

Written evidence from Universities UK, UUK (WOS0034)

Universities UK (UUK) is the collective voice of 140 universities in England, Scotland, Wales, and Northern Ireland. Its mission is to create the conditions for UK universities to be the best in the world, maximising their positive impact locally, nationally, and globally. Universities UK acts on behalf of universities represented by their heads of institution.

Summary

The duties of the Office for Students (OfS) are clear and appropriate, and its objectives aligned to sector priorities: quality and standards, equality of opportunity, and enabling regulation. We have a shared interest in ensuring higher education in England is subject to robust and effective regulation. We are committed to working with the regulator to understand and address any outstanding challenges.

The OfS has established a regulatory framework that reflects its statutory duties, but it has not been without challenges in implementation. There are inevitable issues in setting up a new system. It was reasonable to expect the sector to adapt and adopt new ways of working. However, frequent revisions and expansion of the OfS's remit, has placed considerable burden on the sector and risks attention being diverted away from the outcomes the regulation is aiming to achieve.

We would like to see the OfS given space to establish itself as an independent regulator and to consolidate its current activity. The OfS has already demonstrated a willingness to respond to sector feedback in areas such as provider engagement. In the next phase of its operation, we would like to see the OfS and government prioritise the following:

- **Proportionality:** the OfS operates a risk-based approach but the expansion of its remit and some of its ongoing requirements remain disproportionate.

- **Transparency:** processes are often opaque, notably in the initiation and conduct of investigations, which is undermining trust.
- **Communication:** the OfS has made welcome commitments to updating their provider engagement approach, with improvements already evidenced, so we would encourage them to use the insights of their latest commissioned research to address the outstanding challenges in tone and complexity of their communication.
- **Responsiveness:** consultation with the sector has been felt to be tokenistic while there have been concerns about accessibility during investigations.
- **Efficiency:** while the sector and other public bodies are making savings, the OfS will be increasing its registration fee income without a clear explanation of where savings will be made, while every expansion of the regulatory framework creates further resource requirements for providers.
- **Expansion:** the OfS's remit has recently expanded which risks undermining efficiencies elsewhere, whereas we think it needs to refocus back towards its core mission that will allow it to direct resource where it is most needed.
- **Independence:** the OfS has been subject to regular and prescriptive correspondence from ministers and this risks constraining its ability to plan a longer-term strategy that is independent (and perceived to be independent) from government.

We would like to see:

- the OfS making further progress on reducing regulatory burden, including developing a mechanism by which regulation can be reviewed and in cases where sufficient progress has been made, updated or removed from the regulatory framework.
- The Department for Education (DfE) and OfS initiating the postponed review of registration fee funding, considering not only what the cost should be and how the cost is borne across providers, but how the OfS can demonstrate value for money in how the income is spent.
- the OfS working with the sector to explore solutions to identified challenges, including improved processes for investigations, a

new proportionate retention of assessment policy, and the development of a broader understanding of value for money.

- the DfE reconvening the Higher Education Data Reduction Taskforce to assess and address data burden across OfS and other relevant regulators, including the OfS's counterparts in the rest of the UK.
- the OfS confirming how it will review interim arrangements on quality and standards assessments and consult on longer-term arrangements, including a commitment to secure full alignment with the European Standards and Guidelines (ESG).
- the OfS taking a more joined up approach to assessing financial sustainability, including consideration of wider income streams such as research, and engaging in earlier identification of potential risks.

We recommend the evidence and findings from this inquiry are used to inform the terms of reference for the upcoming public bodies review of the OfS scheduled for 2023-24. This review will require an independent chair, but we also recommend the chair is supported by an expert panel. The review should look to consider the performance of the OfS as well as the relationship between the regulator, its sponsoring department, and government ministers.

Full response

1. Are the OfS' statutory duties clear and appropriate? How successful has the OfS been in performing these duties, and have some duties been prioritised over others?

- 1.1. UUK remains supportive of the objectives of the Office for Students (OfS) and believes its statutory duties are clear and appropriate. The [Department for Education's post-legislative scrutiny of HERA](#) finds the OfS has successfully performed many of its statutory duties, including establishing the regulatory framework, defining its initial and ongoing conditions of registration, setting out monitoring and penalties processes and introducing arrangements for access and participation plans (APPs) and the Teaching Excellence Framework (TEF). 415 providers have been registered to date.

- 1.2. The OfS's general duties (section 2 of HERA) are clear and appropriate. However, there will always be complexities in how these can be interpreted and prioritised. This can result in sometimes contradictory steers. Progress on narrowing attainment gaps can result in an increase in upper degree awards, but such an increase risks investigations into suspected grade inflation. Absolute minimum baselines on student outcomes set clear objectives on progression into professional employment but can create perverse incentives to recruit students from backgrounds where 'good outcomes' are more likely, with the potential to stall progress on access and participation.
- 1.3. The OfS must also have specific regard to institutional autonomy which can be achieved through principles-led, risk-based regulation. For example, minimum baselines on quality allow universities to innovate in course design above the baseline. The [OfS blended learning review](#) recognised the many and varied ways in which good quality teaching and learning is being delivered, across different modes. However, institutional autonomy has also sometimes been felt to be deprioritised. For example, prescriptive instructions [specifying the assessment of spelling, punctuation and grammar](#) rather than allowing a university to determine its importance relative to other learning outcomes.
- 1.4. We would encourage greater consistency and clarity from the OfS in how it prioritises these issues and defines its expectation to ensure providers are clear on what compliance looks like. Over time, they will need to consider how to balance a metrics-driven approach with other sources of insight to determine where and what action they take and develop an approach that involves greater direct provider engagement on solutions.
- 1.5. The OfS states in paragraph 13 of the regulatory framework that it intends to comply with the [Regulators' Code](#). The Code is a helpful steer for how an effective regulator should operate: supporting growth as well as compliance, responding to sector views, adopting risk-based approaches, sharing information to avoid duplication, and providing clear information, advice and guidance. The next phase of the OfS's development

should aim to align with these goals, focused on compliance rather than enforcement.

2. How closely does the OfS' regulatory framework adhere to its statutory duties? How has this framework developed over time, and what impacts has this had on higher education providers?

Development of the regulatory framework

- 2.1. Since its establishment, the regulatory framework has remained relatively consistent in its overall approach and guiding principles. It has inevitably needed to adapt, however, in response to feedback, evaluation, and sector-wide developments. The pandemic, for example, required a more flexible approach to monitoring and compliance. UUK had the opportunity to advise on how restrictions were impacting universities and welcomed the appropriately [lighter touch regulation](#) that emerged.
- 2.2. However, the scale of change is demonstrated by [33 separate consultations taking place](#) between September 2018 and March 2023 on proposals to amend or expand the regulatory framework or its accompanying infrastructure. While not wholly unexpected in its first years of operation, 2022 alone included proposed changes to:
 - in-year reporting for Data Futures, a sector-wide transformation programme making fundamental changes to data collection
 - questions used in the National Student Survey (NSS)
 - the TEF methodology, ratings, and process
 - APPs and introduction of a new Equality of Opportunity Risk Register
- 2.3. Regular amendments to the regulatory framework generate a burden that can detract from outcomes the regulation is seeking to achieve. They demand regular changes to universities' internal processes, policies, and approaches to ensure compliance against moving requirements. The level of activity will vary depending on the size and type of institution but feedback from across our membership demonstrates the impact:

- One member has 10FTE supporting regulatory compliance at an approximate staff cost of £443k.
- One member reports 4 core staff working full-time for 3 months to complete only their TEF submission.
- One member estimates a total cost of £1.1million in 2022-23 on regulatory activities.

2.4. These challenges are especially pronounced for smaller providers. They may not be able to resource the work in this way, which can mean regulatory activity being incorporated into existing roles and increased pressures on staff. A recent example includes the application process for world-leading specialist provider funding. The additional funding and recognition was well received, but members have reported the process being highly resource-intensive which in a small provider feels more acute.

2.5. The OfS has nevertheless recognised the challenge of burden and there have been some positive developments to counterbalance this. This includes the reduction in enhanced monitoring ([between November 2019 and April 2022, a per provider average of 1.35 conditions subject to enhanced monitoring down to 0.3](#)), the removal of an annual accountability statement on Prevent, and OfS now generating and providing the data required to meet its transparency duties. We would encourage the OfS to continue to explore with the sector where further burden could be reduced, including how to balance demands on the sector when new requirements are added.

Future expansion

2.6. The remit of the OfS is already extensive with 25 conditions of registration outlined in the current regulatory framework. There are significant concerns about the further expansion of this framework to include additional conditions of registration following ministerial interventions. Two examples of this are the proposed creation of a new condition of registration on harassment (currently under consultation) and incorporation of freedom of speech into the OfS' remit. Neither were originally envisaged during the passing of the Higher Education and Research Act (HERA) 2017.

- 2.7. Tackling harassment and sexual misconduct is an important area, but one which arguably falls outside of the core responsibilities of the regulator, and which is already covered by existing legislation. The OfS introduced a 'self-regulatory' approach to tackling harassment in autumn 2021 through their 'statement of expectations', albeit with an evaluation launched less than a year later. Given the complexity of achieving culture change in this area, we would have liked to see the OfS continue to work collaboratively with the sector first to support improvement before rushing an evaluation and proposing a new condition of regulation. Where possible the government and the OfS should avoid expanding the regulator's remit into areas beyond its core priorities unless there is compelling evidence it is the only remaining lever to protect students.
- 2.8. The incorporation of duties relating to free speech and academic freedom is a substantial undertaking. While at the time of writing the Bill has not yet received royal assent, the duties are wide-ranging and will cover a range of areas including complaints, overseas funding, as well as students' unions. This role is complicated further by the complex and overlapping legal and regulatory framework regarding academic freedom and freedom of speech which universities – and the OfS in fulfilling their duties – will need to consider. This includes the Education Act 1986, the Human Rights Act 1998, the Equality Act 2010, and the Prevent duty.
- 2.9. Universities take their responsibility to protect and promote both free speech and academic freedom seriously, yet it is questionable whether the burden that the new duties will place on universities is proportionate to the risk posed and student interest. In December 2022, the [OfS revealed](#) that of 800 notifications since 2018, only 60 (7.5%) were about free speech, although we recognise that concerns related to free speech often go beyond the small number of events which do not go ahead. It will be important to review the impact of these new duties, particularly given the additional fees which the OfS will charge to fulfil them.

2.10. It is nevertheless inevitable that new issues will emerge requiring attention. Where the sector is not making sufficient progress, the OfS may need to take a more interventionist and sector-wide approach. The type of attention should, however, still be informed by evidence on how widespread and significant the concern is, and what action is already underway within the sector. The OfS should consider a mechanism by which to review its regulation so that where the sector has taken control of an issue it can move away from enforcement-led approaches. This could mirror the approach taken during the pandemic on the temporary [condition Z3](#) on admissions procedures, since taken up by the UUK and GuildHE [Fair Admissions Code of Practice](#). Despite Z3 no longer being in force, the use of conditional unconditional offers has not returned.

Impact of OfS regulation

2.11. With the OfS is still arguably in its infancy, its broader strategic goals around quality and standards, equality of opportunity and enabling regulation are [focused towards a 2025 deadline](#). The impact of OfS regulation in pursuit of these objectives will therefore require future evaluation. For example, we are yet to see results from the 30 investigations into quality and standards launched in 2022¹ to assess how well the regulation is working. We have been consulted on the evaluation of B3 and are pleased that the OfS is seeking feedback from those under investigation. We would like the evaluation to be published alongside lessons learnt which will support the sector to comply in the future. We would also like to see similar independent evaluations into OfS's other investigatory activities.

2.12. As above, the Regulator's Code encourages regulators to support those they regulate to comply and grow. Enforcement-led approaches may be necessary in cases of serious breaches but should be a last-resort. We would encourage the OfS to work more collaboratively with the sector to develop innovative approaches that will support compliance and improvement above

¹ <https://www.officeforstudents.org.uk/news-blog-and-events/press-and-media/regulator-opens-investigations-into-quality-of-higher-education-courses/>, <https://www.officeforstudents.org.uk/news-blog-and-events/press-and-media/new-ofs-investigations-to-examine-credibility-of-degrees/>, <https://www.officeforstudents.org.uk/news-blog-and-events/press-and-media/of-sets-out-next-steps-in-ensuring-courses-are-delivering-positive-outcomes-for-students/>

baseline requirements. Universities are already often being proactive in addressing areas of concern, which provides a good basis for this approach. For example:

- UUK, working with GuildHE, committed the sector to [a statement of intent on degree classification to address grade inflation concerns](#). This has resulted in [118 universities in England and Wales now publishing degree outcomes statements](#), new sector-recognised standards for degree classification, and principles for effective degree algorithm design and external examining practices.
- UUK has developed a [framework for programme review](#), cited by the OfS when introducing its revised B3 condition, that brings more transparency and consistency to universities processes to identify courses where quality and value may be of concern and then act on it.

Risk-based regulation

2.13. On quality and standards, the move away from cyclical review towards investigations has the potential to ensure more targeted interventions focused on potential breaches, in line with risk-based and proportionate regulation. The same is true of the decision to remove the originally envisaged random sampling. [Prioritisation of assessments under condition B3](#) instead considers the number of students impacted and potential severity of a breach according to distance from the baseline. However, it is unclear how the prioritisation criteria are being applied in practice (i.e. the courses against which assessments will be targeted and in which providers). It is therefore not possible to assess the degree to which it reflects 'high risk' areas. As a consequence, the OfS is targeting particular courses and initiating investigations without making it clear to the provider from the outset what the basis for the investigation is.

2.14. Increased transparency on investigatory processes would help providers understand how the regulation is being applied. This could include publication of anonymised case studies following

investigations that explain how and why decisions have been made (see Q7).

- 2.15. [Research commissioned by the OfS in 2022](#) found providers that considered themselves to be low risk felt the requirements of OfS were disproportionate. For example, within the [guidance for condition B4](#), all registered providers are now expected to retain five years' worth of all student assessment. Conservative estimates of what digitising and storing work on this scale might cost have resulted in figures of between £270,000 to over £1 million pa per institution, in addition to an environmental cost. One member has estimated a 150% increase in current costs of this activity. We welcome the opportunity to engage in a task and finish group with the OfS and the Association of Heads of University Administration (AHUA) to find a resolution that will allow the OfS to regulate as necessary while not creating a disproportionate burden. This should be informed by lessons learnt from investigations that are currently underway on B4.
- 2.16. The OfS-commissioned research also found that, across the board, there was often confusion linked to the complexity of OfS communications and processes. Where these expectations are not clear, it can lead to effort disproportionate to risk, for example a letter dated [14 January 2021](#) that called for internal reviews of compliance against condition C1 but with no clarity on what needed to be produced. We received feedback from the OfS that universities had in many cases done more than was necessary to satisfy the request, and elsewhere such reactions have been [described by the OfS as 'gold plating'](#).
- 2.17. The [National Audit Office \(NAO\) in 2022](#) reflected that a 'one-size-fits-all' approach to data collection has been established under the OfS. This is to some extent unavoidable as the OfS needs a consistent foundational dataset to regulate in a risk-based way, using metrics to identify concerns and limit interventions to areas of most risk. We welcome the progress the OfS has made in reducing some of these requirements, as demonstrated [in KPM 11a](#).
- 2.18. However, the amount of data being collected is still often significant. One member reports a total of 99 data returns being required for the 2022-23 academic year, across not only the OfS

(who represent only a small proportion of this number) but also professional, statutory and regulatory bodies, the Student Loans Company, and Office for National Statistics, to name a few. This is being supported by a team of 7 full-time staff members. Concerns about multiple, potentially duplicate data collections was recognised in the creation by DfE of the [Higher Education Data Reduction Taskforce](#) in 2022.

2.19. The OfS could do more in its role as lead regulator in England to recognise the wider regulatory reality in which providers operate. Universities are accountable to several regulators and there is scope for taking a more joined-up approach. We think the Data Reduction Taskforce should be reconvened with an immediate priority being to map the data burden across all the regulatory bodies universities engage with. This should include involvement of the funders and regulators in the devolved administrations where data requirements and collections operate cross-border.

3. What is the nature of the relationship between the OfS and the Government? Does this strike the right balance between providing guidance and maintaining regulatory independence?

3.1. The OfS must have regard to guidance from the Secretary of State and to comply with any general directions and/or terms and conditions relating to grant funding from the Secretary of State. Between 2018 and March 2023 there have been [26 pieces of published government advice and guidance to the OfS](#). Partly a symptom of ministerial changes, this creates additional pressure on the OfS to adjust its priorities and approaches.

3.2. There are cases where ministerial steers have not been followed and instead the OfS has responded constructively to sector and student feedback, for example retaining the NSS against political steers.

3.3. There is a perception, however, that this has sometimes constrained their ability to act independently. In a [letter dated 31 March 2022](#), the Secretary of State twice gave strong support for a new 'requires improvement' TEF category. Despite three-quarters of 239 responses to the [relevant consultation](#) expressing

significant concerns about the implications of this and it going against recommendations of the independent review of TEF, the OfS implemented the government preference with no adjustment.

- 3.4. In the same letter, priorities for targeting quality investigations on a revised condition B3 were set out, preempting the condition that was still under consultation. No baselines had been established nor had the data source or assessment approach been confirmed. The ministerial priorities specified computer science and law, both of which were subsequently prioritised by the OfS for investigations in 2022.
- 3.5. The OfS has a clear role to gather and consider the evidence and intervene in a targeted and risk-based approach if valid concerns are identified. However, it should also explain where it considers media or political campaigns to be misguided and unjustified. Publicly announced investigatory action should not be a means to satisfy ministers that the regulator is acting robustly. The government, in return, should give the OfS the space to regulate, setting a direction of travel but minimising the number and prescription of its guidance letters.

4. Does the OfS have sufficient powers, resources and expertise to meet its duties? How will its expertise be affected by the Quality Assurance Agency for Higher Education's (QAA's) decision not to continue as the OfS' Designated Quality Body?

Quality and standards

- 4.1. Under HERA the OfS must assess or make arrangements for the assessment of quality and standards. On standards, it must have reference to sector-recognised standards. It has the power to do this in-house in the absence of a suitable DQB, and the B conditions of registration allow it to conduct quality assessments without deferring to a DQB. The OfS has begun to put in place arrangements to manage this, including appointing and training new assessors. We have welcomed OfS's sharing with us details on how this process will work, responding to questions from our members, and their engagement with mission and sector representative groups to establish guiding principles to underpin assessment of quality and standards in the future.

- 4.2. We would like to continue this engagement during the interim period and do not believe the current interim arrangements should be made permanent by default without assessing performance. We recommend a review of OfS's quality and standards activity over the coming year considers value for money, effectiveness, and the potential for future efficiencies. This should be informed by sector feedback, and we would welcome confirmation of its plans for how it will consult with the wider sector on longer-term arrangements. Particular attention should be given to how investigations regarding quality are being initiated and conducted (see Q7).
- 4.3. Ultimately, we believe an independent DQB remains most appropriate for external quality assurance. This is crucial for academic standards, which are set, maintained, and owned by the sector, and in the assessment of degree awarding powers. Both were [cited during HERA's](#) passing and informed clauses relating to establishment of an independent DQB. This recognises the role of academic expertise in advising on whether content is 'up to date' and whether it offers sufficient stretch.
- 4.4. An in-house function is also subject to greater volatility. Even an independent regulator must respond, reprioritise, and redirect resource across its activities as events, intelligence, and ministerial guidance requires. Experts need the space to make informed, impartial, evidence-based reports against which a regulator can then make a judgement. As above, there is a concern in the sector that the OfS is currently subject to considerable guidance from government. A dedicated DQB provides greater stability and reassurance, which is important for consistency in assessments and for clarity of process among international audiences.
- 4.5. The regulatory approach to quality and standards in England has been judged to be only 'partially aligned' with the European Standards and Guidelines (ESG) by the [European Quality Assurance Register for Higher Education \(EQAR\)](#). This risks damaging the international reputation of English universities (and a potential knock-on effect for those in the devolved administrations), weakening the potential for transnational education partnerships, and undermining mutual recognition of qualifications. The rest of the UK remains fully aligned. Both DfE and OfS should take monitoring the impact of 'partial alignment'

with the ESG more seriously and make securing 'full alignment' a priority in developing their capacity.

- 4.6. The OfS will soon be responsible for quality assurance under the Lifelong Loan Entitlement. The current B3 condition involves some contextualisation of student outcomes data to determine when and where to initiate investigations. However, there is still an in-built assumption that if a student does not continue or complete in a traditional pathway then that is a poor outcome. The success of the LLE is going to necessitate a culture shift to show that success will look different for different learners, with less linear educational paths being supported. This will require the OfS to play a greater role in system design, producing insight and building consensus. This will require a collaborative approach with the sector and employers.

Freedom of speech

- 4.7. We expect an announcement on a new OfS Director for Free Speech and Academic Freedom to be made imminently. This will be a Board-level role with significant new responsibilities. As UUK has made clear throughout the passage of the new Higher Education (Freedom of Speech) Bill, it is critical that the new Director has the requisite experience of the legal and regulatory landscape and is able to command the confidence of the higher education sector, particularly given the sensitive and complex judgements they will be required to oversee. At the time of writing, there remain questions over how the OfS intends to implement their new duties, and the timescales in which they will come into effect. We would welcome the opportunity for further meaningful and constructive engagement in this area to ensure an approach which all stakeholders can have confidence in.

Harassment

- 4.8. As OfS takes on regulating universities' response to harassment and sexual misconduct, all staff involved will need a detailed understanding of the nuances and complexities involved in this area. The OfS will need to work constructively with universities and their representatives, alongside students and campaigners, to ensure a detailed understanding of what is reasonable and feasible.

5. How does the OfS measure value for money for students? How can this be measured in an objective, tangible way that is not based on economic or political judgements about the value of subject areas or types of institution?

- 5.1. The OfS currently sets out three measures under its key performance indicator covering value for money for students at a sector level; proportion of undergraduate students who say university offers good value for money, percentage of students who are positive about quality, and proportion of students with student outcomes above their thresholds for continuation, completion, and progression. The sector performs well on these measures. The [latest data](#) on the proportion of students at providers where the relevant indicator for continuation was below the threshold shows it was just 5.2%, with 6.7% for completion and 1.6% for progression.
- 5.2. There are limitations, however, of relying heavily on measures such as career progression. The metrics are lagged, so may not be sufficiently responsive to changing labour needs. They are also only revised once every ten years which risks missing trends in emerging industries. To illustrate this, a recent change in ONS classification approach led to 7% of non-graduate jobs being classified as graduate level.
- 5.3. 'Good outcomes' as defined by the OfS, however, present a narrow view of the value of higher education as recognised by students themselves, and the needs of the taxpayer. [Research on student perspective of value by OfS in 2018](#) showed that students were up to 45% more likely to state that quality of teaching was more important in their view of value, compared to the measures the OfS have focussed on. There is also evidence showing positive graduate views linked to careers that may fall outside of definitions of 'good outcomes'. UUK analysis of the [HESA Graduate Outcomes Survey](#) finds that 90% of graduates in in 'Caring, leisure and other service occupations' felt their employment was meaningful, second only to 'Professional occupations' and above respondents classified as managers or in other occupation groups. UUK research has also showed that

eight out of ten students agree that government should do more to advocate for the broader benefits of university study.

- 5.4. A metrics-led approach can also be challenging for smaller and specialist providers where small cohort and class sizes can make data unreliable. A small change in performance can appear far larger in their data, putting them at greater risk of being identified as potentially breaching a condition of registration.
- 5.5. In [our responses to OfS consultations](#) on this issue we have strongly encouraged the OfS to consider greater use of expert independent evaluation in defining value and quality, and to work together with the sector and others in setting out an approach that is sustainable and future proof for the needs of students and the economy. This commitment to developing a shared understanding could mirror the approach taken by Ofsted in revising their definition of 'quality of education' in its [revised Education Inspection Framework](#). The approach must be flexible so that it supports widening access and participation and enables innovative activity that meet the needs of students, employers, and local and national economies. In the case of the incoming LLE reforms, the metrics will need to adjust to account for non-linear and step-on-step-off educational pathways.
- 5.6. [UUK has developed a toolkit](#), based on research from government and other stakeholders, that reflects the full value of higher education. This recognises the importance of existing outcomes-led approaches, but covers other measures such as:
- the value added for certain groups, including their likely career and salary prospects had they not gone into higher education and the relative learning gain over the course of their degree.
 - graduate prospects that include graduate views of career progression, including how meaningful they find their work and how their current work fits with their longer-term goals.
 - support for economic growth (particularly at a local level to reflect substantial geographical variation in earnings and employment).
 - social impact through student and graduates' contributions to public sector, culture and the environment.

Value during the pandemic

- 5.7. Much attention has been given to the question of whether students received value for money during the pandemic, especially when public health requirements suspended and later restricted face-to-face teaching. The sector quickly responded by moving teaching, learning and assessment online before a gradual return to campuses, including in disciplines where this would have previously been thought to be impossible (for example in relation to courses requiring practical experience and access to specialist facilities). While the circumstances were challenging, the [government response to findings of the House of Commons Petitions Committee](#) recognised the efforts that were made: 'The Government is grateful for the tremendous effort made by universities and the dedication and commitment of staff to continue to deliver higher education and support to students during these unprecedented times. There are some excellent and innovative examples of high-quality online learning, and the sector is working hard in preparation for the new academic year.'
- 5.8. The OfS used the NSS to understand students' experiences. [The results](#) showed that while they were less content overall (only 48%), 78% were able to access the learning resources they needed.
- 5.9. Where there were issues, university complaints processes and the Office for the Independent Adjudicator (OIA) handled these cases ([37% of 2,763 complaints received by OIA in 2021](#)). Case summaries published by the OIA provide important lessons on how to support students during disruption and universities have taken this on board. [UUK research](#) has identified further lessons from the pandemic on how and where new technologies can be used alongside traditional teaching methods to support student successes. Similar findings were evident in the [OfS's digital teaching and learning review](#), and the sector will continue to work with staff and students to maximise these opportunities.

Value for money at the OfS

- 5.10. In oral evidence sessions, the Committee has expressed interest in the value for money provided by the OfS itself. The OfS currently sits at a headcount ([398 on 31 March 2022](#)). This is not dissimilar to numbers (388) that transferred from the Higher Education Funding Council for England (HEFCE) and the Office for Fair Access (OFFA) in 2018. However, we would expect to see an increase in headcount as the OfS adapts to discharge its new responsibilities (see Q5).
- 5.11. The OfS will also need to consider how the recently announced third category of registration will impact their approach. With more further education colleges and independent training providers entering the register, the OfS needs to set out how it will prioritise and focus its work while also supporting a greater diversity of provision.
- 5.12. The expansion of the OfS remit has led to increased costs – both direct and indirect. In September 2020, the OfS committed to a 10% real terms reduction in registration fees over two years. In [guidance from the Secretary of State in March 2022](#), however, OfS were advised that the fee reduction was not necessary in view of the priorities they were being asked to pursue. In December 2022, the sector was advised of plans to increase the OfS subscription by a further 13%, partly to resource additional responsibilities relating to freedom of speech but at a time when universities and other public sector bodies are making significant efficiencies in response to rising costs combined with falling real-terms income.
- 5.13. This is in a context in which the cost of regulation is not insignificant. The [OfS's running costs in 2020-21](#) were £27.7 million, of which £26.3 million (95%) was funded by registration fees paid by providers. In 2020-21, [OfS calculates](#) that registered providers paid an average of £19.70 per student in regulatory fees. Institutions with 501-1000 students are disproportionately affected by the cost of registration (£59.75 per student compared to an average of £9.58) and will be disproportionately affected by the proposed 13% increase (a further £7.77 per student). From UUK members alone the contribution is c.£16 million. The proposed increase of 13%

could see a further £2 million being contributed by UUK members.

5.14. The sector itself is increasingly constrained in its financial position. The erosion of the fee cap by inflation means the £9,250 fee cap in 2012/13 prices is now worth just £6,585 while [central grant funding for teaching in 2020-21](#) was 78% below the figure for 2010-11 in real terms. [Maintenance loans](#) are also not keeping pace with inflation. On top of other costs (see Q8), the potential increase in registration fees and regulatory activity linked to an expanded regulatory framework will become increasingly difficult for the sector to bear.

5.15. The OfS was due for a review of its fee model two years after its establishment. This is yet to happen. We recommend this happens with a matter of urgency and before any increase to registration fees. It should consider both how the cost is borne across the sector and how this interacts with factors such as size and risk, what the impact on providers is, and how the fee income is spent.

5.16. For example, in its current consultation [on recovery of costs in the case of investigations](#), it is notable that while discussing how fees will be calculated there is no mention of how the OfS will seek to ensure efficiencies. This should be expected as standard, and we are recommending this in our response.

5.17. The DfE should also consider how the income from monetary penalties (which under HERA schedule 3 requires the OfS to pay the sums received through penalties to the Secretary of State) can be directed towards support for students. For example, increased hardship funding.

6. How does the OfS engage with students? To what extent does input from students drive the OfS' view of their interests and its regulatory actions to protect those interests?

6.1. The OfS has developed a student engagement strategy, operates a student advisory panel, and has student representation on its board. It also receives notifications from the public, including students, that can identify individual cases

in which breaches may have occurred but also support in identifying sector-wide themes, alongside complaints data provided by the OIA. The OfS also uses the NSS within KPM 4 to track student views on quality. In recent reforms to the TEF it has sought to protect independent student voice through introducing a separate student submission.

6.2. It will always be difficult for the OfS to be fully led by student concerns. There are minimum requirements against which the OfS must regulate in the interests of students, but which may not be front of mind for all students. For example, market exit would create significant disruption for any students affected, but the ongoing work the OfS does to monitor the financial health of the sector may not be the top priority of students at a time when immediate and personal cost of living concerns are likely to be dominant. Addressing potential cases of grade inflation will benefit students by ensuring their qualifications hold their value over time but this may be perceived to be undermining the efforts of current students.

6.3. The OfS must strike a delicate balance between its regulatory functions and being responsive to student concerns. We would encourage them to continue seeking ways to engage with a wider range of students and demonstrate more clearly where they are responding to student views.

7. What is the nature of the OfS' relationship with higher education providers? Does the OfS strike the right balance between working collaboratively with universities and providing robust challenge?

Provider engagement

7.1. [Research commissioned by the OfS and conducted in the summer of 2022](#) suggested a need for clearer communications, dedicated contacts, and a more constructive dialogue. The [OfS responded in January 2023](#) and set out welcome plans for increased accessibility and engagement with the sector, including more institutional visits and regular online sessions to give accountable officers opportunities to ask questions. Since the pandemic the OfS has also reintroduced named contacts for

each provider. While the OfS-commissioned research suggests there may need to be further promotion of these initiatives, it is good to see the regulator responding to sector concerns.

7.2. Issues with the clarity of guidance has been recognised by the OfS itself. During the registration process, [266 student protection plans had to be re-submitted](#), sometimes after multiple iterations, due to not being judged approvable. This number suggests it was not a sector issue but one with the guidance, with OfS indicating they would revise it in 2019 (it remains still forthcoming).

Investigations

7.3. It is appropriate that where there are concerns, that the OfS is providing a robust challenge. This is evidenced most recently by the launch of investigations into quality and standards during 2022. [We support](#) minimum baselines on student outcomes that are stretching to ensure that students are not starting courses where the likelihood of continuation or progression falls significantly below the high averages that most students can expect. Where other problems are identified, it is right that universities are subject to scrutiny.

7.4. Where the OfS has initiated information-seeking or investigatory activity, however, feedback we have received suggests several concerns. These include:

- a lack of clarity on what the basis for the investigation is.
- limited information on what a provider needs to do to comply with an investigation.
- the scope of an investigation changing during investigation.
- Inconsistent methodologies when investigating similar issues within different providers.
- the absence of an expected timescale, with short deadlines for providers to supply large amounts of information but with delays in response from OfS

7.5. This risks inadvertent non-compliance, additional correspondence and burden, and potential legal challenge. One member has shared that a single query requesting a range of data and information required 870 hours of staff

time and cost £48,000, including external legal advice. The nature of the enquiry was for a broad range of data/information which required a significant amount of time to be spent on it. We have heard from other members about requests for large volumes of information followed by changes in the focus of OfS's inquiries. This is undermining trust in the regulator where these requests have been felt to be 'fishing exercises' and adds to the time, cost, and burden of the work. With providers under investigation likely to [bear the costs of this activity](#) and meeting these costs through student fee income, the OfS needs to ensure it is focused in its requests.

7.6. The OfS should consider developing a set of minimum standards for their engagement with a provider in these instances. UUK has developed a set of principles which we hope will support this process. This is not about disputing the need to investigate nor the potential finding that there has been a breach. It is about ensuring the process is – and is accepted as – transparent, consistent, and fair, with clarity on how the regulator operates and how providers will be regulated, so there is accountability for all parties involved. We think three stages require improvement:

- **Prior to a formal investigation:** Where concerns are identified, a provider could be invited to provide an initial response and given an opportunity to take voluntary action, especially where the risk is judged to low. This would also be a chance to provide additional information or context that could lead to quick resolution without the need for a costly investigation. Should it suggest a formal investigation is needed, the grounds for the investigation will be clearer and the provider will be reassured that due process has been followed.
- **Launching investigatory action:** The method of investigation will necessarily vary depending on the issue of concern. However we think providers need greater clarity at the start of the process on what this will look like in their context. We think the OfS should adopt a consistent process for writing to a provider and detailing: the rationale for the

investigation, the scope of the investigation, the expected timeframe, the form it will take, the process for provider engagement, the expected points at which information will be made public, likely decision makers, and the possible outcomes.

- **After an investigation:** Once a decision has been reached, the provider must be made aware of how the decision has been made, how any penalty has been decided, and how they can appeal. They should also be engaged in a discussion of how any information will be made public, recognising the potential impact on students at the provider in question.

Consultations

7.7. The OfS has engaged in extensive consultation amounting to 33 consultations in 5 years. This is welcome and offers providers the chance to shape the regulatory framework, which is especially important during the establishment of a new body. We would anticipate the amount of consultation action will start to subside shortly. However, as the OfS has itself recognised, the process has not always been smooth. We were pleased to see [recent commitments from the OfS](#) to revisit its consultation approach.

7.8. An example of the challenges in the current approach includes the experience of January 2022. With a Data Futures consultation already open, three further consultations were launched with documentation amounting to 1,158 pages and 8 weeks to respond. The OfS supported providers during this process by running well-received information events, but the level of detail and number of proposals meant responding still generated significant burden. Consultations have also often had short deadlines. Consultation on the NSS in August 2022 (coinciding with when many staff and most students are on holiday) was open for only five weeks. This was followed in October 2022 by a second five-week consultation on Equality of Opportunity and Access and Participation.

7.9. There are questions emerging about the extent to which consultations are truly open and the OfS is open to listening and working with the sector. [Research commissioned by the OfS](#) found providers “suspecting them to be ‘box ticking’ exercises or too prescribed, with many decisions ‘already made’.” In the 2022 NSS consultations, [90% of 250 respondents disagreed with removing a question on student satisfaction](#), citing its usefulness in benchmarking performance, supporting UK-wide comparisons, and informing internal enhancement. Despite these concerns and the relatively low cost of its continued inclusion in the survey, the OfS did not adjust its plans.

7.10. We recommend the OfS considers:

- Publishing an annual timetable of consultations to allow universities to plan resource allocation to respond in a meaningful way.
- Avoiding multiple concurrent consultations (at the time of writing, the OfS is currently running three consultations).
- Adopting the recommended 12-week consultation period promoted in the [government code of practice for consultation](#).
- Engaging earlier with the sector and in advance of publication, to ensure that the proposals are clear and understood upon publishing the consultation,

Relationship with the rest of the UK

7.11. The relationship between the OfS and the sector UK-wide is also being affected by growing divergence between England and the rest of the UK. As above, this is evident in our alignment with the ESG, but has implications for cross-UK collaboration. For example, the OfS’s decision in England to remove the summative question from the NSS that is used by the funders and regulators in the devolved nations sent a signal that cross-UK comparison and learning was not a priority. Another is in the regulation and quality assurance of transnational education where changes in England necessitated the devolved administrations to amend their approach away from their preferred model.

7.12. The OfS's statutory remit relates to England, and it is right that this is its focus. However, the actions of the OfS have consequences in the other nations of the UK. We would encourage the OfS to engage in more regular and meaningful dialogue with their counterparts in Scotland, Wales, and Northern Ireland, including working through the UK Standing Committee for Quality Assessment (UKSCQA).

8. What systemic financial risks are present in the higher education sector? Is there the potential for significant provider failures if these risks crystallise, for example through an unexpected reduction in numbers of overseas students or an unexpected increase in pension costs? Are these risks limited to particular groups of providers or are they widespread or systemic in nature?

8.1. Overall, the higher education sector is resilient, with strong investor and lender confidence, thanks to prudent financial management by providers. However, there are some common risks. The NAO has also [noted](#) that these financial risk are found across the sector, and are not limited to one kind of provider. It has reported that around one third of providers in England were in deficit in 2020, and around 20 of these providers had been in deficit for at least three years at that point. These providers varied in size from around 200 students to over 30,000.

8.2. There are real questions over how these risks will affect the ability of the higher education sector to deliver the skills and research that is needed to power the UK economy in the long term. In 2020-21, 39% of university income came from tuition fees from UK and EU students. Possible government reforms to the student finance system, increased student demand ([UCAS predicts a million applicants by 2030](#)), and the fee cap put this at risk. The £9,250 headline fee for English universities, which will not change until 2025 at the earliest, is now only worth around £6,600 and will erode further as we continue to experience record levels of inflation.

8.3. The level of tuition fee does not cover costs of teaching. [Russell Group analysis](#) shows the average deficit for a UK undergraduate is now £1,750 and will double to around £4,000

by 2024-25. Deficits are much higher in some subjects. Across the sector deficits average £2,460 per year for each medical student and £1,940 per student per year in STEM subjects.

- 8.4. This is within a context of increasing costs being placed on both universities and students, due to rising energy bills and high inflation, the cost-of-living crisis, and several other key factors. Changed availability of capital grants, with a move to bidding for most funding, is having an impact on providers' ability to maintain their estates. Providers are experiencing intense competition for market share of domestic students, and there are also strong demands in the sector for higher pay and pensions.
- 8.5. For example, Post-92 institutions mostly use the Teachers' Pension Scheme (TPS) for their academic and academic equivalent staff. In 2019, TPS employer contributions increased from 16.4% to 23.7%. More recently, the [SCAPE rate has been lowered to CPI+1.7%](#) which will increase employer contributions further. Consequently, many were required to implement sizeable costs saving measures, including reductions in teaching headcount and in the resources available for students to support their learning and to enhance the student experience.
- 8.6. This is leading to a dependence on cross-subsidy. Another 17% of university income is from international student fees, and 12% from commercial sources such as accommodation and catering.² In the case of international students, geopolitical tensions, as well as the competitive position of other major study destinations such as the US, Australia, and Canada could make this less reliable as a long-term solution.
- 8.7. Research has the greatest deficit of any area, [reported by OfS to be 41.7% in 2020-21](#) (as a percentage of income). This means it is particularly exposed to reduced funding. We think OfS should work more closely with UK Research and Innovation (UKRI) to consider how the income and expenditure on teaching and research interact, and this may involve reconsidering where sponsorship of the OfS should sit.

² Flagged in the [OfS financial sustainability report 2022](#), [NAO 2022](#), and [Nurse review 2023](#)

9. What business models are present in the UK higher education sector? Are these models resilient to the financial risks of the sector, and are universities focusing sufficiently on having a viable business model?

- 9.1. There is significant variation across the higher sector – from small specialist institutions to large comprehensive institutions; institutions with a predominantly local focus to those which explicitly see themselves as global institutions; from institutions with a high level of reliance on teaching income via the Student Loans Company (SLC), to those with a very modest reliance on public funding. Some institutions are private (including some for-profit) and others operating as charities in receipt of government funding. The OfS faces the challenge of providing effective regulation across a large and diverse sector.
- 9.2. For all universities, their core business includes the provision of higher education, leading many to argue that their financial sustainability depends on student recruitment. This is currently buoyant with high demand for higher education and an [upcoming increase in the number of 18-year-olds](#). However, research and knowledge exchange are also central in varying degrees to most of the established university sector, and many providers are diversifying/changing their model in different ways.
- 9.3. The 'average' business model is a mix of public and private sources. On average, around 35-40% of income comes from domestic tuition fees; around 29% from a combination of international tuition fees, commercial sources, and donations; 20% from government or EU grants, including for research; and the remainder comes from grants from charities, industry, and local authorities. This mix of private and public sources can be challenging to balance. Universities are expected to meet government's expectations in the same way as fully public entities but are also expected to respond flexibly like a business, despite more restrictive parameters.
- 9.4. There is potential for long-term cost-saving through transforming approaches to teaching, collaborating with other universities and businesses, and improving capital assets. It would be valuable for government and OfS to incentivise these

more ambitious, transformative changes through targeted funding or regulatory interventions. Targeted funding could also be directed at collaborations which might not otherwise occur due to competitive pressures, or at areas of priority for government such as levelling up, lifelong learning, or supporting disadvantaged students.

10. How does the OfS oversee the financial sustainability of higher education providers and the higher education sector? Is its approach clear, and is its oversight sufficient to spot potential risks early on and take action accordingly?

- 10.1. The OfS has a role both as a funder and regulator for the higher education sector in England. It evaluates the financial health and sustainability of providers as part of its monitoring and can intervene where it feels institutions are not being managed prudently. During [the initial registration phase](#), the OfS undertook formal communication with 74 providers in relation to condition D (financial viability and sustainability), and imposed enhanced monitoring on 71 providers.
- 10.2. It has powers to distribute funding as appropriate, such as with student hardship grants during COVID-19, and it establishes clear parameters for institutions to receive this funding. In this way, it has a key role in managing financial risk in the higher education sector.
- 10.3. For the OfS to act as an effective regulator of financial sustainability and risk, it must consider risks across all income streams. For example, the financial sustainability of research is subject to different risks than teaching, due to different levels of subsidy and sources of funding. The OfS should consider how risks to different streams can be mitigated with effective regulation and funding allocations. Ministers should consider where sponsorship lies in government, and whether closer connections to either science and technology or business and innovation should be made.
- 10.4. The OfS' publicly available reporting on financial health gives a general, sector-wide view. While this reporting acknowledges that the impacts of financial risks will differ across the sector, it is

important that the challenges facing diverse institutions are fully understood. The institutions which the OfS regulates are extremely diverse, and financial risk is managed very differently by these institutions.

10.5. However, indicators and reporting can only tell one part of the story. A provider must report to the OfS if it is likely that its liquidity will drop below 30 days at any point during a rolling three-month period, but for some providers this may be too late for useful change. A six-month horizon may be more appropriate, with opportunities to have a confidential conversation on what actions would be helpful. Identifying risks must be supported with meaningful communication with providers. This will also need the OfS to rebuild the sector's trust in it, so that they feel better able to flag potential problems before they become more significant and without fear of premature regulatory repercussions.

11. What is the OfS' tolerance for the failure of higher education providers, and what processes are in place to manage provider failure? Would the failure of a large provider follow a clear regulatory process or is there the potential for political considerations to play a role in such decisions?

11.1. The OfS undertakes regular monitoring of providers (as above) which can indicate the financial health of a provider and whether there may be a need for an intervention, be this an informal conversation to gather more information or a more formal engagement that requires action.

11.2. All registered providers must have a Student Protection Plan (SPP) that sets out how they assess risk and what they will do to protect students from disruption in cases of course, campus or provider closure. This ensures there are plans for 'teaching out' courses or providing access to suitable and equivalent alternatives. [As the NAO notes](#), however, there have been weaknesses identified in the current model. The success of SPPs is contingent on many factors outside of providers' control. TheOfS also [noted in 2019](#) that they had registered providers with SPPs that were not felt to be adequate and that would require further revisions upon as-yet-unpublished guidance.

11.3. An extension to this was introduced in 2020 with market exit plans for OfS to manage provider failure. These come into action in cases where a provider is judged by the OfS to be at material risk of market exit. Here, the OfS will have more oversight and be able to direct certain actions. During the consultation, UUK raised concerns about the approach and argued that the OfS needed to pay more attention to improving the effectiveness of existing regulatory approaches like SPPs, rather than creating a new condition.

11.4. Provider exit is rare but where it has happened most recently, [one case in 2021-22](#), it affected 284 students, but 94.4% of which were able and chose to continue their studies at an alternative provider, suggesting provider exit can be managed. However, this will have required other providers to offer spaces, impacting on their own activity and generating additional work, and this may not be a students' first choice. While there are processes in place, the OfS should use its financial oversight to prioritise prevention of market exit. This should also consider the role of a provider in a local area, for different sectors, and for the students it recruits.

12. To what extent is the financial sustainability of providers determined by government policy and funding rather than the OfS' regulation? Is there a need for policy change or further clarity to ensure the sustainability of the sector?

12.1. The financial sustainability of providers is primarily determined by the institutions themselves, managed through effective leadership and strong governance. However, given the reliance on currently capped tuition fees for undergraduate students and the public funding for research not covering the full costs, government policy has a significant impact on their ability to balance the books.

12.2. There is a role for the OfS in monitoring and appropriate information-sharing with government. For DfE's policy making to be most effective, it must be informed by evidence that reflects the full range of challenges in the sector. As the OfS has access to the relevant evidence, this must be shared with government

in a proportionate and timely manner. This will support good policy-making that protects the overall financial health of the sector. It would be useful to have clarity on this relationship and what information is being shared to ensure link-up between policymaking and the OfS' regulation. For example, it would be valuable to know how the OfS is communicating financial risk around international students or lack of subsidy for research funding to relevant departments in government.

12.3. The uncertainty over the future of funding is a key concern. A lack of clarity on long-term policy direction, including the lack of a response to the higher education reform consultation, makes it challenging for institutions to plan for their financial future. We would welcome clarity on this to support institutions' long-term planning.

06 April 2023