

House of Lords Industry and Regulators Inquiry: The work of the Office for Students

Association of Heads of University Administration (AHUA) Response

AHUA is the representative body for senior University managers (Registrars, Chief Operating Officers, Heads of Administration and Secretaries to Governing Bodies) in the United Kingdom and Ireland, with Associate members in other countries. The AHUA has members from 140 institutions, across all parts of the sector. The AHUA aims to represent the collective view of members on key issues and policies to the higher education sector, government and other stakeholders.

Summary

Regulation in the Higher Education sector is not a new phenomenon, however the scope and reach of the OfS in England is, and has understandably taken some time for it to establish itself and for institutions to adapt to a new relationship with the OfS as the primary regulator. The powers and duties set out in the Higher Education and Research Act 2017 are clear and appropriate. AHUA has sought to work supportively with the OfS during, and since, its initiation to ensure that regulation is able to be operationalised effectively and in ways that reduce unnecessary burden and create incentives for good management and governance of institutions. Effective regulation can create significant benefits and positive impact for the Higher Education sector as a whole, for institutions and for students.

However the significant extension of conditions and almost constant state of consultation on new areas of activity; the focus on creating distance from the sector which has also led to misunderstandings about how university operations work; the pressures on resources which have led to a decline in service standards; the perception that in tone and engagement it does not take an approach which seeks to recognise and support the best practice in the sector as well as address the poorer practice, have all led to growing dissatisfaction and reduced confidence in the ability of the OfS to be effective in its execution of regulation. The cost of regulation has grown significantly within institutions at a time where operational efficiency is a significant priority.

AHUA would recommend the following would lead to significant improvement in the operation and effectiveness of the OfS:

- Impact assessments of cost of introduction of each new regulatory requirement, informed by understanding of the practical impact of operational implementation, should be undertaken to ensure that the procedures are applied proportionally to outcomes and in a risk-based way;
- That beyond merely having 'regard to' the Regulators' Code solely for policy matters, the OfS should actively seek to model itself with the best practice set out in the Regulators' Code for *both* policy and procedures, and seek objectives in line with best practice for effective regulation;

- That the OfS develops a process to have independent input to assess the impact of aspects of regulation, enabling updating or removing regulation where it is found not to have achieved its objectives or does not represent good value for money;
- That a more collaborative and developmental dialogue is sought that seeks improvement and innovation alongside robust regulation – the sector has a lot of experience of being regulated and can help the OfS get better at it.

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?**
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?**

1.1 The OfS general duties in section 2 of HERA are clear and appropriate.

1.2 In reality however the prioritisation and tensioning of those listed (a)- (g) in the Act has been differential.

1.3 The tone and approach in relation to Access and Participation has generally been developmental, engaged and promotes strong practice. The most recent approach to redesign the framework of Access and Participation has been consultative and developmental in discussion, sought to listen as well as set out a strong steer in consultation, and has had due regard to proportionality, transparency and value for money, such that there is good clarity in the sector of expectations and priorities.

1.4 Its approach to institutional autonomy has been increasingly undermined by the prescriptive nature of the conditions. Examples include the application of specification of learning outcomes of spelling and grammar; the prescriptive nature of the requirements under B4 for retained assessment and the proposed review of assessment outcomes from individual pieces of assessment during investigations to form judgements on standards.

2.1 In particular we consider that there is significant progress to be made in focusing in on the following duties which OfS must have *due regard* to:

(f)the need to use the OfS’s resources in an efficient, effective and economic way, and

(g)so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be—

(i)transparent, accountable, proportionate and consistent, and

(ii)targeted only at cases in which action is needed.

- 2.2 OfS resources are stretched and are increasingly distanced from a good understanding of the operations of the sector it seeks to regulate. Service responsiveness has been poor and our members have cited numerous examples of where requests for information from OfS, which have resulted in significant expenditure of staff resource to compile a response has gone into a black hole, with nothing further heard.
- 2.3 Our understanding from OfS is that it has to have 'due regard' for (ie not to comply with) the Regulator's Code – but only for policy and not for implementation or its procedures. The extent of 'due regard' and how this is undertaken is not transparent to the sector. As set out in HERA, the reference is to 'best regulatory practice' and in particular those aspects in (i) and (ii) above. Feedback from our membership indicates that there has been inconsistency in levels of service and responses to queries. We have also worked with OfS to help increase understanding that lack of transparency and clarity about e.g. how reportable events are to be applied and considered, and prioritisation of risks are considered, has led to an increase in risk aversion and overlaying of bureaucracy where institutions and their governing bodies seek to comply. This has been characterised by OfS as 'gold-plating', however there has been little attempt to seek to understand why this response and interpretation has been widespread across the sector and the extent to which its own approach could help moderate this, rather a sense of casting blame and aspersions of poor governance.
- 2.4 There have been examples where the OfS has made decisions which run counter to the benefit of the sector, solely on the basis that it as a regulator does not need access to it within the scope of its powers. For example in an attempt to 'reduce burden' it removed the Estates Management return data, which had provided access to sector benchmarking on sustainability, carbon and energy management, just at the time many institutions had committed to significant targets for Net Zero. Alternative arrangements – at cost – are having to be found to readdress this. There are significant issues and potential tensions for a Designated Data Body which is both seeking to react to OfS requirements alongside providing a beneficial data environment for the sector.
- 2.5 A second example which has undermined confidence in the regulator by institution and students alike has been to remove the overall satisfaction question in the NSS, despite 90% of the sector seeking to retain it. The utility and validity of an overall Net Promoter Score is widely used across all forms of customer surveys, and has been a strong and helpful focus in driving performance within the sector at institutional and discipline level. No sufficient explanation has been given as to why the views of the sector were ignored beyond that along the lines of 'a consultation is not the same as a vote'.
- 2.6 Changes to the above, forthcoming Data Futures and changes to the Designated Quality Body also have had significant unplanned impact on devolved nations which has increased cost and impacted on consistency and comparability across the UK sector.
- 2.7 An further example of action which is likely to be to the overall detriment of the sector (in terms of proportionality and cost) has been the prescriptive nature of the introduction of a

new condition in B4:3 which requires institutions to retain assessment for every student post-graduation for 5 years, to enable unhindered access to assessment for OfS investigators who may choose to look at the work. This level of prescription was not consulted on (instead the consultation indicated solely that providers were expected to retain appropriate records of students' assessed work for such regulatory purposes) and suggests a complete lack of understanding of how the sector operates. The published version is far more prescriptive, requiring retention of students' assessed work for a period of five years after the end date of a course and where possible for this to be anonymised, while ensuring that all of the work of an individual student can be identified from the records. In addition to this being hugely burdensome and costly to implement, reviewing individual student assessments without the wider context of how eventual marks are determined and confirmed in moderation, exam board scaling and any individual circumstances, will not achieve objectives it seeks.

- 2.8 Had this intention been consulted, this would have resulted in a completely different response from institutions. The impact of this is significant – it is completely new practice for institutions and will have significant cost impact – currently estimated at least into the hundreds of millions across the sector. We have been raising this concern with OfS for several months since publication last year and in the end sought to escalate this to the Chair and Chief Executive alongside UUK. We are now engaged in a working group to see what can be achieved but have been told that the OfS has no ability to 'unexpected' this condition of registration. There needs to be a mechanism by which poor implementation of regulation can be undone.

3. 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?

- 3.1 We consider the OfS has sufficient powers, but resources and expertise are under considerable pressure given the additional expectations which continue to be placed on it, and for which the sector is expected to pay through increased registration fees. There is significant concern about the level of expertise and understanding there is with regards to implementation of practices as the DQB. Recruiting a few academic staff to undertake inspections is not equivalent to compensate for the loss of knowledge, expertise, history and crucially, credibility that the QAA had across the sector. We expect this to be a temporary position for the OfS in taking on this role and that an alternative solution should actively be sought as soon as possible. The example of B4:3 (see 2.7) also suggests that the mechanisms being used to reach conclusions on standards and quality are likely to really address the objectives.

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?

The relationship has been deliberately distanced, is at arms length and often defensive in tone via blogs and the press. The communication approach is overwhelmingly undertaken through consultation (the inputs from universities on which often appear to be ignored), letters via email and instruction. Our relationship via AHUA is constructive and we are able to open regular dialogue and have been able to influence better planned communication, however at an institutional level it would be rare to have any direct dialogue with a named individual. This has recently been changing and is welcomed, we do believe that it is possible to have a collegial dialogue with universities while remaining a robust regulator – to the benefit of both universities and OfS in creating better understanding and better regulation.

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?

The financial risks are systemic in nature due to the lack of inflation to the domestic fee. They present differently in different institution depending on the reliance on domestic students; the reliance on international students and research activity. The only present route to sustainability is through international unregulated fee income, so any reduction in that market would place significant and existential risks to the research intensive element of the sector within a short timeframe (as highlighted during the pandemic). It is unlikely now to see pension costs increasing during this period of inflation and increased gilt yields and in light of actions taken to improve sustainability of the scheme in recent years. The increased registration fees for OfS is yet another example of further cost being added on to institutions, whereas they are expected in a flat fee environment to identify efficiencies and absorb other cost increases.