opportunity in connection with access to and participation in HE, as well as powers to identify and advise on good practice and approve access and participation plans. These provisions relate to the whole student lifecycle for disadvantaged and traditionally under-represented groups, so not just access, but also student success and progression.

In March 2023, the OfS launched its Equality of Opportunity Risk Register (EORR). This will empower HE providers to deliver interventions for groups of students least likely to experience equal opportunity in HE settings by highlighting 12 key sector risks across the student lifecycle (access, attainment, and progression) and the groups most likely to experience these. HE providers are expected to refer to the EORR when writing their access and participation plans. The government welcomes the EORR as a key marker for social justice which will help ensure that no student groups are left behind.

Degree apprenticeships offer a strong alternative to a traditional postgraduate degree, supporting productivity, social mobility as well as widening participation in HE and employment. The OfS is providing up to £40m of Strategic Priorities Grant

funding to eligible providers over the next two years to boost degree apprenticeship starts, and launched guidance for the first round of funding in September 2023. These apprenticeships will meet employers' skills needs and deliver a wider range of provision. They will improve access to degree apprenticeships, ensuring students can access high quality jobs and build their careers. This funding represents a significant uplift in degree apprenticeship funding against last year's initial £8m allocation and will lay the foundations for sustainable growth in capacity.

The government agrees that HE enriches students in many ways and can lead to other positive outcomes that are not measured within the regulatory system. There is already existing research which explores the wider value of HE and the government is giving consideration to further work on this. Whilst the government agrees that existing research could be built on in collaboration with the sector, the OfS has limited resources and must think carefully about its priorities. The government believes that the OfS is rightly focused at present on identifying where there are risks of poor-quality provision and acting to address them.

**[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)***

### **Government response:**

The government accepts this recommendation and will work with OfS and the sector to encourage providers to be more transparent. Going to university is not a decision that people take lightly. The financial implications are far-reaching and long-lasting and choosing the right course is paramount. Therefore, the government agrees that it is vital that prospective students have access to high-quality information that will enable them to take informed decisions, and to hold providers to account if what they offer does not live up to reasonable expectations.

Many providers do publish detailed information about living and accommodation costs on their websites, so that prospective students are aware of the levels of funding they will need during their studies.

Providers are also required to include links in their course web pages to 'Discover Uni' which brings together a range of comparable data at course level. The government has issued guidance asking providers to also link to this dataset in their advertising. The OfS's student outcomes and access and participation dashboards also show measures of continuation, completion and progression outcomes for individual providers and for students with different characteristics. The outcomes dashboard is used to inform its regulation of condition B3. The government has also strongly encouraged providers to take account of guidelines set out by the Competition and Markets Authority. However, as autonomous institutions, HE providers can decide how to signpost information and data to prospective and existing students through advertising or elsewhere. The government will continue to press providers to be clearer about the specific number of contact hours and mode of delivery in their course descriptions.

Assuming that the information published by providers is both accurate and complete, the OfS would undoubtedly have a role in holding providers to account through regulation if an investigation found that they were consistently failing to deliver the advertised provision to the expected quality standards. The OfS's role in this regard is already captured through its existing regulatory framework.

## 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)*

### **Government Response:**

The government believes that the OfS's regulatory framework is clear and its approach to quality and standards is robust, efficient, and effective. It includes cyclical reviews, as it did before the creation of the OfS, but these are now delivered through the Teaching Excellence Framework. The government conducted extensive consultation prior to the introduction of HERA and has confidence in the OfS's risk-based approach to regulation. All providers are monitored for adherence to quality and standards conditions and where there is a risk of a provider falling below these requirements, the OfS can investigate. This approach enables the OfS to act decisively to identify and address issues where there are the greatest risks of poor quality, whilst also recognising the autonomy of the sector and the need to avoid unnecessary regulatory burden.

The government understands that there was an expectation that QAA would be the designated quality body (DQB) at the time of HERA's inception, but the legislation does not prescribe QAA or any other body as the DQB. In July 2022, QAA released a public statement requesting to step down from its position as the DQB, citing its desire to remain on the European Quality Assurance Register (EQAR) as the reason. However, the OfS also highlighted performance concerns about the QAA in its role as DQB in a report submitted to government in January 2023. As required by HERA, the government undertook a consultation on the de-designation of QAA as



DQB from 8 February to 3 March 2023. Following the consultation, on 30 March 2023, QAA was de-designated.

The government does not agree with the Committee that the OfS's views on QAA's performance as DQB were unclear. The OfS's triennial report<sup>12</sup> on the performance of QAA as the DQB outlined performance concerns and concluded that, if QAA had not asked to step down, then the OfS would have recommended that it be de-designated.

The government also does not agree that the current situation is impractical. HERA is clear that the assessment functions sit with the OfS, where no body is designated to perform them. Both DfE and the OfS have engaged with the sector to understand their concerns about QAA stepping down from the role and the assessment functions reverting to the OfS. To date no alternative body suitable for designation as DQB has been identified by the sector.

The OfS has sought to offer assurances on its capacity to perform the assessment functions effectively and impartially. The OfS understands the importance of expert academic input into regulatory decision-making and has recruited expert academics to its panel of quality and standards assessors, many of whom were previously QAA assessors. These academics are already supporting the delivery of the OfS's quality investigations programme and regulatory decision-making and will ensure expert judgements can be applied to quality and standards assessments.

The OfS is keen to make the most of this opportunity to build the sector's confidence in their performance of the assessment functions and rightly expects to be judged on its performance.

The government agrees that when QAA cited European Standards and Guidelines in its reasons for stepping down from the DQB role, it raised some concerns in the sector about the alignment of the English regulatory system with international standards for quality assurance. However, the OfS's approach to quality assurance is primarily determined by HERA. The government believes that this approach is in line with the spirit of European Standards and Guidelines, but is more efficient, by

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<sup>12</sup> [Summary of the OfS's triennial report on the performance of the DQB \(officeforstudents.org.uk\)](https://www.officeforstudents.org.uk/summary-of-the-ofs-triennial-report-on-the-performance-of-the-dqb).

focusing regulatory resources in a risk- based way where they will have most impact. English HE maintains a very strong international reputation.

The government does agree with the Committee that there may be benefits in exploring how alignment of the implementation of the OfS approach and European Standards and Guidelines can be reinforced. DfE has been engaging with officials involved in assessing the alignment of national HE quality assurance systems with international standards to better understand the difference between their expectations and the regulation of HE in England. The government will continue to discuss and consider these issues with the OfS, recognising that the regime for regulating quality and standards is largely set by HERA.

It should also be noted that compliance with the European Standards and Guidelines does not automatically require there to be a DQB. Whether or not there is a DQB in place has no bearing on the alignment of English HE regulation with these guidelines. Whilst the government recognises that many in the sector favour a co-regulatory approach to quality and standards assessment, we do not believe a DQB is necessary for the effective and impartial assessment of quality and standards.

***[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)***

### **Government response:**

The government accepts that the costs of the OfS taking on the work previously delivered by the DQB should remain transparent. However, the government does not currently expect there to be any additional costs to the sector or taxpayer, as a result of the OfS taking on these functions. The Department laid regulations in July this year to enable the OfS to charge for assessment activity.<sup>13</sup> So far, the government understands that the OfS has charged providers less for its performance of the assessment functions than QAA would have charged and will continue to look for efficiencies for academic year 23/24. As required by the regulations, the OfS has issued transparent guidance<sup>14</sup> to providers on the payment of fees for quality and standards assessments, including how it calculates its reasonable costs. The OfS is

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<sup>13</sup> [The Higher Education \(Assessment Fees\) \(England\) Regulations 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk).

<sup>14</sup> [Payment of fees for quality and standards assessments \(officeforstudents.org.uk\)](https://www.officeforstudents.org.uk).

also required to lay its annual report and accounts before Parliament, to enable scrutiny of its efficiency and effectiveness across its operations.

***[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)***

### **Government response:**

The government agrees with the Committee that the OfS's new guidance on registration for new entrants is very welcome, providing greater clarity on the process. The OfS has also streamlined its registration processes. The government would like to see more innovation in provision and more new entrants, supported by simpler processes which maintain high standards.

Although this decision will sit with the OfS, the government also accepts that the OfS should continue to consider whether any additional improvements or clarity could be provided to potential new entrants, as well as identifying any further opportunities for streamlining its registration processes.

Notwithstanding this, the OfS's registration process clearly needs to be robust and thorough, ensuring that quality and standards and outcomes are maintained for students, public funding is protected through good governance, and disadvantaged students are supported.

The factors that affect whether new entrants will seek to join the HE sector are complex, and not solely influenced by the OfS and its registration processes. As a result of this, and the need to maintain high standards in English HE, a target for new entrants would not, in our view, be appropriate.

In relation to publishing information on validation, the government accepts that the validation process should be clearly explained and as transparent as possible. The OfS has rightly prioritised other elements of its role in the first few years of its operation. The government also accepts that there are some limits on the ability to

be transparent, as the process will likely differ in each case, depending on commercial arrangements between providers.

Finally, the department is working with the OfS to pilot a national validation programme. The Open University has been selected by the OfS to deliver the programme and is providing critical validation and support, backed by up to £10m of government funding for further education providers, to give them the confidence and capability to deliver the courses local people want, and to develop the skills base local employers need.

**[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)***

### **Government response:**

The government is committed to ensuring that there are robust controls on access to public funding whilst also ensuring that regulatory burden is minimised for providers that want to deliver modules and courses through the Lifelong Learning Entitlement (LLE).

The government wants to encourage diverse forms of provision without overly burdening providers. For that reason, government asked the OfS to progress work to develop a new, permanent third registration category, designed to deliver an appropriate long-term approach to regulations under the LLE for smaller providers typically offering level 4 and 5 qualifications.

To ensure providers have sufficient time to adapt to a new regulatory approach, the government has decided to allow longer for these providers to prepare for registration with the OfS, in order to access the LLE. To support this change, the government will extend level 4-6 Advanced Learner Loan funding for courses which would be designated for LLE funding, but where providers are not registered with the

OfS, until 2027/28. Further details on the courses in scope for ALL funding from 2025-2027 will be announced separately. LLE funding will be available from 2025 for providers registered with the OfS.

The third category will support the delivery of diverse, high-quality provision, in alignment with our full modular roll out in 2027. The OfS launched a call for evidence<sup>15</sup> on 27 July 2023 to seek sector views about how it could measure student outcomes resulting from modular study in the future. The OfS intends to set out proposals for any changes that it thinks are appropriate to regulate outcomes for students studying on a modular basis next year.

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<sup>15</sup> [Positive outcomes for students studying on a modular basis - call for evidence \(officeforstudents.org.uk\)](https://www.officeforstudents.org.uk/positive-outcomes-for-students-studying-on-a-modular-basis-call-for-evidence).

## 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)

[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)*

### Government response:

While its approach to student engagement is a matter for the OfS, the government fully agrees with the Committee's conclusion that some student concerns, such as challenges with the cost of living, are not within the OfS's control, nor specifically covered by its remit or powers, and that this might fuel a misconception that it is not focused on students' priorities.

The OfS's powers and duties are set out in legislation. To provide clarity for the sector and students, the OfS also has detailed information about its role and regulatory remit on its website, in its 2022 to 2025 Strategy,<sup>16</sup> and in its regulatory framework<sup>17</sup>. This includes:

- its mission;
- its objectives;

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<sup>16</sup> [Office for Students Strategy 2022 to 2025. OfS 2022.15.](#)

<sup>17</sup> [Securing student success: Regulatory framework for higher education in England \(officeforstudents.org.uk\).](#)

- its areas of focus in its current three-year strategy (quality and standards and equality of opportunity, as well as enabling regulation); and
- the eleven strategic goals which underpin those areas of focus.

The government strongly disagrees with witnesses' view that freedom of speech is not important to students: the recent National Student Survey (NSS)<sup>18</sup> results tell a different story. As set out above, only 86% of students in England felt free to express their ideas, opinions and beliefs and, in our view, this is not good enough. While the majority of students may feel they can express their views and ideas, and do not consider this issue to be a priority, that does not mean that the OfS should do nothing. It is crucial that all students feel able to express a diverse range of views without fear of repercussion.

Finally, on the Committee's recommendation regarding scoping work on the definition of the student interest, the government fully agrees that it would be useful for the OfS to continue to consider and update how it defines the student interest, and for it to clarify and communicate that to students and the sector. The decision as to how to implement this would be a matter for the OfS, but we would anticipate that it could form part of the OfS's refreshed approach to engaging with students to identify any areas for improvement.

**[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)**

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<sup>18</sup> [National Student Survey - NSS - Office for Students.](#)

**[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)**

***[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)***

### **Government response:**

As noted above, the OfS is best placed to determine its approach to student engagement. However, the government agrees with the Committee that the OfS's mechanisms for engaging students are welcome and important, and that it would be helpful for the OfS to explain how it uses input from students. As the OfS has set out in its evidence, it already engages extensively with students where they will be directly affected by its policy decisions, and it has committed publicly in its student engagement strategy<sup>19</sup> for 2022/23 to:

- *“publishing and promoting the impact the student panel has on [its] work”* and
- *“continuing to work in direct partnership with students and their representatives and showing how they have had an impact on our decisions.”*

It is for the OfS to decide whether and how to communicate this through a report, but we would support this if it chose to do so.

The government also agrees that it is positive that the OfS is now considering how the Student Panel can be made more effective. While the reform of the Panel is a matter for the OfS, the government understands that the purpose of the Panel is to provide advice to and feed in to OfS decisions, within its functions and remit. It is not intended to be a new representative body of students, to raise issues outside of the

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<sup>19</sup> [Building a culture of student engagement: our priorities for 2022-23 \(officeforstudents.org.uk\)](https://www.officeforstudents.org.uk/building-a-culture-of-student-engagement-our-priorities-for-2022-23).



OfS's remit, or to represent the OfS externally. In relation to the specific allegations raised by one student, and referred to in conclusion 48 (above), the government is not aware of the detailed facts of the allegations referred to and cannot therefore comment directly on this issue.

Finally, the government fully agrees with the OfS that there is more to do to raise awareness of its work among students. However, we should also be clear that not all of the valuable work that the OfS does on students' behalf will be visible.

***[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)***

### **Government response:**

The OfS is already refreshing its approach to student engagement, and will no doubt consider this recommendation for co-creation as part of that work. The OfS's current strategy already sets out how it will involve students in its work. It also has well-established mechanisms for gathering student input, perhaps most notably through the Student Panel.

The Student Panel advises the OfS board and informs policy development across the whole of the organisation's remit. The Student Panel ensures that students' views and perspectives are understood and reflected, and that the OfS regulates in the interest of students. The OfS also encourages students to feed in views through surveys, user testing of policy, workshops and focus groups, which are advertised on its website.

However, given the complex remit and regulatory functions of the OfS, which often require extensive legal considerations and legislative understanding, and the need to prioritise effectively, the government anticipates that the scope for complete co-creation may be limited. Again, this decision will ultimately sit with the OfS.

More specifically, the government remains disengaged from the National Union of Students (NUS) at this time while the NUS continues to work on implementing all the recommendations in the recent report by Rebecca Tuck KC into antisemitism within its ranks. While NUS's response to the report has been encouraging, the

government's view is that engagement is not appropriate for now, given the history of failure properly to implement the recommendations of previous reports into antisemitism within the NUS. The government will want to see evidence of lasting change before it engages. Having said that, we understand that the OfS continues to meet quarterly with the NUS, and also has a variety of other opportunities to engage with students in the course of its work.

***[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)***

#### **Government response:**

The management of the Student Panel is a matter for the OfS, but the government completely agrees that the Panel must remain free to give its views, whether or not they diverge from those of the government or the OfS.

Equally, however, the government understands that the primary role of the Student Panel is to advise and share views in relation to the OfS's powers and functions. The government would understand if the OfS does not want to spend extensive time on areas that are clearly outside its role and remit when there are many other complex priorities to consider.

The government also agrees that the Student Panel should encompass students with a wide range of HE experiences, from a wide range of backgrounds. The government understands that the OfS works hard to ensure that this is the case, and postgraduate students will also, of course, bring their own undergraduate knowledge and experience to the Student Panel.

***[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)***

#### **Government response:**

Appointments to the OfS Board are made by the Secretary of State under paragraph 2 of Schedule 1 to HERA<sup>20</sup>.

HERA provides that the OfS board is to consist of a Chair, the Chief Executive Officer, the Director for Fair Access and Participation, the Director for Freedom of Speech and Academic Freedom, and at least seven and not more than twelve ordinary members. The board has a number of important strategy, risk, audit, regulatory, and financial governance functions which require a wide range of skills and expertise to deliver. While the government accepts the importance of the student perspective on the OfS board, adding a second student representative could limit the skills and expertise in one or more other crucial areas, such as regulation, HE, further education and schools, communications, legal, finance and risk at a very senior leadership level.

In our view the current structure of the OfS board is sufficient to ensure a range of student views are heard directly without the need to add a second student representative. The Student Experience Non-Executive Director is intended to represent not only their own views to the OfS board, but also to represent a wide range of student views and promote the interests of past, present and future students. The Student Panel also submits a report following each panel meeting, which the board then discusses.

However, it remains open to the Secretary of State to consider this option in the future when making appointments. The government would, of course, encourage the OfS board to continue to support the student experience Non-Executive Director to ensure they can make the views of students known to the board.

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<sup>20</sup> [Higher Education and Research Act 2017 \(legislation.gov.uk\)](https://www.legislation.gov.uk).

## 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)***

### **Government response:**

The OfS's regulatory framework is underpinned by the provisions of HERA, including the general duties set out in section 2(1). As mentioned in our response to

recommendation 10, the OfS was deliberately set up to be risk-based, proportionate and data driven, ensuring that providers that pose the lowest risks to students, taxpayers and the wider sector should, and do, experience lower levels of regulatory burden. The OfS operates a principles-based rather than rules-based approach to regulation, which enables individual providers to have flexibility in deciding how to comply with the conditions of registration.

The government acknowledges that new areas have been added to the OfS's regulatory framework since it was created but strongly believes that this is to be expected of a relatively new regulator. The government does not share the sector's view that the OfS has become prescriptive or willing to interfere in operational matters. The OfS's broad duties and strategy mean that the regulatory framework will change and adapt to new context and evidence on the issues facing students. In our view, the potential expansion of the regulatory framework into important areas such as the protection of students from harassment and sexual misconduct, or protecting their freedom of speech, are clearly matters that the OfS should be taking action on.

As set out in response to conclusions 1 to 3 above, HERA already provides considerable protection for providers' institutional autonomy. In our view, it is the role of the regulator to set appropriate conditions for providers in return for accessing the considerable benefits which registration with the OfS brings. The government does not believe that this approach means that the OfS is infringing on institutional autonomy in a way not envisaged by HERA.

As previously mentioned, the government published a policy paper on 10 September 2020: 'Reducing bureaucratic burden in research, innovation and higher education',<sup>21</sup> setting out the changes government wanted to see across all parts of HE, including research. This was followed up by strategic guidance to the OfS to ensure both the regulator and the sector were clear about our vision.<sup>22</sup> The OfS has since taken action in response to that paper, including:

- Ending the practice in the previous regulatory regime of carrying out annual and cyclical reviews of each provider, in relation to quality and good governance.

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<sup>21</sup> [Reducing bureaucratic burden: higher education - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/reducing-bureaucratic-burden-in-research-innovation-and-higher-education).

<sup>22</sup> [ofs-strategic-guidance-14092020.pdf \(officeforstudents.org.uk\)](https://www.officeforstudents.org.uk/media/2020/09/OfS-Strategic-Guidance-14092020.pdf).

- No longer requiring providers to submit data about their estates or non-academic staff.
- Removing, where appropriate, many of the enhanced monitoring requirements imposed at initial registration.
- Consulting the sector on the burdens of their data collections and responding with decisions that seek to minimise those burdens.<sup>23</sup>
- Improving regulatory communications with providers so that they are clearer and delivered in manageable batches.
- Reducing duplication of regulation for providers that are also regulated by the Education and Skills Funding Agency, usually further education colleges.

It is important to understand, however, in relation to regulatory burden and data collections, that all regulation brings a degree of burden, as set out in DfE's written evidence. The OfS has publicly committed to minimising that burden where possible, including working with other arm's length bodies to do so. The government fully supports this approach and takes the issue of regulatory burden on the sector seriously.

While specific data collections are a matter for the OfS, the government agrees that time-consuming ad hoc requests should be minimised. But we also recognise that these are sometimes unavoidable and the OfS needs to maintain the flow of information that it uses to regulate and assess risk. In a changing and often urgent context (for example in relation to the pandemic or challenges with the cost of living), or to meet external requirements (for example government or auditors' requirements in relation to funding), there may be a need for ad hoc requests. The government also agrees, as does the OfS, that it would be helpful to be clear on the purpose of its data collections.

The government is committed to identifying ways to reduce regulatory duplication. However, while the Taskforce was useful in bringing experts and providers together, and in surfacing general issues around data burden, it is unlikely to be the best vehicle for the next, more detailed, stages of work. Instead, the government will

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<sup>23</sup> [Consultation on Data Futures and data collection: Analysis of responses to part one of the consultation and decisions - Office for Students.](#)

follow the steps set out in response to recommendation 10 above to drive out duplication and unnecessary data burden wherever possible.

***[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)***

### **Government response:**

The government agrees with the principle of transparency in relation to investigations, and that providers should understand the basis on which they are being selected for investigation. The government was pleased to see the publication of the first quality assessment reports on 12 September 2023. These set out in detail the approach the OfS has taken to investigations and show the sector what to expect. The government expects that the OfS will want to reflect on the first group of investigations once these are complete, to identify any areas for improvement or development.

***[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)***

### **Government response:**

Although this is a matter for the OfS, the government agrees that case studies are welcome and that the OfS could usefully identify other areas where it might share additional case studies. The government understands that the OfS also agrees. The quality assessment reports published recently by the OfS offer examples of how the OfS assesses compliance with the registration conditions relating to quality, setting out its expectations and approach.

**[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)

*[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)*

### **Government response:**

The OfS has already acknowledged that its relationship with the sector could be improved and has put in place a plan to address this. The government fully supports this activity and understands it has been useful to the sector and the OfS. The government agrees with the Committee that the OfS's new sector engagement plan, including quarterly sector discussions, meetings with new providers, and an ongoing programme of visits, is particularly welcome. All regulators should take the time to get to know the sectors they regulate better, and to understand the unique challenges faced by individual providers.

The government agrees that the OfS should ensure its contact points are clear to all providers but understands that the OfS has already made concerted efforts to ensure that this is the case. In terms of meetings with providers, the OfS is now holding



sector wide briefings every quarter, giving providers a chance to ask questions and raise issues as needed.

However, the government does not agree with the Committee's view that the OfS focuses too much on analysing data and not enough on context. In our view, it is critical that the OfS analyses the data it receives. This enables it to identify risks and issues, and to focus its resources where they are most needed. We understand the OfS shares this view. The OfS also already takes context into account in its regulatory decision-making and how it does this is set out in its regulatory framework.

***[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)***

### **Government response:**

The government agrees that all regulators should seek feedback from the sector they regulate. We fully support the OfS's intention to remain open to feedback, and to go to considerable effort to facilitate and consider that feedback in a meaningful and appropriate way. It is a matter for the OfS as to how it does this, on what issues, and how it responds to that feedback. The OfS already does this to some extent: for example, as the Committee will be aware, it sought feedback from the sector on its engagement and communications approach this year<sup>24</sup>, to inform its new engagement plan.

**[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**

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<sup>24</sup> [Report on provider engagement with the Office for Students.](#)

**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)***

### **Government response:**

The OfS has a duty to have regard to the need to use its resources in an efficient way, and the government fully supports it in this. But ultimately its key focus is on delivering for students, rather than providers.

The government recognises that regulation always creates burden for those being regulated. The OfS has already taken significant steps to reduce the burden it places on providers, and seeking to minimise regulatory burden is a key focus for the OfS, as set out in its Strategy to 2025.

The OfS has also published its intention to become increasingly risk-based in the way it monitors compliance and takes enforcement action, and the government supports this. It plans to vary the regulatory requirements it places on individual providers according to the risks they pose. The government fully supports this work, but the detail of this approach is for the OfS to determine as the independent regulator.

Until last year, despite its work increasing considerably, the OfS had not had a registration fee increase since 2018, when it was created. Its fees were even decreased by 3% in 2021. That said, the OfS’s fees in academic year 2023/24 amount to less than £14.28 per student on average (net of the estimated fees that would have been paid to QAA if it had remained as DQB). In our view this still represents good value for money given the importance of its work.

The government carefully considers the level of fees the OfS needs each year, so that it can deliver its functions effectively and efficiently. These include the implementation of Higher Education (Freedom of Speech) Act 2023 and the delivery of key priorities on quality and standards, access and participation and other areas. The impact of its proposed new work in relation to harassment and sexual misconduct has not led to an increase in the OfS's fees. Likewise, the OfS's performance of the assessment functions following the de-designation of QAA has not led to any increase in costs to the sector to date; the OfS delivered a saving on QAA's costs last year.

The government accepts that scrutinising how the OfS targets and uses its resources is important. DfE and OfS officials already meet regularly to discuss its finances, efficiency and resourcing. The government also negotiates the OfS's funding for the year ahead. This includes determining the level of resource it needs to deliver its priorities, and reviewing its business planning for the year ahead, as required under the published framework document<sup>25</sup>. This is particularly the case where it is expected to take on new functions, such as those relating to freedom of speech and the assessment of quality and standards. There are also separate discussions about how the OfS spends public grant funding, as for any funding body outside central government.

In terms of holding the OfS to account for its efficiency and spend, DfE officials monitor progress against OfS strategic priorities, business plans, and key performance measures, and provide assurance on the OfS's governance, use of public money and performance through biannual performance reviews. These are a key part of the DfE's oversight and governance of the OfS, as outlined in the published framework document (where our financial management expectations are set out), and the Cabinet Office Code of Practice on Sponsorship.<sup>26</sup>

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<sup>25</sup> [Framework document between the OfS and DfE - January 2023.](#)

<sup>26</sup> [Arm's length body sponsorship code of good practice \(publishing.service.gov.uk\).](#)

## 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)*

### Government response:

The government strongly agrees that the OfS should operate at arm's length from government, and we acknowledge that guidance to the OfS may be perceived to be overly prescriptive. The government does not share the view that the number of ministerial letters has been too frequent, given the context. Current Ministers have only issued two guidance letters to the OfS to date: the annual letter guiding the OfS on the Strategic Priorities Grant and one relating to medical and dental places for 2024. While there were ten letters to the OfS in 2021, that was in the context of the Covid-19 pandemic, and seven of those letters related to funding, including for students and the sector. Of the six letters sent since the start of 2022, four have related to funding. All ministerial guidance<sup>27</sup> to the OfS is published on its website to ensure transparency.

The Secretary of State's powers in relation to the OfS are clearly set out in HERA. The Secretary of State may give guidance or general directions to the OfS and attach terms and conditions of grant funding. These powers are subject to important restrictions which are broadly aimed at protecting institutional autonomy.

For example, when giving guidance, the Secretary of State must have regard to the need to protect the institutional autonomy of English HE providers. There are also express limits on the matters to which guidance may relate. Guidance may be framed by reference to particular courses of study but must not relate to the content of such courses, the manner in which they are taught, supervised and assessed, or the criteria for the appointment or dismissal of academic staff, or for the admission of students. Guidance framed by reference to particular courses of study must not

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<sup>27</sup> [Guidance from government - Office for Students.](#)

guide the OfS to perform a function in a way which prohibits or requires the provision of a particular course of study.

The government does not believe that guidance given to the OfS by Ministers to date has been too prescriptive. Ministers use guidance to set out their position and key priorities for HE, as envisaged by the legislation, and it is important that they can do this in a clear and unambiguous way. This is especially the case where guidance relates to taxpayers' money.

The OfS must have regard to guidance given to it by the Secretary of State but is not bound to follow it. Where guidance has been given, it has been for the OfS to determine how best to take proposals forward. The government considers that this is entirely appropriate and in keeping with the relevant provisions of HERA.

**[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)**

***[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)***

### **Government response:**

The government fully agrees that it is vital that regulators act with an appropriate degree of independence from government and are also perceived to do so. The OfS is not a Crown body or part of central government. However, the government does not agree that the OfS's regulatory actions and duties are driven by political pressures and input. The maintenance of standards, for example, is a key priority for Ministers and also a condition of registration in the OfS's regulatory framework, and it is not unusual that those priorities should align on important issues.

There are, of course, also instances where Parliament has given the OfS new powers and duties, which has an impact on its priorities, for example the Higher Education (Freedom of Speech) Act.

Given the importance of the HE sector, the amount of public funding it receives, and the OfS's regulatory remit, it is vital that the DfE and the OfS have a constructive working relationship on important issues. This approach, in line with the Cabinet Office's Code of Practice on Sponsorship of Arm's Length Bodies, does not in any way undermine the OfS's regulatory independence. The OfS is also completely clear that it has procedural protections in place to ensure that it remains independent in all of its regulatory decisions. In light of this, the government is of the view that there are already established and sufficient protections to ensure that the OfS operates independently of government.

**[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)***

### **Government response:**

As the Committee set out, it is a matter for Lord Wharton as to whether he chooses to retain the whip. Section 3.14 of the Code of Conduct for Board Members of Public Bodies explicitly states that Members of the House of Lords may retain a political party whip relating to their role in the legislature.<sup>28</sup>

The government has no plans to change the Code of Conduct, which sets out how board members should exercise proper discretion on matters directly related to the work of the public body.

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<sup>28</sup> [Code of Conduct for Board Members of Public Bodies June 2019 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803227/code-of-conduct-for-board-members-of-public-bodies-june-2019.pdf).

**[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)**

**Government response:**

The government recognises that there have been a number of Ministers in place since the OfS was created in 2018, which has coincided with a period of considerable political change. However, in our view it is clear that the OfS has remained focused on its core priorities throughout this period.

**[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]**

**Government response:**

The government's response to the HE reform consultation sets out a number of proposed reforms to HE which aim to drive up the quality of provision so that all students can be confident that they can get the skills they need for jobs that will benefit them, our workforce and the economy. These reforms include plans to:

- issue statutory guidance to the OfS, asking it to impose recruitment limits on provision which does not meet its rigorous quality requirements for student outcomes;
- reduce fees for foundation years in classroom-based subjects, such as business studies and social sciences, to £5,760;
- ask the OfS to consider how they can take graduate earnings into account in their quality regime, recognising that many factors influence graduate earnings; and
- ask the OfS to consider franchising arrangements in the sector and whether additional controls should be introduced, particularly for organisations not directly regulated by any regulatory body. The OfS has already announced it intends to prioritise sub-contracted higher education in deciding what

investigations to carry out in 2024-25.

These reforms are complemented by our wider reforms to the skills system. The government looks forward to working with the OfS and sector to implement these reforms, and also to working together over the longer-term to ensure that government policy continues to respond to the changing context and to set a clear strategic direction.