

CONSULTATION RESPONSE

OfS proposals on regulating quality and standards in higher education

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Questions relating to Proposal 1 Define 'quality' and 'standards' more clearly for the purpose of setting the minimum baseline requirements for all providers

Question 1a: Do you agree or disagree with the proposed definitions of 'quality' and 'standards' set out in Table 1 of Annex A and that this should be used to express minimum baseline requirements for quality and standards in revised B conditions?

Question 1b: Do you have any comments about how the proposed definitions of quality and standards set out in Table 1 of Annex A should be assessed for individual providers?

Question 1c: Do you agree or disagree with the proposal in paragraphs 41 to 43 to express initial requirements differently from the equivalent ongoing requirement for providers seeking registration?

DISAGREE

Since the introduction of the new regulatory regime established by the Higher Education and Research Act (2017) that created the Office for Students OfS, the higher education sector has been informed that the regulatory environment is principles-based, with the OfS having less regard for specific institutional practice, but more concerned with setting an overall framework. This approach was suggested to be best suited to a) allow new providers to enter the higher education market; and, b) to encourage greater innovation. Both of these aspects were considered to be vital to extend choice to students, and therefore grant them a greater degree of power as consumers. This proposal would move the Office for Students away from being a principles-based regulator, as envisaged by Parliament in the legislation establishing the body.

The principles-based regulatory environment is novel to many higher education institutions that were used to a more prescriptive approach that was preferred by the OfS's predecessor in its Revised Operating Model for Quality Assessment (from 2016-18). However, given this new environment, and the regular reminder that it is the principles that count, not the rules, higher education providers have adopted practices and governance arrangements to align with this new approach over the last three years.

It is therefore surprising and concerning that the OfS proposes a fundamental change in approach by now adopting a rules-based regulatory approach in this key area. This new requirement increases burden to providers who having adapted governance arrangements are now faced with additional regulatory requirements based on a new approach only three years into the existence of the organisation.

There is also a concern that, having been so insistent on a principles-based system, the OfS introducing a rules-based approach sets a precedent that other elements of the regulatory regime could also shift towards hard and fast rules rather than principles. The current direction of travel does not provide a stable, understandable, transparent environment in which providers can operate.

The consultation document is not clear as to why this area – quality and standards (the B conditions) – are suitable for a rules-based system with specific baselines, criteria and indicators, while other areas – the A or C conditions, are not. The proposal for the application of minimum absolute baselines is followed by some paragraphs throughout the document that note that the OfS will consider the context of individual providers. There is little explanation, however, about how this will happen, nor any sufficient justification for this approach. If context genuinely matters for individual judgments then it must, by logical extension, be relevant in the metrical indices the regulator sets set to assess providers against the quality conditions in the framework. If explanation is required to describe the OfS’s approach to using absolute minimum baselines by then applying context, this infers that the minimum absolute baselines are not appropriate to assess breaches of the conditions on their own. This casts serious doubt on the coherence of a single, sector-wide non-benchmarked metrical baseline for quality.

The proposed definitions of quality and standards included in Annex A of the consultation document seek to redefine quality and standards in a way that is acceptable to the Office for Students. Many of these are sound and reasonable. The elements that address activity and experiences that occur during a student’s experience and are in the direct control of the provider – on course content and resources – describe a high-quality higher education experience that all providers should a) agree with, b) strive to achieve; and, c) accept accountability if they are not met.

The challenge, however, is in the definitions that relate to areas that are outside the full control of the provider; areas that the OfS and its predecessor are fully aware of and have invested significant sums of money in to support providers, such as through grant funding to support students from widening participation backgrounds. These are the elements of higher education that are arguably more affected by social factors than they are by the quality of education offered by the provider.

It is for this reason that we disagree with the proposal to set minimum absolute baseline requirements for all providers in continuation, completion, and progression into managerial and professional jobs and/or higher study. We believe that contextual baselines and benchmarks, as used by the higher education sector for many years, remain useful and appropriate. What OfS proposes is the use of metrics that are significantly affected by factors that are outside of the control of the provider, without taking into account this lack of direct control. While they may have the highest quality of teaching on the course, and put in place significant support services, providers are not able to control what happens a) before a student enters university, b) events that occur during their experience part outside of their study, or c) many of the factors that impact on the student’s career once they have left higher education and moved into the employment market.

It is for this reason – events and social factors that occur outside of higher education providers – that it is challenging to directly compare one higher education experience against another and make hard and fast judgements about which one is “best”. In compulsory education (primary and secondary schools) the government and Ofsted evaluates colleges and schools through evidence of ‘value-add’ or ‘progress’ when considering the impact the educational experience has had on an individual’s own journey. Similarly, higher education has long considered value added partly through the lens of social mobility and widening participation, via the use of benchmarked performance indicators to demonstrate the success of universities that focus on providing opportunities for people from disadvantaged backgrounds.

The OfS states in the consultation document, and in meetings and public events to explain the consultation proposals that it believes that it does not want to “bake-in” disadvantage or lower standards for students from particular backgrounds, and that applying benchmarks when considering a provider’s performance does this. MillionPlus agrees that disadvantage should not be used to lower the aspirations for the future success of students and our member universities invest substantial resources in support for students to succeed and encourage them to excel in their careers through mentoring and peer networks.

Yet the OfS's argument that benchmarking 'bakes-in' lower aspiration for graduate success is erroneous – universities in practice expect and facilitate all their students to succeed to their full potential. There is no evidence to suggest that universities who take a higher proportion of disadvantaged students treat those students in a way that would discourage aspiration in that cohort of students, or more widely. The notion that sector benchmarks create complacency is false and is thus not a sound basis for quality assessment baselines.

Disregard for appropriate benchmarking also appears to be diametrically opposed to the justification for contextual offers for applicants, a policy that the OfS has gone to great lengths to promote to this day through Access and Participation Plans. This clear contradiction has not gone unnoticed among social researchers and has been highlighted by other commentators.¹ It is widely accepted that educational inequalities begin at birth and are compounded by a range of social influences. That the regulator might recognise these inequalities as a social reality, while also taking steps with providers and schools and colleges to reduce them, cannot be construed of a tacit 'acceptance' of those inequalities – quite the reverse.

Applying an absolute baseline for **continuation** rates means the OfS is, in effect, privileging a very traditional model of higher education. This is one typified by above average attainment in three or more A levels at the age of 18 following also above average attainment in GCSE exams by an individual with family experience of higher education, a stable home background, social networks with knowledge of higher education, good physical and mental health, and financial security. These are excellent conditions for a relatively straightforward approach to progressing through higher education in a standard and linear fashion – studying full-time, with few if any life distractions, and able to continue one year directly following another.

The application of a minimum absolute baseline would appear to ignore different contexts and social backgrounds and expect individual higher education providers to "solve" deep-rooted social challenges. The greater complexities that come with supporting people from non-traditional backgrounds seem to be overlooked by the OfS with this approach.

This contradicts the ambition of the UK government as articulated by the Prime Minister in his speech on 23 September 2020 in Exeter to promote and encourage a more flexible approach to post 18 education. The fixed three-year full-time model of higher education, where students move away from home, is restrictive and places barriers in the way of many individuals. The continuation rate, however, is in many respects predicated based on this model and works against those who wish to manage their experience of higher education in a different fashion, because they have other life commitments that will sometimes take priority over studying.

Typically, these students are mainly those who are recruited by modern universities. They are also likely to be students from diverse backgrounds. These universities and students have been able to demonstrate the success of their approach and their achievements in the past through benchmarked performance indicators that acknowledge the journey travelled, the context, the value-add and the progress made. The OfS proposal for an absolute baseline will mean it is comparing these students who often overcome significant barriers in order to achieve with students for whom barriers seldom exist.

Similarly, programme **completion** is heavily influenced by social factors and prior attainment, and continuation. In fact, the approach to measure continuation in the way that currently exists (e.g., progression

¹ Nick Hillman (2021), 'A short guide to non-continuation at UK universities', HEPI policy note 28 <https://www.hepi.ac.uk/2021/01/07/new-report-warns-that-an-excessive-focus-on-university-drop-out-rates-conflicts-with-other-important-priorities/>

directly into the second year), works against flexibility and penalises providers who support students to withdraw and return at a point that works best for them. The UK government has also suggested that it would like to see more opportunities created for students to have their achievements at different stages of a degree formally accredited as they study – something that has been recommended by the Augar Review of higher education.

A focus on completion using the current measure harms this new flexibility and will likely place barriers in the way of successful study as it will discourage the creation of opportunities to study at different intensities depending on other commitments. The effect of assessing success through the use of minimum absolute baselines would disproportionately affect mature students or those studying part-time. These students will often need to pause their studies due to work commitments, even in cases where the study is sponsored by employers. They will therefore not continue or complete at standard rates, but will manage their studies in way that still sees them succeed, achieve, and then benefit from their programme of study. The OfS risks ignoring experiences of this nature and provision that accommodates such flexibility.

Judging the quality and standards of a higher education experience on the basis of **progression to managerial and professional jobs or higher-level study** is highly problematic. It assumes that the only markers of success are those that are associated with income or moving into more academic study. These are both events that are dependent on the choices of individuals based on their own circumstances and desires, and as such are significantly not within the direct control of higher education providers. It is also the case that success in the job market is going to be dependent on economic conditions and business planning decision by different companies. Major economic shocks which are beyond the control of universities, such as the financial crisis and subsequent recession in 2008 or the coronavirus economic recession of 2020-21 have a huge effect on the number of graduate level jobs available generally or in a locality.

Graduate level job opportunities will also vary by region and, as has been evidenced frequently, the UK currently suffers from imbalanced economic growth, with London and the south east dominating the economy and other regions doing less well. Students opting to study and then live in one of these regions, rather than move to more prosperous parts of the UK will inevitably be in jobs that are of a lower salary and may not – at least immediately or shortly after graduation – move into managerial and professional jobs. A focus on short term outcomes will inevitably underplay the benefits of higher education. It is also the case that social advantage and professional networks often come into play for jobseekers despite the effort of universities to help students and graduates to access them, which will potentially mean that those students who faced fewer barriers when studying also face few or no barriers when seeking employment. The application of a minimum absolute baseline fails to recognise this.

Another significant factor is that many modern universities and newer higher education providers are innovators in supporting new provision for emerging professions. They have also been pioneers in supporting the professionalisation of many job roles, primarily in response to employers wanting to employ individuals with higher skills, and attributes that are acquired by graduates in degree study e.g. (resilience, problem solving, independent thinking). This means that the notion of a professional or managerial job is changing, and changing faster than the relevant statistics. A prime indicator of this is the revised Standard Occupational Classifications published by the Office of National Statistics. A revised methodology has recently been introduced, demonstrating that many jobs that graduates do that were not previously considered as professional or managerial, now are considered to be so.² The OfS is at risk of applying inaccurate measurements and judging the success of higher education providers using outdated markers of

²www.ons.gov.uk/methodology/classificationsandstandards/standardoccupationalclassificationsoc/soc2020/soc2020volume1structureanddescriptionsofunitgroups#main-areas-of-revision-from-soc-2010-to-soc-2020

success if it does not adopt this new classification. However, even if it does do so, the fact that the SOC can change significantly in a relatively short space of time shows that it is vital that this information is not relied on too much.

Fundamentally this approach falls into the common trap of thinking that the only benefit of higher education worth considering as important are the direct individual income earned by graduates. This fails to recognise that salary is dependent on many factors, including age, sex, class and location of employers. It also ignores the many benefits to society that graduates contribute - from working in healthcare, to starting businesses that offer employment to others, to managing charitable endeavours. The long-standing criticisms of the survey of longitudinal education outcomes and the recognition of the government that it is insufficient in understanding the benefits of higher education is evidence of the misguided nature of viewing graduate success on the basis of salary.

It is also the case that for many mature students and those studying part-time while employed, motivations are not solely to progress into specific jobs or earn a higher salary. Many may be able to access student loans to support their study, but not have ambitions to directly progress on to graduate level employment (if at all). Some may be using study opportunities to improve their longer-term prospects within their current employer, others may not have been able to access higher education earlier in life and as such are studying for personal, not employment reasons. The application of minimum absolute baselines related to managerial and professional jobs risks ignoring a) the success of these individuals and b) the impact higher education has on their lives specifically, and on society more generally.

The value of higher education should not be narrowly defined by the type of employment that graduates find themselves in a year and half after graduation. The benefits of higher education are broad: they are social as well as professional. For the vast majority of students, going to university is a fundamentally transformative experience. As Professor Paul Ashwin of the Centre for Global Higher Education has recently put it, the quality of higher education is as much about the extent to which universities "... provide students with access to knowledge that will transform their sense of who they are and what they can do in the world."³

The basket of metrics that are proposed in this consultation cannot account for this ultimately more holistic definition of the value of higher education. On their own, the B3 metrics are insufficient to properly assess the quality of the academic experience on offer. This is another unavoidable reason why context is of the utmost importance with regard to quality and standards and why the OfS needs to outline how it proposes to consider the context of institutions in more detail than is offered at present.

The points made above are not to suggest that the metrics in question are of little or no value, or should not be fully taken into account by the regulator. These indicators, when taken individually, can of course be of use to students, universities and organisations operating on a national level. But there is a danger in the belief that these distinct data points can be collated and unified together to produce a single mark of quality that is clean and uncomplicated. This is especially true when, as pointed out above, the metrics do not account for the fullness of "quality" within the system. Furthermore, when the assessment of metrics is introduced too bluntly, it can often give rise to the phenomenon explained by "Goodhart's Law". In other words, institutions may be incentivised to prioritise outcomes of such metrics over considerations for the broader quality of the university experience. This could have ramifications and unintended consequences that would be harmful to students.

³ Paul Ashwin (2020) "Transforming University Education: A Manifesto", Bloomsbury: London.

Undermining the UK dimension of higher education quality and standards

The proposals outlined by the Office for Students risk exacerbating the divergence in approaches to higher education quality and standards in the UK. The proposals set out a rigid, regulatory-led definition of quality and standards, which unduly focus on the B3 metrics and constitute a move further away from the notion of the higher education sector co-operating with the OfS in establishing and adhering to regulatory framework based on the sector-recognised standards (as outlined in HERA 2017). This divergence away from an established UK-wide approach of sector and funder co-regulation concerning quality were raised as potential risks from the reforms that led to the creation of the Office for Students in HERA 2017. It is clear that these proposals, if implemented unamended, could undermine the position of the UK Quality Code as the pivotal sector recognised standard governing quality and standards. This would be a backward step as the code has worked well for many years in establishing and promoting the strength, quality and the international reputation of UK higher education. There is a risk that, in establishing different working definitions of quality and standards based predominantly on a suite of non-benchmarked metrical baselines, the Office for Students will damage the coherence and consistency of higher education quality assessment across the UK. This, in turn, could negatively affect the reputation of UK higher education overseas.

Creating additional burden

The OfS argues in the consultation proposals, and also in meetings and events to explain these proposals, that it will not take action solely due to a provider missing an absolute baseline and that it will always consider the individual reasons and circumstances. Arguably, this is a weak defence for absolute baselines – they either prompt action, or they do not – and in fact a recognition of the importance of context. It would therefore be simpler and more effective to continue to use benchmarked performance indicators that are designed to recognise, understand and assess performance in context.

Questions relating to Proposal 2: Set numerical baselines for student outcomes and assess a provider's absolute performance in relation to these

Question 2a: Do you agree or disagree with the proposed approach to assessing student outcomes set out in Annex B?

Disagree. As stated above, Benchmarking should be employed to assess student outcomes at a provider in its context.

Question 2b: Are there any other quantitative measures of student outcomes that we should consider in addition to continuation, completion and progression (see Annex B paragraph 18)?

No.

Question 2c: Do you agree or disagree with the proposals for the levels of study at which indicators should be constructed? Should any additional indicators be considered (see Annex B paragraph 25)?

As stated above, benchmarking should be employed to assess student outcomes at a provider in its context.

Question 2d: Do you have any comments about an appropriate balance between the volume and complexity of indicators and a method that allows us to identify 'pockets' of performance that are below a numerical baseline (see Annex B paragraph 32)?

These factors would generally be reflected by the use of benchmarks, which should be employed by the regulator in its assessment of quality (as argued in response to question 1a).

Question 2e: Do you agree or disagree with the demographic characteristics we propose to use (see Annex B paragraph 36)? Are there further demographic characteristics which we should consider including in the list of 'split indicators'?

These factors would generally be reflected by the use of benchmarks, which should be employed by the regulator in its assessment of quality (as argued in response to question 1a).

Question 2f: Do you agree or disagree that the longitudinal educational outcomes dataset should be used to provide further indicators in relation to graduate outcomes (see Annex B paragraph 46)?

Disagree. LEO data does not reflect widely differing regional or local geographical employment patterns or salary levels. Including LEO data would therefore contradict the levelling up agenda of the UK Government by implicitly encouraging universities to advise graduates to see work in higher salary regions such as London and the South-East.

Question 2g: Do you have any comments about how the range of sector-level performance should be taken into account in setting numerical baselines (see Annex B paragraph 57)?

This would be reflected through the use of benchmarking.

Question 2h: Do you have any comments about the other contextual factors that should be taken into account and the weight that should be placed on them (see Annex B paragraph 68)?

Benchmarking institutional performance achieves a balanced contextual picture for a provider, when assessed by the OfS.

Questions relating to proposal 3: Clarify the indicators and approach used for risk-based monitoring of quality and standards

Question 3: Do you agree or disagree with the proposals in Annex C for monitoring ongoing compliance with regulatory requirements for quality and standards?

Questions relating to proposal 4: Clarify our approach to intervention and our approach to gathering further information about concerns about quality and standards

Question 4: Do you agree or disagree with the proposals in paragraphs 86 to 101 for our approach to intervention and gathering further information about concerns about quality and standards?

Questions relating to all proposals

Question 5: Do you have any comments about any unintended consequences of these proposals, for example for particular types of provider or course or for any particular types of student?

Question 6: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

Question 7: Do you have any comments about where regulatory burden could be reduced?

Question 8: Do you have any other comments?

The proposal regarding the application of minimum absolute baselines strikes right at the heart of reducing the barriers to higher education facing students from disadvantaged backgrounds, including those with protected characteristics. These students are heavily represented in particular universities, especially modern universities. In particular, universities will be disincentivised by an absolute baseline requirement to recruit mature students – age being protected characteristic – as these prospective students have a higher non-completion and non-continuation rate than the typical 18-21 year old residential student.

While a deficit model of education at any level is the wrong approach, there is a risk that without understanding the context and specific circumstances facing some universities, the OfS regulation will discriminate against students from disadvantaged backgrounds or with protected characteristics by generating unintended consequences in provider behaviour.

The OfS notes that specific characteristics are important. It therefore should be taking these into account when setting absolute minimum baselines.

The OfS announced in March 2020 that it was pausing all consultations and lowering regulatory requirements to enable providers to manage the additional pressures and priorities that the pandemic presented. As events have developed, and lockdowns have continued, these pressures have also continued. In addition, universities and other higher education providers are tasked with carrying out mass asymptomatic testing and managing staggered timetables imposed by the government.

It is highly problematic for the OfS to introduce a consultation on such a fundamental element of its regulatory function during this time. It is equally perverse that it has chosen to do this over the Christmas period, therefore removing time from the consultation period. Assuming Covid-19 restrictions remain in place through to April 2021 at least, it is likely that the OfS will launch its second stage consultation when higher education providers are still facing these additional pressures and priorities. Additionally, if these proposals become policy, they will be implemented either while higher education providers are still under these restrictions or in the early stages of recovery and attempts to return to a normal operating model.

It is therefore difficult to understand why the OfS is a) introducing a consultation of this importance at this time; and, b) planning to significantly revise the regulatory requirements when higher education providers will still be dealing with the consequences and impact of the pandemic and the effects it has had on educational attainment and success, as well as the extremely challenging economic circumstances the country is likely to be in.