

CONSULTATION QUESTIONS

OfS consultation on a new approach to regulating student outcomes

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General questions regarding this consultation

QUESTION 1: ARE THERE ASPECTS OF THE PROPOSALS YOU FOUND UNCLEAR? IF SO, PLEASE SPECIFY WHICH, AND TELL US WHY.

1. The approach to prioritisation could have been laid out a little more clearly, especially as this is quite a pivotal part of the regulatory process that is being proposed. MillionPlus appreciates that these proposals are in development. It is not practical, nor desirable for a consultation to be conducted in a way in that proposals are presented as a fait accompli. Nevertheless it would have been useful to have a bit more information on the different possible approaches to prioritisation that the OfS is considering. It perhaps would have been more helpful to have the different options presented in a more systematic manner, with a clearer outline of how certain approaches, or combination of approaches might work in practice. MillionPlus appreciates however, that this is an area that the OfS is inviting opinion from the sector and as a result does not want to be too prescriptive or limit responses.

QUESTION 2: IN YOUR VIEW, ARE THERE WAYS IN WHICH THE OBJECTIVES OF THIS CONSULTATION (AS SET OUT IN PARAGRAPH 7) COULD BE DELIVERED MORE EFFICIENTLY OR EFFECTIVELY THAN PROPOSED HERE?

2. An alternative approach to that set out in the consultation that might improve efficiency would be to change how the OfS arrives at identifying a starting point for a numerical threshold (as shown in Annex E of the consultation). The logic of how sector averages will be used as a starting point are explained in the document. However the rationale for choosing sector averages as opposed to another cut off point in the distribution of indicator performance is not articulated in much depth. It is MillionPlus's understanding that averages have been adopted in part because of the level of variation across the sector on some of the indicators. OfS colleagues have argued that identifying a starting point for a numerical threshold based on the lower quartile of provider indicators, for example, might not be suitable because of a long tail found at the bottom of the distribution of indicators. This is because the long tail of performance pulls down the sector average. MillionPlus accepts that variation in the indicators of different institutions might skew the data, and establishing a starting point that reflects a percentile lower than the median has limitations.
3. However, this consultation document is explicit in acknowledging that the OfS will simply not have the capacity to investigate all providers where there is an indicator that does not meet the numerical threshold. This is the reason that there is going to be a process of "prioritisation" to establish where the OfS intervention will be targeted. There is a logic, therefore, in the name of efficiency, for redesigning the approach to so that the number of providers "in scope" for intervention is smaller and the process of prioritisation is a simpler exercise. This would reduce the level of regulatory burden across the sector,

which is ultimately in the interest of students. In addition, it would reduce the level of resource required from the OfS. It is important to remember the overall objective of this exercise: to establish a minimum expectation for providers with respect to student outcomes.

4. MillionPlus welcomes statements made in the consultation document that affirm that the English sector “generally performs highly”. The only risk here is that there is a slight gap that is emerging between the rhetoric and the methodology. It is important to emphasise that a provider can be below sector averages for these indicators and still be high quality. Moreover, the OfS itself indirectly acknowledges that it is possible on occasion for a provider to be below a numerical threshold by providing a positive outcome for students. This is the reason for the second stage of the process to understand and account for the individual context of providers.
5. To produce a more streamlined and efficient approach to B3 regulation it may be worth considering identifying a starting point that is lower than the average(s). This could be done by developing a common point in relation to the mean or the general distribution for the outcome measures (e.g. one standard deviation below the mean, or at the 40th percentile mark). MillionPlus does not have the benefit of access to data that would allow for a judgement to be made on this. OfS colleagues have informed us that the lower quartile may be impractical, but it seems plausible that one could strike a point somewhere between the two that could be workable. Without access to more comprehensive data it is impossible to say whether this alternative is practicable or indeed a better approach than what is outlined in the consultation. But it would at least make the process more efficient from the point of view of the OfS.

Questions relating to Proposal 1: Revising condition B3 and associated guidance in the regulatory framework

QUESTION 3: DO YOU AGREE OR DISAGREE THAT THE PROPOSED WORDING OF CONDITION B3 WILL ENABLE THE OFS TO MEET ITS POLICY OBJECTIVES? IF YOU DISAGREE, WHAT CHANGES DO YOU THINK ARE NECESSARY TO DO SO?

Strongly disagree

6. MillionPlus believes it would be more appropriate to use language that indicates a provider is expected to meet the threshold for outcomes, or alternatively, meet the quality and standards thresholds set by the OfS. It is worth noting that the word numerical is omitted in our suggestion, since the overall condition of registration includes the application of context in the process. As such, using the term numerical thresholds could give rise to confusion in the sector, as some providers might be performing below the numerical thresholds as set out in Table 1, but have satisfied the condition when context is factored in. MillionPlus believes this choice of language also avoids the binary of positive and negative, which could equally give rise to confusion, particularly amongst the wider public or those not well acquainted with higher education policy and regulation (not least students and prospective students).
7. It is perfectly feasible that a provider could be delivering “positive outcomes” for some (or most) students but fail to meet the threshold and be subject to intervention from the OfS. To illustrate this point, if 75% of a provider’s full-time first degree students continue to the second year of study, it is still delivering positive outcomes for the vast majority with respect to the continuation indicator. But even after consideration of the context of the provider it might be the subject of intervention from the OfS. This is why MillionPlus believes that the language of positive outcomes could be confusing in the wording of condition B3. Positive outcomes itself does not indicate that there is a rate, percentage or

level of positive outcomes that are deemed as acceptable. It therefore seems sensible to focus the language on the idea of a threshold or level which is expected to be met, while accounting for the fact that this will vary across providers when context is factored in. This is also being advocated because it falls in line with other recommendations that MillionPlus will be making in the other two OfS consultations. In the consultation on the TEF, MillionPlus will be arguing that the “required improvement” category label should be replaced with “meets the quality threshold” as was recommended in the independent Pearce review of the TEF. Our answer to this question demonstrates some consistency with this suggestion. For these reasons, we do not see the language of “positive outcomes” as appropriate for the wording of the B3 condition.

8. To be clear, we are not opposed to use of positive outcomes in general, or throughout the consultation document. But MillionPlus believes that the wording of condition B3 would be best served by focusing more overtly on the notion of a regulatory expectation i.e. a quality threshold, rather than “positive outcomes”.

Questions relating to Proposal 2: Constructing indicators to assess student outcomes

QUESTION 4: DO YOU AGREE OR DISAGREE WITH THE PROPOSALS FOR HOW WE WILL CONSTRUCT A STUDENT OUTCOME MEASURES? DO YOU HAVE ANY ALTERNATIVE SUGGESTIONS?

Agree

9. MillionPlus has reservations about the feasibility of establishing outcome measures for transnational education (TNE). There is an expectation here that data from other nations and national statistic agencies can conform to the demands of domestic regulation, which is questionable. That is to say, it is out of the gift of the OfS, or English providers, to establish a graduate outcomes survey that serves as a suitable international equivalent. The consultation document is written in such a way that suggest the inclusion of TNE in B3 is a question of when rather than if. MillionPlus is not opposed to the inclusion of TNE in principle, but this must be done in a robust way that ensures equivalence in measurement. Therefore, we think it is sensible for the OfS to approach the inclusion of TNE as a question of if not when, in the first instance. This would ensure that the approach is evidence-led and that the inclusion of TNE is only carried out if the methods and process meet the standard set elsewhere.
10. As such, the future inclusion of TNE should not be presented as a *fait accompli*. There are not the same imperatives with respect to TNE that the OfS must have regard to when looking at regulation of practice that takes place in England. That is because the consideration of value for money and the interests of students are not the same. The interests of TNE students are of course of great importance to modern universities, but their experience does not relate to British taxpayers’ money in the same way as domestic students. MillionPlus of course recognises that there should be some level of accountability for TNE provision for providers who are registered in England, and that this affects the overall reputation of UK higher education. But this exercise will not be worthwhile, and is not in the interest of students, or the wider public, if it cannot be shown to be robust and on par with the Graduate Outcomes survey.
11. MillionPlus also has concerns about how continuation and completion might be implemented for courses at level 4 and 5. This is not to say it is impossible to implement an amended or alternative set of outcomes metrics to suit qualifications at these levels. Clearly, the barriers to regulation here are not the same as those outlined above for TNE, since it is a domain over which the OfS, and the Department for Education, have more direct influence. But there are potential pitfalls and challenges all the same.

MillionPlus would advocate for the same approach as above with respect to qualifications at level 4 and 5: reforms should only be implemented if there is evidence to suggest that they will be robust and effective as regulatory tools.

Questions relating to Proposal 3: Setting numerical thresholds for student outcome indicators

QUESTION 5: DO YOU AGREE OR DISAGREE WITH OUR PROPOSED APPROACH TO SETTING NUMERICAL THRESHOLDS SET OUT IN ANNEX E? IF YOU DISAGREE, PLEASE PROVIDE REASONS AND ANY ALTERNATIVE SUGGESTIONS.

Agree

12. MillionPlus does not oppose the general approach to setting numerical thresholds set out in Annex E of the document. As expressed in our response to question 2, there might be ways that this could be done more efficiently when you consider the prioritisation process that is going to be taking place as part of this package of proposals. However, efficiency is not the only thing that the OfS should have regard to. If the process to develop numerical thresholds is to use averages as a starting point, then it follows that distance from the average of indicators should take precedence in the next stages of the regulation of student outcomes and in the process of prioritisation. This is because, and it is worth reaffirming this again, below average performance does not necessarily mean low quality. There are likely to be many high quality providers who may display below average performance on certain indicators that should not require further investigation from the OfS if it is to fulfil its ambition to be a "risk-based" regulator.
13. MillionPlus welcomes the application of contextual and policy factors into this approach to regulating numerical thresholds. It is very encouraging that the OfS has clearly taken on views of the wider sector from previous consultations in devising this part. It is also encouraging that the OfS states in the consultation document that the sector is "generally high performing". MillionPlus would object, however, to the idea that the OfS would set a numerical threshold higher than the sector average. Within the short term, this does not appear to be a likely outcome, based on the assertion that the sector is generally high performing. But thinking more long term, there should be some guarantees built into this regulatory approach that the setting of the numerical thresholds will not change wildly. This is not in the interests of institutions, nor students. MillionPlus does not think it would be fair, or even sensible, to have an approach that identifies a starting point value that begins from above a sector average. There should be some guarantee built into the system that this will not be implemented as a point of principle.

QUESTION 6: DO YOU AGREE OR DISAGREE WITH THE PROPOSED NUMERICAL THRESHOLDS SET OUT IN SUMMARY IN TABLE 1 AND SHOWN IN FULL IN 'SETTING NUMERICAL THRESHOLDS FOR CONDITION B3'?

Strongly disagree

14. MillionPlus has some concerns about the proportionality of the numerical thresholds listed for the progression metrics in Table 1. MillionPlus believes that these thresholds have been set too high and that this risks bringing providers under scope for intervention that are high quality. Measures of progression are important but setting the numerical thresholds at this level risks placing too great an emphasis on employability of graduates 15 months after graduation in determine the regulation of the sector and the level of bureaucratic burden that providers will be put under. This is based on the following factors:

- Progression is perhaps the most complex of all the metrics in terms of drawing a direct causal link between the role of the provider (the quality of the educational experience) and the student outcome being measured.
 - These numerical thresholds are more likely to be influenced by external economic factors than the other measurements in B3. The global economy is approaching an era of increased unpredictability. This is likely to create greater instability in the domestic job market. We appreciate that the OfS has embedded the application of context into in these proposals, and this is welcomed. The consultation document indicates that matters arising such as external economic factors may be offered as an explanation for performance below the threshold when context is considered. But MillionPlus would question whether this is sufficient to account for this, or indeed whether it is practical to apply context after the fact for such widespread influences. It would be more prudent to adjust the progression measures so that there chance of providers being dragged into scope of intervention (by external economic factors) is minimised.
 - The time lag for the progression metric is the largest for any of the three measures of student outcomes. Progression metrics published in the 2021-22 academic year would relate to students who have started full-time undergraduate courses at least five years prior to the data collection, and at least seven years prior to the data collection in the case of part time undergraduate students.
 - Despite significant improvements in the recruitment practice of many employers over recent years, there is still a considerable level of prejudice towards graduates based on the type of institution they attended (perceived prestige). So in many cases performance on this indicator will often reflect the subjective view of employers with respect to institutions rather than any objective measure of performance of universities or the level or personal development/learning gain of the individual.
 - There are structural, socioeconomic factors that influence progression into highly skilled employment such as race, class and disability. The consultation document indicates that some work has been undertaken to mitigate for these factors, which is to be welcomed. Nevertheless, the way in which these socioeconomic factors influence outcomes is arguably more complex than is the case for continuation and completion, because these are now interacting with a even deeper mix of societal factors, mainly those pertaining to the labour market.
 - The other side of the coin here is that setting too strict a numerical threshold for progression risks ignoring the agency of the individual graduate in the labour market. There is a limit to the impact that the institution can have in the direction of the individual graduate in the first 15 months after they have left the university. This is not to suggest that the university does not have a role and responsibility to promote and support strong progression outcomes. But there is a danger universities become punished for something over which they only have partial control.
15. For all of these reasons, MillionPlus believes it is sensible to approach the construction of this metric with a slightly more open approach to the performance of universities. In essence, we believe that the numerical threshold may have been set too high in order to account for the myriad of different external factors (those outside the control or influence of the provider) that will affect the progression indicators.
16. MillionPlus does not believe that the level of numerical threshold for continuation being proposed for foundation year courses is appropriate. Part of the reason for this is that these course appear to be treated as an equivalence to degree level courses. But this misunderstands these courses, how they are structured and the level that students are entering at. Foundation years are a separate level of study and deserve to be treated as such when constructing a continuation measure.

Questions relating to Proposal 4: Publishing information about the performance of providers in relation to the OfS's numerical thresholds

QUESTION 7: DO YOU AGREE OR DISAGREE WITH OUR PROPOSAL TO PUBLISH INFORMATION ABOUT INDIVIDUAL PROVIDERS' STUDENT OUTCOMES AND PERFORMANCE IN RELATION TO OUR NUMERICAL THRESHOLDS, AS WELL AS SECTOR-WIDE DATA, ON OUR WEBSITE?

Agree

Questions relating to Proposal 5: Making judgments about compliance with condition B3, including consideration of context

QUESTION 8: DO YOU AGREE OR DISAGREE WITH THE PROPOSED APPROACH TO ASSESSMENT SET OUT IN ANNEX F? IS THERE ANYTHING WE COULD DO TO IMPROVE THE CLARITY OF THIS INFORMATION FOR PROVIDERS?

Agree

17. It may be useful to have a worked example for a fictional provider to illustrate the process and sequence of this approach, particularly in relation to the application of context. This would help to give a sense of the degree to which context could alter the numerical thresholds expected of a provider and how. The consultation document is largely referring to context in the abstract so a real-life example could be helpful here.

QUESTION 9: DO YOU AGREE OR DISAGREE WITH OUR PROPOSED GENERAL APPROACH TO PRIORITISATION? IF YOU DISAGREE, DO YOU HAVE ANY ALTERNATIVE SUGGESTIONS FOR HOW WE SHOULD APPROACH PRIORITISATION?

Disagree

18. MillionPlus would object to an approach that is thematic or based on random sampling of institutions that display any indicators below the numerical thresholds. Either approach would ignore proportionality or scale. This seems unfair on institutions and would not sufficiently incentivise performance (and continuous improvement) as is the stated objective of the proposals. MillionPlus fears that a thematic approach could lead to a more volatile regulatory climate where the focus of regulatory attention is determined by the political or policy fancy of the day. This could lead to inconsistency in regulation, which would be highly disruptive for institutions, and is not in the interest of students. It is hard to see how a thematic approach could be managed effectively in a way that providers are not constantly having to update and review the regulatory climate. This approach risks maximising regulatory burden for providers and inconsistency in regulation.
19. MillionPlus believes that the primary consideration in the approach to prioritisation should be the distance between the indicator of the provider and the numerical threshold. This aligns with some of the responses given to other questions in this consultation, acknowledging that sector averages are being used to identify a starting point for the numerical thresholds. The stated objective of this regulatory reform is to be able to set a minimum expectation of student outcomes for a) the sector and b) for providers once context has been applied. There is likely to be considerable variation in indicator performance for those below the sector average. Plus, there is also likely to be considerable variation in the gap between the numerical thresholds (once context is applied) and different providers who have

indicators that are below the threshold. It therefore would seem unfair to not prioritise the distance between the indicator value and the relevant numerical threshold. MillionPlus believes the level of statistical uncertainty is suitably covered in proposal 6 of this consultation. As a result, statistical uncertainty should not take precedence in the process of prioritisation, but could be used as a secondary consideration in the process of prioritisation.

20. There needs to be greater clarity on what will determine the process of prioritisation before this is taken forward and adopted. As it stands, the consultation document does not propose a clear strategy or system. This is worrying because if it were left this open or ambiguous, the process could be subject to influence that would cause inconsistency in regulation over time. MillionPlus believes there may be a role for the OfS's Quality Assessment Committee or the DQB in the prioritisation process. This would ensure some level of accountability to the process. At present, it is not clear who is making the decisions on the process of prioritisation going forward. While we understand that the colleagues at the OfS will be overseeing the process, it would be regrettable to have no involvement of expert peer academic judgment in decision making, even if this were to act in a more limited capacity as a check and balance on proceedings.

QUESTION 10: DO YOU THINK THAT THE OFS SHOULD ADOPT OPTION 1 OR OPTION 2 (SEE PARAGRAPHS 207) WHEN DEFINING THE SCOPE OF EACH ASSESSMENT FOR ONGOING CONDITION B3?

21. MillionPlus can see the pros and cons of each option as laid out in the consultation document but would opt for option A as this seems a fairer way to deal with providers. It does not seem reasonable or proportionate to investigate providers for areas of provision that are demonstrating high levels of positive outcomes (indeed this aligns with our response to question 5, as we do not envisage a scenario where it would be reasonable to put a provider in scope of regulation where its performance is above average).
22. For either option, there needs to be something in place to ensure that interventions do not take place repeatedly to the extent that the level of regulation is unmanageable for the OfS or that the level of regulatory burden for providers actually inhibits their capacity to improve outcomes as directed by the OfS or otherwise.

QUESTION 11: DO YOU AGREE OR DISAGREE WITH OUR PROPOSALS FOR CONSIDERING THE CONTEXT OF AN INDIVIDUAL PROVIDER WHEN ASSESSING COMPLIANCE WITH CONDITION B3?

Agree

23. MillionPlus is encouraged to see that context will effectively be incorporated into the regulatory process at two different stages, in setting the numerical thresholds for the sector and when considering individual institutions. It is clear that the OfS has responded to sector feedback from earlier phases of the quality and standards consultation. MillionPlus welcomes the use of benchmarks in the consideration of context, and the broadening of contextual factors that are to be taken into account.

Questions relating to Proposal 6: How the OfS will address statistical uncertainty in the assessment of condition B3

QUESTION 12: DO YOU AGREE OR DISAGREE WITH THE PROPOSED APPROACH TO USING STATISTICAL MEASURES WHEN CONSIDERING A PROVIDER'S PERFORMANCE IN RELATION TO NUMERICAL THRESHOLDS?

Agree

24. MillionPlus is pleased to see that some of the points made by the ONS report on the statistical elements of the TEF have been factored in when devising these proposals.

QUESTION 13: DO YOU HAVE ANY SUGGESTIONS FOR ADDITIONAL STEPS THE OFS COULD TAKE TO PROVIDE GREATER CLARITY ABOUT THE IMPACT THAT THE PROPOSED APPROACH TO STATISTICAL CONFIDENCE MAY HAVE FOR INDIVIDUAL PROVIDERS?

25. It may be helpful to offer a short explainer of statistical confidence and/or confidence intervals within the relevant documentation. The box of text on statistical uncertainty that follows paragraph 235 is well explained and helpful. But there might be extra information that could be provided alongside these proposals, since they are going to affect a wide range of providers, staff and students. It is perhaps useful to have information there for those individuals who do not have a background in data or statistics.

Questions relating to Proposal 7: Taking regulatory intervention when a breach is identified

QUESTION 14: DO YOU AGREE OR DISAGREE WITH OUR PROPOSALS TO IMPOSE AN 'IMPROVEMENT NOTICE' WHERE WE FIND A BREACH OF CONDITION B3?

Agree

26. The specified timescale in the improvement period should be long enough so that it covers indicator data that can be reasonably influenced by the provider, after the improvement notice has been issued. If not, this will not be a meaningful measurement of the providers capacity to respond effectively, and undermines the notion of the measures being incentives for improvement. Equally, it is not in the interest of students or the OfS for providers to be kept under notice in perpetuity. There perhaps needs to be a more concrete definition for "sustained improvement" here so that providers are not kept under notice for an inappropriate amount of time.

QUESTION 15: DO YOU AGREE OR DISAGREE WITH OUR PROPOSALS TO TAKE ACCOUNT OF A PROVIDER'S COMPLIANCE HISTORY IN RELATION TO CONDITION B3 FOR THE PURPOSE OF DETERMINING ELIGIBILITY FOR OTHER BENEFITS OF OFS REGISTRATION?

Agree

Questions relating to Proposal 8: Timing of implementation

QUESTION 16: DO YOU AGREE OR DISAGREE WITH THE PROPOSALS FOR THE IMPLEMENTATION OF THE PROPOSED APPROACH TO REGULATING STUDENT OUTCOMES? IF YOU DISAGREE, DO YOU HAVE SUGGESTIONS FOR AN ALTERNATIVE TIMELINE?

Agree

27. MillionPlus believes the timing of implementation is ambitious, considering the sheer amount of consultation responses that will have to be read, considered and synthesised to respond effectively to this consultation. It hardly needs stating, but it is important that this implementation process is not rushed and that the exercise is done properly and all elements of the proposals and their ramifications,

duly anticipated and planned for. If there is any doubt that this can be done due to delays or unforeseen challenges along the way, it would be prudent to delay implementation to the next academic year.

Question relating to Considering regulatory burden on registered providers

QUESTION 17: IS THERE ANYTHING ELSE WE COULD CONSIDER THAT WOULD REDUCE REGULATORY BURDEN FOR PROVIDERS WHILE REGULATING MINIMUM REQUIREMENTS FOR STUDENT OUTCOMES?

28. Regulatory burden for providers can be minimised by ensuring there is no unnecessary duplication of regulation across providers. In the case of partnership arrangements, there should be some thought given to how and where duplication of regulation might be occurring and whether this is appropriate. MillionPlus believes that providers have a duty to registered students (as well as taught) and there should be motivations within the system for continuous improvement across all types of students. However, there is some concern across the sector that the proposals that are outlined in the consultation, when taken together, will disincentivise partnership agreements. That would be regrettable as it is likely to restrict choice for students and is therefore not in the interests of the wider student population.