

INQUIRY RESPONSE

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

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1. This evidence is being submitted in response to the House of Lords Industry and Regulators Committee [inquiry](#) into the work of the Office for Students.
2. MillionPlus is the Association for Modern Universities in the UK, and the voice of 21st century higher education. We champion, promote and raise awareness of the essential role played by modern universities in the UK's world-leading university system. Modern universities make up 52% of all UK undergraduates and 37% of all postgraduates, with over one million students studying at modern institutions across the UK. They are major anchor institutions, generating £17bn in expenditure-related gross value add. These institutions are drivers of social mobility and an important cog in regional growth agendas.

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?

3. The role of the Office for Students (OfS) was clearly set out within the Higher Education and Research Act 2017 and the OfS regulatory framework clearly sets out the areas of focus for the regulator. On this basis, it is fair to say that the duties of the OfS are clear and appropriate. Where challenges have arisen in regulation, these have largely been in the implementation of these duties.
4. MillionPlus is supportive of the need for good regulation, which helps to reinforce the quality and strength of our higher education sector, underpinning its international reputation. However the approach the OfS has taken to implement the regulatory framework is causing significant burden and ever increasing bureaucracy in our member universities.
5. Currently, the way the duties of the OfS are performed does not appear to represent 'risk-based regulation', where regulatory responses are targeted, effective and efficient. This means the approach to regulation risks constraining innovation. MillionPlus universities are keen to explore new models of delivering higher education; modern universities are already leading the way in the development of degree apprenticeships (58% of universities on the apprenticeship training provider register are modern universities), and are enthused by the potential of the lifelong loan entitlement and what benefits it could bring to students of all ages. However the current model of regulation, for example where providers are assessed by detailed 'outcomes' metrics would not, in their current form, be transferable to modular level study and so regulation will need to adapt to support new initiatives. MillionPlus would therefore welcome a more 'risk-based' approach be taken by the OfS which provided universities with greater opportunity to innovate in their practices.

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?

6. Since the OfS's inception, the regulatory framework has expanded and looks to continue to swell with new measures on harassment and sexual misconduct, on free speech and growing activity on quality and

standards. MillionPlus does not dispute the importance of these areas, but this represents an expansive growth in activity from the regulator in a short space for time, from a large baseline originally set up under HERA. This expansion of activity has caused additional regulatory burden for universities, coupled with other additional demands on university resources, such as in responding to COVID-19 and the cost-of-living crisis. Universities continue to do more with less, but continuing growth of the regulatory framework and its associated burden will limit universities activity in other areas. Currently, when new regulatory measures are brought in by the OfS, no other activity appears to be slowed or stopped in its place, meaning the remit of the regulator continues to expand. Our members report that it is becoming more challenging to keep up with the regulatory bureaucracy as costs and resources to do this creep ever upwards.

WHAT IS THE NATURE OF THE RELATIONSHIP BETWEEN THE OFS AND THE GOVERNMENT? DOES THIS STRIKE THE RIGHT BALANCE BETWEEN PROVIDING GUIDANCE AND MAINTAINING REGULATORY INDEPENDENCE?

7. Since the regulator's inception, there has been significant turnover in Government, including seven Secretaries of State for Education. This, coupled with the pandemic and other changes in the wider environment, has meant there has been instability in the relationship between the OfS and Government. It is fair that new Secretaries of State should be afforded the opportunity to set out their priorities for the OfS in guidance letters.
8. However since the OfS' inception in 2018, there have been twenty-five letters of guidance from Government, which seems excessive regardless of the broader environment. These letters have varied in content, but some have seemed perhaps overly prescriptive, for example suggesting the type of institutions the OfS should be considering as part of their quality and standards work.
9. It is unclear where the OfS has taken the decision not to implement elements of guidance issued by the Government, with the exclusion of guidance to discontinue the National Student Survey.

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 DECISION NOT TO CONTINUE AS THE OFS' DESIGNATED QUALITY BODY?

10. MillionPlus believes the powers that the Office for Students have been given are sufficient for them to regulate fairly. It is unclear whether the OfS has sufficient expertise or capacity required to meet its ever expanding duties and operations. For example, while universities are often asked for large amounts of data or information to be returned to the OfS on short deadlines, some of our members have raised issues surrounding lack of timely response in return in receiving information from the OfS, such as waiting multiple years for sign off of their student protection plans.
11. This raises practical questions about whether the OfS has capacity to expand into other areas, including taking on the functions of the designated quality body (DQB). Maintaining quality standards is critical to the worldwide reputation of our UK higher education system and so the challenge of taking on the role of the DQB should not be underestimated. The OfS is taking on this role for an undefined length of time, which may also cause challenges with suitable resourcing. As we have raised in our [recent response to the Government consultation](#) on the de-designation of the QAA, MillionPlus has significant concerns with this approach and believe it would be more appropriate to maintain an independent quality body. The Higher Education Research Act references the need for the regulator to hold the DQB to account – it is not clear whether the OfS can appropriately do so while it is fulfilling both functions.

12. MillionPlus is also concerned that the associated costs of the OfS upskilling to take on the role of the designated quality body will be passed back on to providers. While some of these costs have been covered by providers in the past, any short notice rise in costs would be challenging for institution's financial planning and OfS should be mindful of affordability and timeliness in changes of this kind.

HOW DOES THE OFS MEASURE VALUE FOR MONEY FOR STUDENTS? HOW CAN THIS BE MEASURED IN AN OBJECTIVE, TANGIBLE WAY THAT IS NOT BASED ON ECONOMIC OR POLITICAL JUDGEMENTS ABOUT THE VALUE OF SUBJECT AREAS OR TYPES OF INSTITUTION?

13. Measuring value for money in higher education is complex. Should students be asked to reflect on the value they are getting from their studies while they are still ongoing? Should this be asked after they have completed their studies, where they can better see the impact it has had on their career paths?
14. Due to the complexities of measuring value for money, the approach the OfS currently uses is to make use of a number of proxies. These include 'outcomes' measures, for example whether a graduate is in 'graduate-level' employment and whether they complete their studies and measures of satisfaction from the National Student Survey. MillionPlus believes, while these proxies can demonstrate some aspects of value for money, they do not show the full picture and students would be better served by a broader range of measures.
15. One additional way of measuring value for money could be through measuring the 'value add' from higher education. MillionPlus universities recruit students from a diverse range of backgrounds, including students from disadvantaged backgrounds, those with caring responsibilities and mature students. Simple outcomes measures cannot show the full picture of the transformative impact that our member institutions have had on their students and so MillionPlus would suggest development of a measure of 'value add' could help to provide a fuller picture of value for money.

HOW DOES THE OFS ENGAGE WITH STUDENTS? TO WHAT EXTENT DOES INPUT FROM STUDENTS DRIVE THE OFS' VIEW OF THEIR INTERESTS AND ITS REGULATORY ACTIONS TO PROTECT THOSE INTERESTS?

16. MillionPlus understands that the OfS has a student panel and a student member on their board, which help to provide the OfS with the student voice. However, currently only three of the thirteen students on the student panel study at a modern university, while modern universities educate 52% of undergraduate students. This suggests these students could be better represented in the OfS's engagement. MillionPlus member universities recruit students that are often from non-traditional backgrounds, in many cases first-in-family entering higher education, and we believe more work could be done to represent the perspective of these students in the OfS's work.

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?

17. MillionPlus would characterize the current way the OfS maintains relationships with higher education providers as overly adversarial, which does not appear to improve the system for universities or students. Often there seems to be a working assumption that universities are operating as 'bad actors' and providers report disproportionate responses to small scale issues, which could have been resolved through dialogue at an earlier stage. Our members report that there often seems to be a lack of transparency about why information has been requested which can cause the motivation of the requests to be questioned. There is also a lack of consideration given to the make-up of the student body at

institutions, or the regional context in which they are operating. Our members have reported institutional contacts having limited understanding of the provider they are dealing with and members not being routinely notified of changes in institutional contact, meaning when they have an enquiry, particularly over whether a matter is a Reportable Event, responses are haphazard. This has been a bar to developing more positive relations.

18. One positive example of the way the regulator has worked with the sector is their work on recent access and participation, where genuine feedback has been sought, consideration has been given to different types of providers and early discussions have been had about the direction of travel. This is not to say that all providers will agree with the approach taken by the regulator, but the opportunity for open dialogue has helped to develop the proposals. The opposite of this is where decisions are made through consultations with very short timelines, to which responses do not seem to be given consideration nor inform decision making, which can cause significant frustration.

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?

19. Higher education institutions in England continue to deliver world-class teaching and research against a backdrop of economic uncertainty. Universities are largely funded by home student fees, international student fees and research funding. Research operates at a loss and home student fees largely no longer cover the costs of their delivery. By 2024–25, the £9,250 annual tuition fee will only be worth £6,600 in 2012–13 prices.
20. As with other sectors of the economy, the effects of the Covid-19 pandemic are still being keenly felt, exacerbated by the cost-of-living crisis, increasing energy costs and seeking resolution to pay disputes. This paired with a near decade-long freeze of tuition fees means that universities are year-on-year being compelled to do more with less. Universities have responded to this by seeking efficiency savings, but this will also lead inevitably to cost-cutting measures, including course closures. Action is rapidly required to ensure that higher education funding is appropriate and sustainable if standards and option for students are not to be further eroded.
21. While all universities will feel the challenge of these financial pressures, modern universities, who recruit many of their students locally or from disadvantaged backgrounds, and have smaller, albeit growing, international student cohorts may be particularly vulnerable to these challenges. Modern universities are key local placemakers, train the public sector workforce and are key to meeting the country's skills needs, so it is critical that these vulnerabilities are understood and addressed.

WHAT BUSINESS MODELS ARE PRESENT IN THE UK HIGHER EDUCATION SECTOR? ARE THESE MODELS RESILIENT TO THE FINANCIAL RISKS OF THE SECTOR, AND ARE UNIVERSITIES FOCUSING SUFFICIENTLY ON HAVING A VIABLE BUSINESS MODEL?

22. Different universities will have different focuses which drive their models of operating. Modern universities focuses include:
 - Supporting the needs of a wide range of learners and widening access to higher education,
 - Being key placemakers in their local area,

- Building and maintaining strong relationships with local businesses,
 - Training public sector workers and working in partnership with local NHS trusts,
 - Delivering excellent teaching which provides students with the skills to succeed,
 - Producing translational research with real world impact.
23. These are core to the missions of the institutions and inform their business models. Modern universities continually monitor the viability of their business model and adapting their practice to fit with changing environments. However the environment in which they operate has become more challenging, partially due to increasing regulatory burden but also decreasing funding and wider environmental factors identified above.

HOW DOES THE OFS OVERSEE THE FINANCIAL SUSTAINABILITY OF HIGHER EDUCATION PROVIDERS AND THE HIGHER EDUCATION SECTOR? IS ITS APPROACH CLEAR, AND IS ITS OVERSIGHT SUFFICIENT TO SPOT POTENTIAL RISKS EARLY ON AND TAKE ACTION ACCORDINGLY?

24. The Office for Students appears to take a clear role in overseeing the sustainability of higher education providers, monitoring activity and taking action when needed. Much of this action seems to take place privately, which seems appropriate to protect both the institutional reputation but also students and staff from knock-on impacts. This approach seems to be working in the sense that we are not seeing lots of institutions end up in unresolvable financial difficulty. However, moving to a less adversarial relationship between the OfS and higher education providers would likely help to improve the OfS' monitoring of this.

WHAT IS THE OFS' TOLERANCE FOR THE FAILURE OF HIGHER EDUCATION PROVIDERS, AND WHAT PROCESSES ARE IN PLACE TO MANAGE PROVIDER FAILURE? WOULD THE FAILURE OF A LARGE PROVIDER FOLLOW A CLEAR REGULATORY PROCESS OR IS THERE THE POTENTIAL FOR POLITICAL CONSIDERATIONS TO PLAY A ROLE IN SUCH DECISIONS?

25. Failure of a provider would have significant ramifications, for the students, staff, graduates and the broader local environment, and therefore should not be underestimated. Many of the providers MillionPlus represents are in areas that have been under focus of the 'levelling up' agenda and would be significant losses to their local communities.
26. While 'failure' of higher education providers is often discussed, there are likely to be a number of earlier interventions before a provider were to close. This could include course closures or other changes in the type of provision offered.

TO WHAT EXTENT IS THE FINANCIAL SUSTAINABILITY OF PROVIDERS DETERMINED BY GOVERNMENT POLICY AND FUNDING RATHER THAN THE OFS' REGULATION? IS THERE A NEED FOR POLICY CHANGE OR FURTHER CLARITY TO ENSURE THE SUSTAINABILITY OF THE SECTOR?

27. As much of a university's income is determined by Government policy, through the setting of home student funding and research funding, Government policy has a more significant impact on the financial sustainability of universities than regulation through the OfS. Due to the concerns highlighted above, action is rapidly required to ensure that higher education funding is appropriate and sustainable if standards and options for students are not to be further eroded.