

October 2018



Perspectives

Legal updates for the world of higher education

Dear Colleague

In this edition of 'Perspectives' we have a mini-focus on social mobility and accessibility. We take a look at the recent consultation issued by the Office for Students and are delighted to include an article from the charity IntoUniversity which works with young people in this field. We are one of IntoUniversity's corporate partners which provides an exciting opportunity for our staff to get involved and play our part.

As I was preparing this month's briefing, I received an update about the Government's 12 'opportunity areas'. As you may be aware, these flow out of the Department for Education's policy paper '[Unlocking Talent, Fulfilling Potential](#)' in December 2017. The introduction sets the scene:

"We have a national mission to level up opportunity across this country and build a fairer society, one that will guarantee a better future for the next generation. Talent and hard work alone should determine how far people can go in life, whoever you are, wherever you are from."

The DfE's plan is for improving social mobility through education which has an overarching ambition that no community is left behind. There are 4 life stage ambitions:

- 1 Close the word gap in the early years
- 2 Close the attainment gap in school while continuing to raise standards for all
- 3 High quality post-16 education for all young people
- 4 Everyone achieving their full potential in rewarding careers

The 12 opportunity areas identified by the Government are diverse and selected according to data analysis: Blackpool, Bradford, Derby, Doncaster, Fenland and East Cambridgeshire, Hastings, Ipswich, North Yorkshire Coast, Norwich, Oldham, Stoke-on-Trent, West Somerset.

Local delivery plans have now been published for each opportunity area which include helpful local contextual information, emphasise a collaborative approach with a range of local partners and set out local priorities. By way of example, the local plan for Ipswich explains that:

"Young people from disadvantaged backgrounds in Ipswich achieve, on average, poorer outcomes in education than disadvantaged pupils across the country."

The Ipswich local plan has one of its priorities focused on "early learning goals", such as language development (the 'word gap') and "ensuring that all children are prepared to learn for life by developing key behaviours such as resilience and self-regulation".

The role to be played by higher education is highlighted in the local Ipswich plan, noting the contribution of the University of Suffolk with its central Waterfront Campus, its partnership with local further education colleges and its integration into the community.

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OfS will exercise its regulatory powers “to reduce gaps in access, success and progression”.

Office for Students

a new approach to regulating access and participation in English higher education

The Office for Students (OfS) published its consultation on 7 September 2018 for a new approach to how it proposes to exercise its regulatory powers in this area. Responses are due by 12 October. The Director for Fair Access and Participation, Chris Millward, in his foreword describes it as the ‘biggest shake up of access and participation regulation since 2004’.

By way of a legislative reminder, it was the Higher Education Act 2004 which created the Office for Fair Access and ‘access plans’. We now have ‘access and participation plans’ under the provisions of the Higher Education and Research Act 2017 (HERA 2017). We also now have a Director of Fair Access and Participation who is a member of the OfS Board. The OfS has a general duty under the HERA 2017 to promote equality of opportunity in connection with access to and participation in higher education. The broadening of remit was deliberate. OfS will exercise its regulatory powers “to reduce gaps in access, success and progression”.

The regulatory architecture requires each approved (fee cap) institution on the Register of English Higher Education providers to comply with a number of registration conditions. Condition A1 is as follows:

“An approved (fee cap) provider intending to charge fees above the basic amount to qualifying persons on qualifying courses must:

- i. have in force an access and participation plan approved by the OfS in accordance with the Higher Education and Research Act 2017
- ii. take all reasonable steps to comply with the provisions of the plan”

Registration condition A2 applies to approved providers and approved (fee cap) providers charging fees up to the basic amount. In this situation, an access and participation statement must still be prepared and published (but there is no obligation to have this approved by OfS) and this statement must be updated and re-published on an annual basis.

The OfS consultation (and earlier guidance on access and participation plans for 2019-20) refer to “under-represented groups” as follows:

- students from areas of low higher education participation
- students from low income households or low socioeconomic status groups
- students of particular minorities
- mature students
- disabled students
- care leavers

The consultation says that OfS wants to “ramp up the pace of improvement, and drive transformational change rather than the incremental progress we see now.” OfS wants to “create an approach that encourages higher education providers to be as strategic and ambitious as possible, as this will drive the greatest impact for students.”

The key proposals highlighted by OfS in its consultation are:

Submission of access and participation plans every five years

This 5 year cycle will be for higher education providers which are considered not to be at an increased risk of breaching the relevant condition of registration relating to access and participation plans. For those considered to be at an increased risk of a breach of the registration condition, OfS will expect to approve a plan every 3 years. The move to this cycle is designed to put the approval of access and participation plans on a more strategic and risk-based timescale. The OfS does not rule out more frequent resubmission where it has “serious concerns” about a future breach.



Annual impact reports

With the move to longer term approval of access and participation plans, OfS proposes a requirement for annual monitoring. This will be facilitated by the requirement of institutions to provide annual impact reports.

Strategic, outcomes-focused targets

Access and participation plans are to include a set of “strategic, outcomes-focused targets”. Some of these are to be recommended by OfS for all institutions in addition to those set by institutions which are related to their own specific contexts.

The use of targets is described in the OfS publicity accompanying the consultation as being at the heart of the new approach. Possible targets include:

- entry rates for different groups of students
- non-continuation rates for different groups of students
- degree attainment gap (firsts and 2:1s) between black and white students
- degree attainment gap between disabled and non-disabled students
- at least one outcomes-focused target to raise attainment in schools and colleges

Collection of predicted expenditure data

OfS proposes to collect predicted expenditure data as set out in access and participation plans. This will be broken down by where the money is spent: pre-16 activity, post-16 activity and work with adults and communities. OfS will also collect information on financial support to students but makes it clear that it will set expectations that such financial support is robustly evaluated and communicated clearly to students.

Self-assessment

OfS will expect institutions to use a self-assessment tool containing a set of criteria.

Further transparency data

Currently section 9 HERA 2017 places a duty on institutions to provide data required by OfS relating to the number of applications received, offers made, offers accepted, courses completed and awards provided. The legislation states that OfS may request the data by reference to gender, ethnicity and socio-economic background.

Registration condition F1 states:

“The provider must provide to the OfS, and publish, in the manner and form specified by the OfS, the transparency information set out in section 9 of HERA”

Higher education institutions will be required to submit the first transparency dataset to OfS and publish it in August 2019. Thereafter it will need to be submitted to OfS and published in April each year.

The OfS consultation says that it would like to explore the gathering of data also by reference to age and disability. The purpose of this data collection would be to assist the OfS to focus on reversing the decline in the number of mature students in higher education and to “understand how applications, offers, acceptances, completions and attainment differ for [the] students who declare a disability and those that do not.

An access and participation dataset

The final main proposal from OfS relates to its creation of an access and participation dataset. The aim is to collate data on access and participation from a variety of sources, to enable easy navigation by institutions and to drive outcomes and accountability.

Any questions?

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“IntoUniversity is growing and has ambitious growth plans to reach thousands more disadvantaged young people, but a key player will also be universities themselves who must focus their resources much more locally and support young people in the communities in which they live. .”

The Geography of University Access

Mapping participation in Higher Education

IntoUniversity

It's the start of a new academic year and across the country, on university campuses and in student halls all the way from Southampton to Edinburgh, thousands of young people are arriving for their first days at university. It is primarily a time of excitement and anticipation as students begin degree courses that will impact the rest of their lives and enrich their futures. However, although most students will share similar feelings and emotions at this moment, the journey to this point will not have been the same for all of them. Across the country too, in some cases alongside the very same university campuses, are local communities where young people still face extremely significant barriers to accessing Higher Education, locking them out of the benefits and opportunities a university degree can bring. The inequality is stark; in some areas of the UK, a young person is up to four times less likely to go to university than their counterpart from a more affluent area.

Although Widening Participation has become more prevalent in the conversation surrounding university admissions in recent years, there is still a long way to go. In too many cases, accessing Higher Education is still a matter of geographical chance rather than personal choice. The result is disadvantaged communities becoming increasingly marginalised and certain social groups being considerably under-represented at HE institutions and, by consequence, in related professional careers. There is not a quick fix to this educational inequality, the answer to addressing some of these issues must be a sustained and long-term approach, focussing on working with young people and their families from the early-years and in the communities where they live.

This is the idea at the heart of the IntoUniversity model. We are an education charity working with young people aged 7 to 18 in some of the country's most disadvantaged areas to help them overcome some of the challenges they face in accessing Higher Education. We are now a national charity and in the 2017-18 academic year we supported over 30,000

young people across our network of 27 learning centres and projects in 12 different locations. Our focus, however, has always been localised. IntoUniversity was originally started in North Kensington at a community centre to support young people living on the Lancaster West Estate – now sadly infamous as the site of Grenfell Tower. Our Head Office and first centre are still based where we began and we continue to serve the young people living there. We deliver the majority of our programmes out of dedicated learning centres which are firmly rooted in the communities they serve. Many of the young people who use our services live within walking distance of their centre and visit regularly, receiving both specialised academic support and pastoral care.

We work in close partnership with local schools enabling our programmes to reach the young people who need them most and we provide mentors from nearby universities to act as role models and tangibly introduce the concept of Higher Education to those for whom it may not have seemed an option. We also develop key relationships with local businesses and corporate partners - including Mills & Reeve LLP - who provide funding and volunteers. The focus is on providing a source of support for young people within their own community and to do that, there must be an understanding of the specific needs of each place. When opening a new centre, we carry out extensive consultation with local people to ensure our centre will make a positive contribution. Each community is different, one of our newer centres in Clacton-on-Sea for example works with a completely different demographic to our two centres in the London borough of Hackney, but they face the same challenge of social and economic hardship and low HE participation.

There is growing acknowledgement in the Widening Participation sector that place-based work combined with early-intervention are effective strategies to assist in



improving university access. Over our 15 years of operation, we have developed a key understanding of issues surrounding Widening Participation and built a strong network of university partnerships, enabling us to deliver our services across the country. In July 2018 we brought together these university partners, along with other leaders in the sector, for a one-day conference to consider directly the geographical disparities in education and effective strategies for targeting these inequalities. The conference drew heavily on research undertaken by OC&C Strategy Consultants on behalf of IntoUniversity. The research, undertaken on a pro-bono basis with the support of one of our key funders Impetus-PEF, reveals, in a new level of detail, the locations in England, Scotland and Wales where young people stand the least chance of entering HE. This analysis of school poverty indicators and university progression data shows that the areas of greatest need are concentrated in particular UK regions and reveals, on a granular level, the primary schools facing the greatest challenges in terms of future HE access.

Regions such as Merseyside, the North East and South Wales, for example, have lower young participation rates than other parts of the country but the analysis identifies hyper-local areas within these regions where young people stand the least chance of gaining a place at university. In many cases, schools with identified need are clustered in tight localities. For example, an analysis of the 100 primary schools where young people grow up in the greatest poverty, and stand the least chance of getting to university, shows that seven of these schools are in one local neighbourhood in south Middlesbrough. This suggests that efforts to enable more young people to access HE should be localised and targeted.

IntoUniversity is growing and has ambitious growth plans to reach thousands more disadvantaged young people, but a key player will also be universities themselves who must focus their resources much more locally and support young people in the communities in which they live. Coordinated efforts across the sector and long-term planning are also key to effecting sustainable change. The OC&C mapping research has helped show the extent of the educational need in the UK and also generates a list of target areas for new services. Now, the next step is further action in reaching these communities to ensure that, no matter where they are from, no young person is left behind in accessing Higher Education.

If you would like to support IntoUniversity in its mission to create bright futures for more young people, you can do so [here](#).

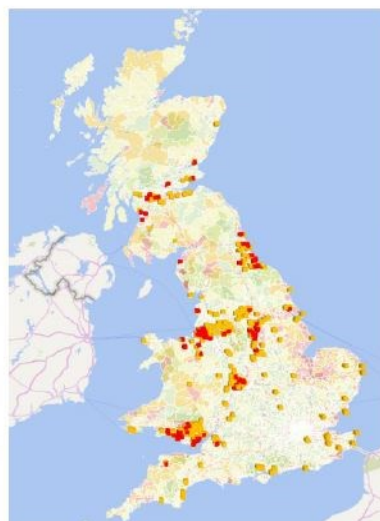
Any questions?

Dr Rachel Carr, IntoUniversity CEO and Co-Founder

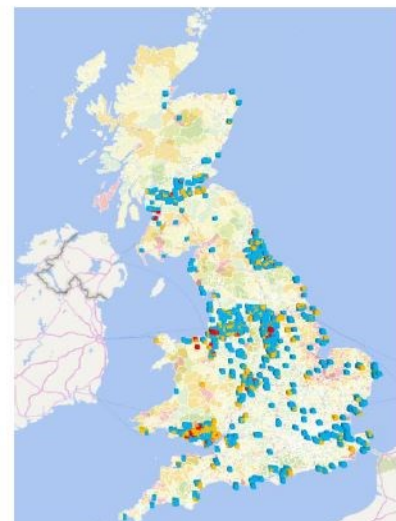
[Click here](#) to find out more or contact Rachel



100 Priority Schools



100 Priority +
Need Tier 1 schools
561 schools



100 Priority +
Needs Tiers 1 & 2 schools
1726 schools



“The aim of the day is to engage students in entrepreneurship and the business world, all within the context of a corporate office environment.”

Mills & Reeve volunteers

Supporting IntoUniversity

As part of our commitment to corporate social responsibility, Mills & Reeve has been partnering with IntoUniversity on a number of projects across our offices. These include corporate mentoring, event-hosting, and contributing through fundraising opportunities.

Corporate Mentoring

One of the key areas in which we support IntoUniversity is through its fantastic corporate mentoring scheme, which it runs each year. We encourage professionals from across our firm to put themselves forward for this popular scheme which we have found to be engaging and thoroughly rewarding. The charity manages the entire application and screening process, matching year 13 students who attend IntoUniversity learning centres and are applying to university with a corporate mentor who has a degree and can guide them through the application process and help prepare them for university life.

IntoUniversity provides a comprehensive programme of training and support to our volunteers, who are encouraged to select a learning centre that is convenient for them and to meet their mentees in these centres for the preliminary stages in the mentoring relationship. The commitment for our volunteers is significant with regular meetings usually taking place on-site at the relevant learning centre, and during office hours.

Often our volunteers have found that mentees might be the first person in their family to consider attending university and so the role of the experienced mentor in their application process can be invaluable and very rewarding for both parties. Strong relationships are built up over the course of the year and continue into university with Mills & Reeve staff able to share both their knowledge and experience on both the hard skills around submitting applications, choosing courses, and applying for grants and scholarships, along with some of the softer skills that are far easier to take for granted – interview preparation, selecting accommodation, and managing the transition from school/college learning to the more independent university model.





Our staff volunteers have been enthusiastic about sharing their higher education experiences and their own pathways into the legal profession with the young people they meet through the charity. Being involved in opening up access to business and the legal world has been an incredibly rewarding element of our work with IntoUniversity.

Business in FOCUS Days

In addition to mentoring we host a number of Business in Focus (BiF) days in both our London and Leeds offices. These are high-impact, one-day events where corporate volunteers support a class of students in years 9 – 13 through a competitive business simulation. The aim of the day is to engage students in entrepreneurship and the business world, all within the context of a corporate office environment. For these events we provide volunteers, make meeting rooms available and provide facilities and support to make the experience as realistic as possible for the students. Our volunteers love the hands on nature of these events, and act either as mentors, guiding the young people through their activities and requirements, or in advisory roles, offering constructive feedback and judging the winning team. The days are led by the fantastic IntoUniversity staff and our volunteers are well supported by the IntoUniversity team throughout the day.

We have also hosted Careers in FOCUS Celebration Days, which focus on a specific career and allow students to take part in various interactive workshops about the world of work. For these events we provide meeting space and facilities, and have asked volunteers to provide a talk introducing the legal profession to the students, followed by a Q and A with the students. Again, these sessions are beneficial to both sides, with Mills & Reeve volunteers able to develop their presentational skills as well as providing an informative talk to the young people who may not have a lot of knowledge of what makes a law firm tick.

Fundraising

Alongside our own charitable trust's giving to IntoUniversity this year, we have also seen some tremendous efforts from across the firm to contribute to the charity's ongoing work. Andrew Playle, a partner in our Leeds office and private client specialist, battled challenging weather to complete the Ride Across Britain cycle ride, raising over £10,000 for the charity. The firm has also hosted more informal dress-down events in our 6 offices with the proceeds going to the charity.

In addition to this IntoUniversity ran a month of Staff in FOCUS activities in early 2018 to reward their dedicated team of hardworking staff. Through our various sponsorships and regional connections we were able to donate a variety of tickets to sporting, theatre and music events across the country along with some branded materials. Dr Rachel Carr OBE, Chief Executive and Co-Founder of IntoUniversity commented that "The contribution made by Mills and Reeve last year was a significant factor in generating ongoing excitement during the month".

As our relationship with IntoUniversity develops we are hoping to look into further ways we can integrate with the charity and continue to support its fantastic work. As a national firm we are particularly excited that IntoUniversity has plans to expand its corporate mentoring programme into locations where we already have a strong presence as a firm within the business community, such as Manchester and Birmingham. We hope to see our partnership with the charity grow in these regional hubs which are key to our own growth strategy.

Any questions?

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“Accessible Virtual Learning Environments is not a niche technical subject; it is about improving learning and education for all students in our colleges and universities.”

New regulations to make websites and mobile apps more accessible

The snappily titled “Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018” (“the Regulations”) came into force on 23 September 2018, with phased implementation over the next 3 years. They apply to “public sector bodies” (“PSBs”), a definition which is identical to the definition of “contracting authority” for public procurement purposes under The Public Contracts Regulations 2015.

Broadly, the Regulations require PSBs to comply with an accessibility requirement and also to provide an accessibility statement. There are some exemptions for schools and nurseries, public service broadcasters, their subsidiaries and NGOs, provided further detailed requirements are met. There are also detailed exemptions for some types of website or app content (“content exemptions”), including for example:

- content of extranets and intranets published before 23 September 2019, until such websites undergo a “substantial revision”; and
- Specified “office file formats” published before 23 September 2018, unless such content is needed for active administrative processes relating to the tasks performed by the PSB; and
- Certain “items in heritage collections”. Heritage collections are defined as “privately or publicly owned goods presenting an historical, artistic, archaeological, aesthetic, scientific or technical interest and that are part of collections preserved by cultural institutions such as libraries, archives and museums”; This exemption only applies to reproductions of items in heritage collections that cannot be made fully accessible because of either:
 - ◇ the incompatibility of the accessibility requirement with either the preservation of the item concerned or the authenticity of the reproduction; or
 - ◇ the unavailability of automated and cost-efficient solutions that would easily extract the text of manuscripts or other items in heritage collections and transform it into content compatible with the accessibility requirement;

A list of the other types of exempt content appears in the accompanying Government [guidance](#).

The Regulations apply in phases:

- For websites published before 23 September 2018, the Regulations will apply from 23 September 2020;
- For new websites published on or after 23 September 2018, the regulations will apply from 23 September 2019;
- For mobile apps, the regulations will apply from 23 June 2021.

The All Party Parliamentary Group for Assistive Technology has produced a [report](#) on Accessible Virtual Learning Environments in the context of the Regulations. The co-chairs stress the importance of accessibility: *“Accessible Virtual Learning Environments is not a niche technical subject; it is about improving learning and education for all students in our colleges and universities. Improving digital accessibility may be required by legal requirements and regulation, but – as this report sets out – it should be at the heart of our colleges and universities and driven by each institution’s leadership. Providing a variety of learning tools suitable for all students – whether disabled or not – will allow us to both close the skills and disability employment gap and provide all students with a better opportunity to succeed in education and work”.*

The accessibility requirement

The Regulations create a “requirement to make a website or mobile application accessible by making it perceivable, operable, understandable and robust”. The Regulations provide that a PSB will be presumed to be in conformity with the requirement to the extent that it meets specified harmonised European standards. Government [guidance](#) published to support the Regulations refers to the detail of the relevant current technical standards. Given the framework of the European Union (Withdrawal) Act 2018, it is not anticipated that Brexit will impact on the requirement on PSBs to comply with the Regulations.

The accessibility requirement is also subject to an exemption where complying with the requirement would impose a “disproportionate burden” on the PSB. PSBs are required to perform an assessment of whether compliance would impose such a burden, taking account of all relevant circumstances including:

- The size, resources and nature of the PSB; and
- The estimated costs and benefits for the PSB in relation to the estimated benefits for those with disabilities, taking into account the frequency and duration of use of the specific website or mobile application.

If a PSB concludes that compliance would impose a disproportionate burden, it must:

- explain in its accessibility statement the parts of the accessibility requirement that could not be complied with; and
- where appropriate, provide accessible alternatives to documents held by that PSB that are not available on their website or mobile application.

A failure to comply with the accessibility requirement is to be treated as a failure to make a reasonable adjustment for the purposes of certain provisions in the Equality Act 2010, potentially enabling individuals to bring claims or for enforcement action to be taken.

The Regulations also include “notification” and “request” procedures. Someone who believes that a PSB has failed to comply with the requirement can notify the PSB of this. They can also request information the PSB has excluded under either the “disproportionate burden” or “content” exemptions to be provided in an accessible format. The PSB must respond to a notification or request within a reasonable period; if it does not, or if the recipient is dissatisfied with the response, the individual may complain to the relevant enforcement body (the Equality and Human Rights Commission, or the Equality Commission for Northern Ireland). A failure to provide a satisfactory response to a “request” is also to be treated as a failure to make a reasonable adjustment.

The accessibility statement

The statement is a detailed, comprehensive and clear statement produced by a PSB on the compliance of its website or mobile application with the Regulations. The Regulations provide that a PSB must provide the statement in accordance with a “model accessibility statement”, and keep the statement under regular review. It is expected the model accessibility statement will be published by December 2018.

The statement must be provided in an accessible format and published on the PSB’s website. Alternatively, in the case of an app, it may be provided alongside other information available when downloading the app.

The statement must include:

- an explanation of those parts of the content that are not accessible and the reasons why;
- where appropriate, a description of any accessible alternatives provided;
- a description of, and a link to, a contact form which enables a person to:
 - ◇ notify the public sector body of any failure of its website or mobile application to comply with the accessibility requirement; and
 - ◇ request details of the information excluded under the content exemptions or the disproportionate effort exemption; and
- a link to the enforcement procedure to which recourse may be had in the event of an unsatisfactory response to a notification or request for material in an accessible format (see above).

The Minister for the Cabinet Office may undertake an assessment of whether a PSB has complied with the accessibility statement requirements, and PSBs must provide compliance information within 28 days of any request. Ultimately if the Minister considers the PSB has failed to comply with the requirements, the Ministerial determination will be published, along with the PSB’s name.

Conclusion

Institutions affected will need to review what measures they need to take to ensure compliance with the Regulations and finalise their accessibility statements when the model statement has been published. Compliance may involve both technical solutions and also training for staff that are responsible for generating website and app content, including content in virtual learning environments.

Any questions?

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About Mills & Reeve

Mills & Reeve offers a deep knowledge of the higher education sector and the commercial strength of one of the UK's leading national law firms.

Our multi-disciplinary team is ranked in tier 1 in the UK legal directories for advising the higher education sector.

We have supported our clients in over 75 jurisdictions through our international network of law firms around the world.

The Sunday Times has recognised us as a Top 100 Best Employer for the last 15 consecutive years; the only UK law firm to have achieved this. We work hard to create a culture where everyone feels that they contribute and can make a difference, delivering outstanding service to our clients.

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Achieve more. Together.