
HE Update

The New Regulatory Framework for HE

March 2018



Background

This briefing note reflects our interpretation of the recently released new regulatory framework and attempts to highlight some of the themes that we expect to become apparent once the initial registration phase has passed. We supplemented our review of documentation with participation in various sector events as well as hosting our own New Regulatory Framework for HE event with speakers from the Office for Students (OfS) and the Quality Assurance Agency for HE (QAA) on 15 Marchⁱ.

First, the Phoney War – and then?

Whilst rumours abound that the OfS will need to make an impact, and quickly, within the established sector our overriding impressions are that for the immediate future, the OfS will be more preoccupied with getting its own processes in place, defining how it will work in practice, and with handling the initial registration process.

Likewise, higher education providers' initial focus will be to race to complete registration in the undeniably short time frame. Initially, therefore, changes in day-to-day regulation of the sector may not become apparent.

While the sector needs to plan on the basis that these changes will occur, it is also worth keeping one eye on the potential for either the current review of post-18 education (which is due to report in early 2019) or changes in the political environment to inflict further regulatory uncertainty on the sector.

Not just a New Logo

Both OfS staff and commentators have been quick toⁱⁱ emphasise that the OfS represents a step change from HEFCE and a clear change from 'buffer body' to market regulator. Many have also stressed that, given the public furore over the appointment process to its Board, it swiftly needs to demonstrate its independence from both government and from the sector that it regulates.

Early signals from OfS confirm that it will maintain greater distance than would have been the case under HEFCE. OfS will avoid being drawn into support or advice for providers' efforts to meet the conditions of initial and ongoing registration. The OfS focus will be on *outcomes* and adherence to baseline conditions of registration that providers must meet. Where providers choose to position themselves above that baseline will be up to them, with the expectation that competition will drive providers to want to deliver further above the baseline than their competitors. The detail of *how*



conditions are satisfied will therefore be left to providers - e.g. there will not be an Audit Code of Practice. Regional teams and routine engagement with individual providers in the manner of HEFCE acting as 'critical friend' will also not form part of the OfS landscape.

OfS have stressed that in doing so providers should expect their relationship with OfS to be entirely objective, and transparent, based on adherence, or otherwise, to their registration conditions. OfS will then be accountable for its decisions and ultimately challenge will be via tribunal rather than judicial review as it was with HEFCE and therefore it will be easier for institutions to challenge decisions.

Value for Money

Value for money is one of the predominant themes in the new regulatory framework and in much of the surrounding media coverage relating to HE. The NAO has recently published a report on it, and the education select committee continues its work in this area. Frustratingly, the term remains poorly understood and defined.

The Student Perspective

OfS has already published research it had commissioned from a consortium of students' unions on the student perspective on value for moneyⁱⁱⁱ. This highlighted 1) the significant percentage of students reluctant to conclude they are receiving value for money; 2) differences in perspectives across subjects; and 3) student reservations about cross-subsidy between teaching and research.

The research also demonstrated, strikingly, that both current students and recent graduates predominantly define value for money in terms of "inputs" (specifically quality of teaching, learning resources and assessment) and student experience rather than in terms of graduate outcomes. This is a take on VfM that is noticeably at odds with the current outcomes focus of exercises like the Teaching Excellence and Student Outcomes Framework (TEF) and with the Longitudinal Educational Outcomes (LEO) data. Either way, it is clear that the emphasis enshrined in the new Regulatory Framework means that this question cannot be ignored.

Individual institutions may therefore need to think about accounting to students for how their fees are spent – although this would be challenging given the complex flows of funding within institutions. In Uniac, we intend to search for effective existing examples of such reporting and are planning an event with interested institutions later this year.

Although inputs, and accounting for inputs, certainly can play a part, outcomes matter too, but are even more difficult to measure and report meaningfully. The value placed on particular outcomes will vary by student. For some, career and earning power may be uppermost; for others personal growth may be most important. Students' perceptions of which outcomes matter most may well change during their time at university. Finally, while individual providers contribute to outcomes, personal aptitude and application also play their parts. This research reaffirms that, notwithstanding its long history, value for money reporting in higher education requires significant further development.



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Don't forget HM Treasury

The fate of the much-criticised annual efficiency return remains uncertain. HEFCE were doubtless pleased to be able to report, on 20 March, that the sector had achieved £912 millions of efficiencies (3% of sector turnover) in 2016-17, however it remains unclear how and whether OfS will pick up the baton of annual efficiency returns in quite the same way given their focus on the student perspective on value for money. Regardless, it is likely that HM Treasury, mindful of the cost of student loan funding, will continue to want evidence of the sector's efficiency.

Senior Staff Pay

Clearly this topic has had significant media exposure. The regulatory framework specifies disclosure requirements for senior staff pay and the CUC is consulting on a draft remuneration code. A consensus view at the recent WonkHE event was that, in addition to meeting disclosure requirements and adherence to the CUC code, providers need to ensure they are aware of and have evaluated senior staff pay, expenses and benefits to the point where they can confidently justify their current arrangements if subject to public and media scrutiny.

Data

The OfS states that it will take a risk based, proportionate approach based on (yet to be identified) lead data indicators. Essentially as long as a provider is above the baseline for each indicator and no events are reported to OfS then the institution will be 'left alone', other than if they are picked as part of the 5% of providers involved in random sample audits each year. The HESA Data Futures project may also be an important ingredient in helping the OfS gain access to more 'real time' data than would have been possible under the previous data returns regime, though clearly the complexity of developing approaches to data across institutions means that progress is likely to take some time.

Nevertheless, data matters more than ever before. Institutions need to be confident that their data is reliable; that they understand the most significant indicators; and that they can identify and address problems long before an OfS intervention is triggered. As well as looking at the data, providers, that don't already do so, should also be looking at complaints and whistleblowing incidents to see if there are any warning signs or trends that may merit early local interventions.

Data relating to the access to HE by under-represented groups, and the success of students in these cohorts when at institutions, will be particularly significant. More specific requirements will be in place. Specific plans in this area will be approved by the OfS (the Access and Participation Plans required as part of initial registration), and if not achieved will result in action. The focus in these plans will be on delivering outcomes for students, not on process or expenditure levels.

Monitoring of lead data indicators will also be supported by an extremely comprehensive "reportable events" regime, though work is still needed by OfS to define what will constitute reportable events in different contexts. Breaches of ongoing conditions, including failures to report appropriate events, could ultimately lead to formal sanctions e.g. fines, suspension of registration. Overlaying all of this, there will be random sample auditing of 5% of providers. If a provider is reviewed it will not be visited again in three years.



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Students

OfS has confirmed its commitment to student engagement and itself involves students in a number of ways. They have a student board member and a student panel has been created with clear links to OfS formal governance structures. The early research into student perceptions about value for money, referred to above, is also an example of the weight that will be given to student views.

OfS has a stated aim to reach all students – both through the National Union of Students and its constituent member students' unions and by linking with students directly. The student panel is likely to play a significant part in influencing the OfS agenda.

As a condition of registration, OfS has confirmed that individual providers need to demonstrate meaningful engagement with students. As well as adherence to registration conditions, good quality student engagement is likely to give providers early intelligence about questions that matter to students. We stress that good quality engagement is likely to be a two-way street: as well as listening to students, providers need to work harder to clearly articulate the rationale for key issues such as volumes of contact time provided and cross subsidies between teaching and research - to name but two current 'hot topics'.

Academic Quality

The QAA has been confirmed as the Designated Quality Body in England, however the detail on future quality assessment remains to be developed. The QAA has a number of contracts with the HE funding councils, these will continue until the new Regulatory Framework is fully in place.

The UK Quality Code of HE sets out what is expected of UK HE providers in delivering academic quality and standards. The QAA was until recently the co-steward of the UK Quality Code – this recently moved to the UK Standing Committee QA – which now has strategic oversight for the Code.

The Code is in the process of being reviewed and consulted on. It needs to be agile, to unify a diverse sector, retain a definitive view of what good looks like and to remain owned by the sector. In addition, it aims to be clearer, less ambiguous and better structured.

The consultation feedback was reviewed by the UK wide standing Committee in mid-February. The expectations and practices of the new Code will be published in late March, along with the consultation feedback. There will then be further workshops to develop the advice and guidance to be included in the Code. By November 2018, the full Code is expected to be published.

The new Code will have core practices and common practices (common to the underpinning of quality of all providers, but not requirements for registration for English providers). The four expectations in the revised Code are as outlined in the Regulatory Framework – two relating to standards, two in relation to quality.

The potential role for the Designated Quality Body is still under discussion, however there are some indicators within the Act (HERA 2017 – sections 23 and 46). In England there will be a risk-based approach in future, the other devolved nations are taking different approaches. The DQB is likely to work with the OfS on the Gateway review; designing a quality assessment system e.g. via monitoring of lead indicators, reportable events and other intelligence; and possibly with input to intensive monitoring and more detailed assessments where required.



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There will be new ways of working from QAA - the cyclical review in England has gone, and it is more likely to be a bold, student focused, risk-based approach.

Accountability and Assurance Regime

The new framework stresses the importance of effective governance and risk management arrangements. The annual accountability return regime will end – although pending an Accounts Direction to be issued by OfS it is unclear whether the final returns will be in December 2018 (in respect of 2017-18) or in December 2019 (in respect of 2018-19). The end of these returns presents audit committees and governing bodies with an opportunity to refocus their attention on broader risk, governance and value for money questions, rather than adhering rigidly to existing expectations.

Cyclical assurance reviews will be discontinued in favour of mainly targeted interventions by OfS. Lead data indicators and / or reportable events may trigger OfS interventions, however in addition a random sample of institutions will be visited. As noted above, the OfS will always be more interested in seeing that outcomes have been delivered than about process - and that the focus in audits will be on providers showing that conditions have been met.

Remember UKRI

Clearly OfS are in the limelight right now. However, most providers will have a corresponding relationship with UKRI which will assume HEFCE's previous research responsibilities.

One more area to consider...

Part of the OfS remit is to ensure that prospective students can make an informed choice. HEFCE grappled relatively unsuccessfully with this area. Unistats has had a relatively poor take-up and LEO data remains at a relatively early stage of development and is complex to the point of being potentially inaccessible to those who might need it. For the time being compliance with the Competition and Markets Authority's guidance is one of the primary areas of focus.

Where students entering higher education suffer from "buyer's remorse", the OfS is seeking to make transfer between programmes or between institutions easier – however it is evident that much remains to be done to make this process straightforward. Lessons from other sectors might point to the risk of mis-selling claims downstream – the sector, and individual institutions, might do well to assess whether they are taking adequate steps to protect themselves from such claims (and reducing the risk that prospective students make poor choices).



How can we help?

The new regulatory framework is a step change for the sector – bringing exciting new opportunities and some significant risks. 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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ⁱ Manchester, 15 March. Our thanks to Maureen McLaughlin, Head of Universities and Standards, QAA; Jacqui Brasted, Head of Regulation and Assurance Directorate Transition, HEFCE / OfS; and Andrew McConnell OBE, Chair of the Uniac Board and Director of Finance, University of Huddersfield

ⁱⁱ "It's Alive" OfS, regulation and the new English HE system, London, 20 March 2018

ⁱⁱⁱ The report is on the OfS web-site and on Studentsunionresearch.com



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