HE Insight

A New Regulatory Framework for HE

December 2017

Background

The Government has recently released a suite of consultations (five in total) that start to implement the changes set out in the Higher Education and Research Act 2017. They also take forward a number of key Government priorities, respond to a number of recent high-profile issues, and set out how the new Office for Students, replacing HEFCE, will operate.

Whilst the Government has stressed that these are genuine open consultations, they are extensive (over 500 pages), detailed, complex, technical, and are not framed to indicate huge scope for change. If implemented as expected they will amount to the single largest shake-up in the regulatory environment since the implementation of the last Higher Education Act in 1992 and the creation of the UK Funding Councils.

Summary of proposed changes

The consultations set out a new framework of regulations and associated sector agencies. These comprise a new regulator called the Office for Students (OfS), a 'Designated Quality Body' (DQB) and a 'Designated Data Body' (DDB). HEFCE will be replaced by the OfS, and the DQB and DDB will almost certainly be the Quality Assurance Agency (QAA) and the Higher Education Statistics Authority (HESA) respectively, as both are the most obvious candidates and the only bidders for those roles. The consultations also cover changes to the process for getting university title and degree awarding powers, and how the OfS will be funded via fees from providers.

Regulating a market in the interests of students and not providers

The consultation is clear that the OfS will be an explicitly student focused market regulator operating across all HE (whether public or privately funded) at both sector and individual provider level, and in favour of classic market-related mechanisms such as competition, provision of information to enable choice, and intervention in the case of market failure.

It sets out four objectives for its work: that all students should be supported through their time in HE; have a high quality and value for money experience; gain qualifications of high standards that hold their value; and have their consumer rights protected.

This is a fundamentally different ideological starting point than the existing quasi-regulatory system presided over since the mid-1990s by HEFCE. HEFCE, initially at least, was created as a buffer body between government and the sector, and in broad terms sought to use funding, 'soft power' and supply-side interventions such as allocation of student numbers and targeted funding streams to exert control. However, with the replacement of teaching funding with student fees, the separation of research funding to the newly created UKRI, and the growth of the separately regulated 'alternative/private' provider sector, a new approach was seen as necessary to address a sector that has changed substantively since the early nineties.

The register, conditions, sanctions, sampling and ongoing monitoring

At the heart of this new approach, and the fundamental mechanism through which the sector will now be regulated, is a mandatory register of all HE providers (regardless of funding source), with separate categorisation of providers seeking access to research funding and student loan funding via tuition fees.

To be on the register all providers will have to formally apply and be risk assessed by the OfS. Then, in addition to a number of initial and baseline ongoing conditions, and depending on the outcome of the risk assessment, providers may have specific conditions applied to them.

Ongoing monitoring will be undertaken by the OfS through a combination of what they describe as 'lead indicators, reportable events and other intelligence,' combined with a random sampling approach in which 5% of providers will be examined to see if they meet the ongoing conditions. The consultation then sets out a 'set of behaviours and evidence' that the OfS will look for as evidence of compliance with the conditions.

This is a marked change as it ends the annual cycle of assurance that will be familiar to many in Higher Education. There will, for example, be no annual accountability return or annual provider review.

Implications for audit committees and internal audit services

Immediate requirements

Much of what is contained within the conditions of registration is based on existing practice and long-standing principles and requirements. Whilst the way the new regulatory framework is expressed differs significantly from the current system in order to stretch across all forms of higher education, in reality there are few new practical requirements in the short term for established providers of HE, coming from the traditionally publicly-funded sector, seeking entry to the register.

In fact, the incoming CEO of the OfS confirmed in a recent blog that for these providers the only new requirements for registration will be a:

- new access and participation plan or statement (replacing OFFA access agreements);
- short self-assessment of the provider's current governance arrangements, and a copy of existing governing documents where these are not already held in the current regulatory system;
- short self-assessment of the provider's approach to ensure it has regard to guidance about compliance with consumer law; and
- student protection plan, proportionate to the provider's own circumstances

Whilst these requirements may not be too onerous (though the student protection plan is a substantive new requirement), institutions will no doubt wish to ensure that there is a high level of assurance and oversight of any new documents being submitted to the OfS that will inform its initial risk assessment. Audit committees may therefore wish to seek proportionate and appropriate assurances, either from management or through internal audit, in relation to each of those areas prior to their submission to the OfS. In addition, when it comes to actually applying to be on the register for the first time, audit committees again may wish to seek assurances that all relevant conditions have been met.

A chance for innovation

Of perhaps more consequence in the medium term, to both audit committees and internal auditors, is the ending of the annual cycle of assurances to an external body such as HEFCE via the annual accountability return, for which December 2018 (when it will be submitted to the OfS) will be the last.

In that context we would envisage Governing Bodies rightly still wishing to continue to seek key core assurances on those issues relating specifically to the conditions of registration. However, the ending of that enforced external annual cycle of reporting to a prescribed format does present, in our view, opportunities for both audit committees and internal auditors to be innovative. In particular, there is now the chance to work with management to create an audit approach that is better able to work creatively and flexibly in both managing key risks and achieving the institution's core objectives.

We need to talk about internal audit

So where might these opportunities for innovation come? Well, we have increasingly seen that where our work can be most valued is through:

- internal control advice, focused on both efficiency and effectiveness, during the early design stages of new system projects, rather than pointing out the pitfalls after implementation;
- strategic advice to institutions on how to prepare for changes to come;
- interpretation of sector topics – for example, value for money, where sector expectations have ebbed and flowed in recent years, and where there is an ongoing task to arrive at approaches that add value rather than being simply burdensome.

We also know that institutions are continuing to express a demand for more intelligence on how others, inside and outside the sector, manage particular risks. This is an area where we know we can really add value (while respecting individual institutions' competitive advantages), but only if sufficient time and resources are put into making sure that it is appropriately contextualised and reflective of the diversity of providers involved.

We can also see the benefits of more 'continuous auditing', where we might play a more embedded role within processes and systems, providing exception reports 'in real time' that might highlight unexpected or exceptional events or transactions that might warrant further scrutiny. And finally, the ending of an annual cycle of external reporting means that there is the potential for a more flexible rolling programme of reviews, more aligned to natural project or process lifecycles, and without the need to be bound by July-year-ends.

How can we help?

With all these changes, we think now is the time to have a discussion about the future of internal audit services and how we can collectively ensure that they are adding the value they should.

If you'd like to have that conversation with us, whether as an existing member/client or any other provider of HE, we'd love to hear from you. For further information on how we can help, or any other aspect of Uniac's internal audit and assurance service, please do get in touch.

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