

## Office for Students Consultation: City's Response

### Summary

This paper contains City's response to the Department for Education's consultation document suite 'Securing student success; Risk-based regulation for teaching excellence, social mobility and informed choice in higher education: Government consultation on behalf of the Office for Students'.

The consultation focused on the proposed role of the Office for Students (OfS), the powers it would have to control the sector, and the processes for new institutions getting degree awarding powers.

City's response to the consultation was coordinated by Student and Academic Services. Boards of Studies, School ExCos, Professional Service Directors, the Students' Union, School Student Experience Committees, Academic Governance Committee, ExCo. Senate and Council were invited to provide views on the consultation questions. Input was sought from student Programme Representatives through a series of workshops on the proposals. Students and staff were also invited to provide comments on any aspect of the consultation.

Feedback received informed City's draft response to the consultation, which was approved by ExCo prior to submission to the DfE.

The OfS will come into force in April 2018 and is the first ever regulator for English higher education. It replaces the more arms-length bodies of the Higher Education Funding Council for England (HEFCE) and the Office for Fair Access (OFFA). Details of registration with OfS will be published on 28<sup>th</sup> February.

One action required.

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(Student and Academic Services)

### Recommended action

Senate is asked to **note** City's response to the Office for Students consultation questions.

**Publication: Open**

**City's Response to - regulatory framework for higher education**

The full consultation papers can be accessed at: <https://goo.gl/32b69X>

**Part 1**

**1. Do you agree or disagree that these are the right risks for the OfS to prioritise?**

Partially agree.

Objective 1: We agree that access and participation should be a priority for the OfS, and that it is important that the powers which are currently exercised by OFFA are maintained within the OfS.

Objective 2: We agree with this priority, although the regulatory framework should recognise that students are co-producers of their education and degree outcomes. The term "high quality" will have different meanings for different students, and therefore work would need to be done to shape what that means in a way that is understood and accessible to students.

Objective 3: Whilst the continuation of student protection plans is welcomed, we disagree with the view outlined later in the consultation that a provider's exit from the market is considered "healthy". For students' outcomes to be protected, and their qualifications to "hold their value over time" as per objective number 2, institutions need to be supported, and processes put in place prior to formal degree awarding powers to reduce the risk of market exit. Similarly students do not wish to be considered solely as consumers, but instead as co-producers of their education.

Objective 4: The consultation appears to view higher education as a simple transactional arrangement rather than a transformative one. The definition of "value for money" will vary between individual students their background, e.g. international fees versus home, and choice of course. It is unclear how a regulator would systematically meet this objective.

**2. Given all the levers at its disposal, including but not limited to access and participation plans, what else could the OfS be doing to improve access and participation and where else might it be appropriate to take a more risk-based approach?**

With the limited information on what institutions will be expected to provide in access and participation statements and plans it is hard for us to comment on further improvements that could be made.

It is encouraging that the Director of Fair Access and Participation (DFAP) will have powers to intervene if it is viewed that admissions practices have been gamed, for example to aid in TEF metrics.

**3. Do you agree or disagree that a new Quality Review system should focus on securing outcomes for students to an expected standard, rather than focusing on how outcomes are achieved?**

Partially agree.

Whilst an outcomes based system could work, there would need to be sufficient detail describing what achievement of the outcomes would look like, similarly sharing best practice alongside sufficient advice and guidance.

Our primary concern on an outcomes focused approach is in relation to new providers. Under the OfS proposals new providers would be able to gain degree awarding powers without a significant track record, and it is unclear how an outcomes-based system would apply to such institutions. This would be a significant risk for the sector and its reputation.

Any move to an outcomes-based approach should continue to prioritise student engagement, externality and high quality and standards.

**4. Would exploring alternative methods of assessment, including Grade Point Average (GPA), be something that the OfS should consider, alongside the work the sector is undertaking itself to agree sector-recognised standards?**

Disagree.

We are supportive of work to agree sector-recognised standards as this is important to aid students' understanding as well as the reputation of the sector. We are not convinced that GPA would be beneficial. GPA provides a spurious level of granularity and is not comparable between subjects or institutions. There is also clear evidence that employers are increasingly disregarding marks or classifications that students obtain for their degree, instead focusing increasingly on approaches such as psychometric testing. Similarly, a move towards GPA could change pedagogic practice where assessment is done to align to a GPA system, rather than any intrinsic learning and teaching value.

**5. Do you agree or disagree that a student contracts condition should apply to providers in the Approved categories, to address the lack of consistency in providers' adherence to consumer protection law?**

Disagree.

We are supportive of the current requirements of universities placed on us by the Consumer Markets Authority to set out Terms and Conditions to students who have accepted an offer and who register on our programmes. We are assuming that by consulting on the concept of student contracts that the OfS proposes to take this current requirement a step further. We would see this as a shift towards the consumerisation of students, and a move away from viewing students as co-producers of their academic experience and outcomes. The proposal is perceived by both staff and students to potentially stifle good practice and innovation, and would position the university experience as a transactional product.

We acknowledge that more could be done across the sector to identify to students how they can raise concerns and complaints over their experiences at an institution, and we believe this can be done through increased information and signposting rather than through a student contract. It is also important to note that some students prefer to provide feedback on their experiences through the Students' Union rather than on an individual basis, and the contracts would need to allow provision for that.

**6. What more could the OfS do to ensure students receive value for money?**

We consider that the OfS has a role in producing a framework that can be used across the sector to help students and potential students understand more about how their fees will be spent. The OfS should support institutions in how to present this information in a consistent

manner rather than each institution adopting its own approach, to ensure it is clear to students and the public.

We consider that “value for money” should not just be based on outcomes and employability metrics. We strongly believe that students receive value for money through a variety of ways at an institution, whether that is through learning gain, opportunities to broaden their horizons beyond the curriculum (such as through the Students’ Union and Careers), academic rigour etc. The OfS could be helpful in setting out these wider benefits to support the notion that the university experience is transformative as opposed to transactional.

**7. Do you agree or disagree that a registration condition on senior staff remuneration should apply to providers in the Approved categories? Are there any particular areas on which you think should the OfS should focus when highlighting good practice?**

Disagree.

Whilst in principle we are not against publishing information on the remuneration of staff with a salary over £100,000 we do not believe that this should be a registration condition for the OfS. This principle will be covered in the 2018 CUC guidance and the publication of pay should not be a required for regulation of the sector.

**8. What are your views on the potential equality impacts of the proposals that are set out in this consultation? Please provide any relevant evidence if you can as this will support future policy development.**

No feedback received.

**Part 2**

**9. Do you agree or disagree that participation in the TEF should be a general condition for providers in the Approved categories with 500 or more students?**

Partially agree.

Whilst we are not against the TEF being a general condition for providers in the approved categories, we believe that this condition should be postponed until after the independent TEF Review has happened and the development of the TEF has been finalised. As the TEF is undergoing large amounts of developmental work it would be premature at this stage to make it compulsory, as the outcomes from different years would be harder to compare.

Student feedback (NUS research and supported by our own Students’ Union) indicates that they welcome a measure of teaching excellence as a condition for the OfS, however, their view is that the TEF and the metrics used do not correlate to teaching excellence. Therefore, whilst the idea is welcomed in principle, more work needs to be done for students to be satisfied and confident of the TEF.

**10. Do you agree or disagree with the proposed ongoing general registration condition requiring the publication of information on student transfer arrangements? How might the OfS best facilitate, encourage or promote the provision of student transfer arrangements?**

Partially disagree.

Students and staff have both provided feedback that they would be opposed to increasing the promotion or encouragement of student transfer between institutions. Whilst it is fully acknowledged that in certain circumstances students may wish to change institution, and

institutions should and already do have provision for that, it is considered a risk to student outcomes to actively encourage students to transfer.

Students' feedback showed that they considered that more work should be done to increase information on courses and institutions at the admissions stage, rather than encouraging students to transfer once they have started a course.

Pedagogically there is a concern that increasing the level of student transfer would require courses to have a common first year across institutions so that student transfer could be more easily facilitated. The current system allows institutions to design varied courses which gives students more choice, whereas a common first year would reduce that choice. This would not be in the student interest and would reduce competition. If all institutions were expected to adopt the same transfer criterion and processes, this would also reduce the autonomy of institutions.

The resourcing and operational implications of the proposals would need to be fully considered. For example, a sector body such as UCAS may need to be involved in supporting an increased number of transfer applications, and appropriate arrangements would need to be in place to address the induction and support needs of transferring students, which would be different to new entrants.

#### **11. Do you agree or disagree with the proposed approach to sector level regulation in chapter 2?**

Partially agree

We agree with the principle of students being able to receive appropriate and timely information to make an informed decision on their studies.

Whilst we acknowledge that some students might find accelerated courses an attractive alternative, it is important that students are given appropriate information to ensure they make the correct choice for their own learning style. We are also concerned that accelerated degrees are not valued internationally (Bologna process), prevent students working to assist their studies financially (thus impacting widening access), provides inadequate time for reflection and personal development, and pilots have shown limited student interest. Institutions would need to develop appropriate support mechanisms both academically and pastorally to support students if they take these accelerated courses. As an institution we would need to consider carefully a move to offering accelerated provision. Many institutions offer students the opportunity to undertake a placement or internship alongside their course, which supports skills development and employability. Students on accelerated courses would be limited in being able to access these additional opportunities due to the nature of the provision and the study hours. They could therefore be disadvantaged when compared to their non-accelerated counterparts.

We strongly disagree with simplifying market entry and introducing no requirement for a track record. This would be a significant risk both to sector reputation but also student interests. Institutions should need to meet a rigorous baseline threshold via a track record to secure OfS registration as an Approved provider.

#### **Part 3**

#### **12. If you are a provider, can you provide an indication of which category you would apply for (under these proposals) and why?**

We would apply for Approved (Fee Cap).

We are institution with our own degree awarding powers, as well as accessing OfS grant funding, and funding from Research England and the Research Councils. We also have a Joint Venture with INTO University Partnerships.

**13. The initial conditions should provide reassurance that providers will meet the general ongoing conditions without creating unnecessary barriers to entry. Given this, are the initial conditions appropriate?**

Partially agree.

For the approved categories the conditions appear appropriate. However, condition B3 states “The provider must deliver successful outcomes for its students and these are recognised and valued by employers, and/or enable further study”. This condition needs to be more holistic to reflect the wider student experience, as outcomes can be broad and variable. There would need to be clearer indicators of what is expected for this condition.

**14. Do you agree or disagree with the proposed lists of public interest principles in the Guidance, and who they apply to?**

Agree.

We welcome the proposed list of public interest principles set out in the guidance. However, as Freedom of Speech is covered by the Education Act 1986 it is not further required as a public interest principle for regulation by the OfS.

**15. Do you agree or disagree with the proposed approach on the application of conditions for providers wishing to seek a Tier 4 licence?**

Agree.

We agree with the proposal that all higher education institutions will now demonstrate eligibility through registering with the OfS rather than the current system of different routes depending on funding model. This will allow for greater uniformity across the sector, as well as being clearer to students.

**16. Do you agree or disagree that paragraph 7 and 8 should be removed from Schedule 2 of the Education (Student Support) Regulations 2011, which lists the types of courses that allow with access to the student support system? If you disagree, are you aware of any courses dependent on these provisions to be eligible for support?**

Neutral.

It is not thought that these changes will affect current students. The proposed changes would affect students on professional courses which do not lead to a qualification at a degree awarding body.

**17. Do you agree or disagree with the proposed approach for the benefits available to providers in the different registration categories?**

Partially Agree

We agree with the majority of the approach for the benefits available to providers in the different registration categories. However, we have concern with the proposals in the “Simplifying Access to the Market” consultation that in certain circumstances institutions with degree awarding powers would be entitled to register in the “Registered” category rather than “Approved”. This would be a significant risk to the sector. Our view is that all institutions with degree awarding powers (or probationary degree awarding powers if these are used)

should have to be registered within the “Approved” category. It is important for the sector reputation that all institutions with degree awarding powers undergo the same level of rigour, and meet the different threshold criteria for inclusion on the register as an “approved” provider.

The OfS would have to be very clear that students and the public understood the different categories, in particular the difference between “registered” and “approved”. There is a concern that institutions who are “registered” may use that as a form of kite-mark for prospective students without further explaining what the limitations of that categorisation are. Therefore the OfS needs to ensure that “gaming” of information on registration categorisation is not undertaken.

**18. Do you agree or disagree with the general ongoing registration conditions proposed for each category of provider (see the Guidance for further detail)?**

Agree.

We agree with the proposed conditions that providers will need to meet to remain registered with the OfS. There are a number of conditions which apply to “Approved” providers which should also apply to “Registered” providers to ensure a more stringent base threshold for all HE providers in particular around a requirement for student protection plans (condition H) and the condition regarding transparency of admissions and retention (condition A3).

**19. Do you agree or disagree with the proposed approach to risk assessment and monitoring?**

Agree.

We support a risk based approach. Whilst a risk based approach has merit in monitoring institutions we have concerns with the current proposals that are outlined in the consultation. We disagree with the principle of random sampling. Sampling should be performed on the basis of risk, therefore monitoring those institutions who are deemed higher risk more closely. A random sampling approach would not enable this oversight of higher risk institutions.

**20. Do you agree or disagree with the proposed approach on interventions (including sanctions) and do you agree or disagree with the proposed factors the OfS should take into account when considering whether to intervene and what intervention action to take?**

Partially agree.

Whilst the interventions and sanctions are clearly articulated within the consultation document, there are questions about how the OfS will relate to the powers of other agencies, such as the Competition and Markets Authority. It is important that there is a clear distinction about the powers of the OfS compared to other regulators with an interest in higher education. This needs to be more clearly defined.

**21. Do you agree or disagree with the proposed approach the OfS will take to regulating providers not solely based in England?**

No feedback received

**Part 4**

**22. Do you agree or disagree with what additional information is proposed that the OfS publishes on the OfS Register?**

Agree.

We agree with the information which is proposed for the OfS to publish on the OfS register. It is currently unclear who the register is aimed at. If it is going to be a primarily student facing document, then further contextualisation would be needed by the OfS to allow students to compare institutions.

**23. Do you agree or disagree with the principles proposed for how the OfS will engage with other bodies?**

Slightly agree.

We agree with the principles proposed for the how the OfS will engage with other bodies. However, further work would need to be done to ensure there is clarity of the roles of the different organisations. This is particularly pertinent with UKRI and the overlap with PGR students, as well as degree apprentices and ESFA.

**24. Do you have any comments on the proposed exercise of OfS functions in relation to validation, in particular in relation to ensuring that the validation service is underpinned by the necessary expertise and operates in a way that prevents or effectively mitigates conflicts of interest?**

We would disagree with the proposed function of the OfS as a degree validator. If the OfS is to remain an impartial regulator of the sector then having a role as a degree awarding body itself would significantly blur the lines and would draw that impartiality into question. Similarly, we would question what rights to recourse a student receiving a degree from the OfS would have access to, and who regulates the regulator.

One of the objectives of the OfS is “All students, from all backgrounds, receive a high quality academic experience and their qualifications hold their value over time in line with sector-recognised standards.” However, it would be uncertain how a degree from the OfS would hold the same reputation of those from an established provider – this could then disenfranchise students with these degrees.

**25. Does the information provided offer a sufficiently clear explanation of how a provider will apply for registration in the transitional period and what the consequences of registration are in this period?**

The information gives an indication of the timeline for registration for the OfS. However, it is noted that there is a tight window for application. The current proposals would see the OfS publishing guidance on registration in February/March with the deadline for institutions with early UCAS application cycles being the 16<sup>th</sup> April 2018. This does not give institutions long to prepare their submission.

**Annex C**

**26. Do you have any comments on the above proposal of how the OfS will act as the principal regulator for exempt charities?**

No feedback received.

**27. Provided that the Secretary of State considers OfS regulation is sufficient for these purposes, should exempt charity status apply to a wider group of charitable**

**higher education providers? In particular, considering that providers in the Approved categories will be subject to conditions relating to Financial Sustainability, Management and Governance, and the provision of information (as set out in the Guidance), do you have any views on whether the OfS's proposed regulation of providers in these categories would be sufficient for the purposes of it carrying out the functions of Principal Regulator?**

No feedback received.

**City's Response to - Simplifying access to the market: degree awarding powers and university title**

**Question 1: Do you agree or disagree that the OfS should consider applications for New DAPs for research awards from providers without a three year track record of delivering higher education in England?**

Disagree.

We agree with the original premise of the 2016 white paper "Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice", which stated that an institution would need to have a successful research environment established before being able to offer research degrees.

With the example of an established overseas provider moving resources to England – there still needs to be a period for the revised arrangements to be put in place. The three year track record should still apply, ensuring that the research environment is stabilised before RDAPs are given.

**Question 2: (With reference to question 1) Are there particular circumstances where authorisations of this type would be appropriate? If so what are they?**

We do not believe any circumstances should warrant RDAPs being awarded without a three year track record in England.

**Question 3: Do you have any comments on the proposed New DAPs test and associated processes? In particular, do you think these tests and processes provide appropriate safeguards whilst enabling high quality new providers to access DAPs?**

We disagree with a move away from a three year track record for all providers wishing to access DAPs. If the OfS does move forward with a position where new institutions can obtain NDAPs without this requirement, then the proposed processes must be rigorous. Whilst we acknowledge and agree that strong emphasis is placed on the role of the DQB in ensuring that the institution has processes to ensure high quality and standards, more work needs to be done on ensuring that institutions are sustainable.

**Question 4: Do consider the proposals for monitoring a provider with New DAPs during the probationary period to be adequate and appropriate?**

We agree with the quarterly oversight by the DQB, and that any changes to the probationary plan should be systematically reported.

**Question 5: Do you agree with the proposals for the OfS and providers to best ensure that students are aware of what type of DAPs, including New DAPs, a provider has? If you think there should be additional information requirements, please give details.**

It would not be in a student's interest for them to enrol on a programme at an institution in the third year of their NDAPs to then have to move institution if DAPs are then not awarded. Students applying to an institutional with probationary powers need to be made acutely aware of what would happen should the institution fail to meet the requirements. If the institution's protection plan would involve the students moving to an institution in a different city, for example, then applicants need be informed of this at the application stage so that they can make a fully informed decision.

**Question 6: Do you agree or disagree with the suggested change regarding the possible variation of the level 6 TDAPs criterion?**

Agree.

We agree with the proposal to allow some flexibility in the current 50% TDAP criterion to institutions who have significant level 6 provision but have a majority level 4 or 5.

**Question 7: (With reference to question 6) If the 50 per cent criterion is to be disapplied in some exceptional cases, what factors do you think the OfS should take into account when determining whether an application is an exceptional case?**

Student numbers studying at level 6 could be taken into consideration rather than as a proportion of the number of students at the institution.

**Question 8: Do the application processes for DAPs sufficiently align with the registration processes and conditions?**

Yes

**Question 9: Do you agree or disagree that for providers that have obtained DAPs on an exceptional basis without having the majority of higher education students at level 6 or above (as proposed in question 6), the 55 per cent criterion for University Title should be adjusted to additionally require the majority of higher education students to be on courses at level 6 or above?**

Agree.

**Question 10: Do you agree or disagree that student numbers, for the purposes of the 55 per cent criterion for University Title, should be calculated based on the intensity of study, disregarding the mode of study? Please give reasons for your views.**

Agree.

As stated in the proposal the current method of calculating student numbers no longer reflects the current ways of delivering higher education. We therefore agree that the criterion should be based on intensity of study rather than mode.

**Question 11: (With reference to question 10) Do you have any views on how students on accelerated courses should be taken into account, when calculating the percentage of higher education students at a provider? Should these students be counted as 1 FTE, or more?**

No feedback received.

**Question 12 Do you agree with this assessment of the factors that should be set out in Secretary of State guidance to which the OfS must have regard to when determining applications for University Title? If you disagree, please give reasons. If you believe any additional factors should be included, please indicate what these are with reasons.**

Agree

**Question 13: Do you agree or disagree with this proposal of implementing the statutory provisions that allow for the revocation of DAPs and University Title and the variation of DAPs?**

Agree

**Question 14: Do you consider the above proposals regarding a change in circumstances to be sufficiently robust to safeguard the meaning and value of DAPs and University Title?**

We agree with the proposals regarding changes in circumstances to be robust.

**Question 15: Do you have any comments on the proposed DAPs criteria as set out in Annex A? Are there specific aspects of the criteria that you feel should be adjusted in light of the OfS's overall regulatory approach, in particular ongoing registration conditions?**

No additional comments received.

**Question 16: Do you have any comments on the proposals for the assessment of applications for subject specific and Bachelor's only DAPs? Are there specific aspects of the criteria that you feel would either be particularly relevant or not relevant for either of these types of DAPs?**

No comments

**Question 17: Do you have any comments on how a subject should be defined for the purpose of subject specific DAPs?**

No comments

### **City's Response to - Registration Fees**

**1. Do you support the proposal to charge Registered Basic providers a flat rate annual registration fee? Yes/No/Not Sure**

**Please give reasons if your answer is 'No' or 'Not sure'**

Yes

**2. Do you support the proposal to charge Approved and Approved (fee cap) providers an annual registration fee varied by their size? Yes/No/Not Sure**

**Please give reasons if your answer is 'No' or 'Not sure'**

Yes

**3. Do you support the proposal to measure the size of Approved and Approved (fee cap) providers for the purposes of calculating their annual registration fee on the basis of their full-time equivalent (FTE) higher education (HE) student numbers? Yes/No/Not Sure**

**Please give reasons if your answer is 'No' or 'Not sure'**

Yes

**4. Do you support the proposed banding model to group Approved and Approved (fee cap) providers by their size? Yes/No/Not sure**

**Please give reasons if your answer is 'No' or 'Not sure'**

Yes

**5. Do you support the proposed percentage distribution of costs between size bands?  
Yes/No/Not sure**

**Please give reasons if your answer is 'No' or 'Not sure'**

Yes

**6. Do you support the idea of setting registration fees in the future to reflect the regulatory effort associated with the provider? What do you see as the advantages and disadvantages of this model compared with the proposed fee model? Yes/No/Not sure**

**Please explain your answer, including what you see as the advantages and disadvantages**

No - An easy to administer and transparent method as already proposed would be preferable. The costs and complexities of calculating and administering a new system is likely to add to additional regulatory costs which arguable do not represent good value for money.

**7. Do you support the principle of a proposed discount for new providers in their first 3 years of fees?**

Yes

**8. Please provide any further views you may have on the government's proposals on registration fee subsidies and exemptions.**

No comment.

**City's Response to - Designation of a body to perform the assessment functions for higher education in England**

**Please state whether, in your opinion, QAA is capable of meeting all of the above designation conditions.**

Yes

**City's Response to - Designation of a body for English higher education information**

**Please state whether, in your opinion, HESA is capable of meeting all of the above designation conditions.**

Yes