

# **Independent Review of the Office for Students**

**Fit for the Future: Higher Education  
Regulation towards 2035**

**July 2024**

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## **Lead Reviewer's foreword**

### **Fit for the future: higher education regulation to 2035**

I am pleased to present the findings and recommendations resulting from my review of the Office for Students (OfS). To assess the purpose and efficacy of the OfS as the regulator of higher education in England, it is important to be clear about both the overall purpose of the higher education sector and its strategic development. As we advance to the middle decades of the 21st century, the question I ask is 'how will higher education develop and what will be the implications for regulation?'. There is a rapidly developing global debate on reimagining the nature and purpose of higher education. This debate is increasingly couched in the context of post-school education and the link between higher and further education - how do both sectors provide the skilled workforce that a post-industrial society will require in the future? The term tertiary education is increasingly used and anticipates diverse pathways for students, with increasing collaboration between higher education providers, and between providers in both the higher education and further education sectors.

In this review, I have explored the social, economic, political, and policy context for higher education, how it has changed since the Higher Education and Research Act received Royal Assent in 2017 and how it will change again as we head towards 2035. This changing landscape has implications for the regulation of higher education.

My foreword sets out the changing context in which the OfS operates, considers more optimal structures and approaches to regulation, and highlights key findings and conclusions, focusing on what the OfS do rather than on how they should develop their methodologies. It is intended to be a forward-facing strategic review and aims to create a platform for improvement.

### **The changing landscape of higher education**

Compared to a decade ago, the world is much more volatile, uncertain, complex, and ambiguous. It is understandable that the term 'polycrisis' has entered our vocabulary and looks set to stay with us. The current context is shaped by the global macro trends of climate change, disruptive technology, demographic changes, increasing social instability, and a world that is fracturing under seismic geopolitical shifts. These forces are exerting significant direct and indirect influence on higher education both in the UK and globally.

The resilience of the English higher education sector over the past few years has been tested by a global pandemic; the impact of leaving the European Union; unprecedented levels of political change; industrial action; the cost of living crisis; financial instability precipitated by the increasing costs of pensions, reducing number of international students, and fee limits for domestic undergraduate students remaining frozen.

Navigating these challenges is not an easy task and this is taking place when many higher education providers are projecting a fiscal deficit for the 2023-24 financial year, taking urgent remedial action to address this in the 2024-25 financial year alongside revising their medium-term financial strategies. This has led to the observation that the 'golden age' of higher education is over. Looking to the future and the fourth education revolution, we should anticipate the continued impact of digital technology and artificial intelligence on teaching, a push for shorter courses and a move to lifelong learning, as well as more experiential learning. The system will increasingly need to respond to the lifestyle choices of students who may more frequently be working and studying part-time or undertaking other less traditional and more innovative forms of education, whilst balancing other commitments such as raising families. It is also clear that the relationship between research and teaching will continue to be important and that partnerships between higher education providers and industry will become increasingly significant.

Within this shifting landscape, higher education providers continue to make a major contribution to the UK economy, not only nationally but also locally where they serve as 'anchor institutions' in 'place'. The challenge for the future of higher (and tertiary) education is how to respond to these global and domestic trends and be ambitious for the sector and the students. New business and operating models will be required in order that higher education providers remain relevant for the local and national UK economy in a rapidly changing world.

## **Regulation fit for the future**

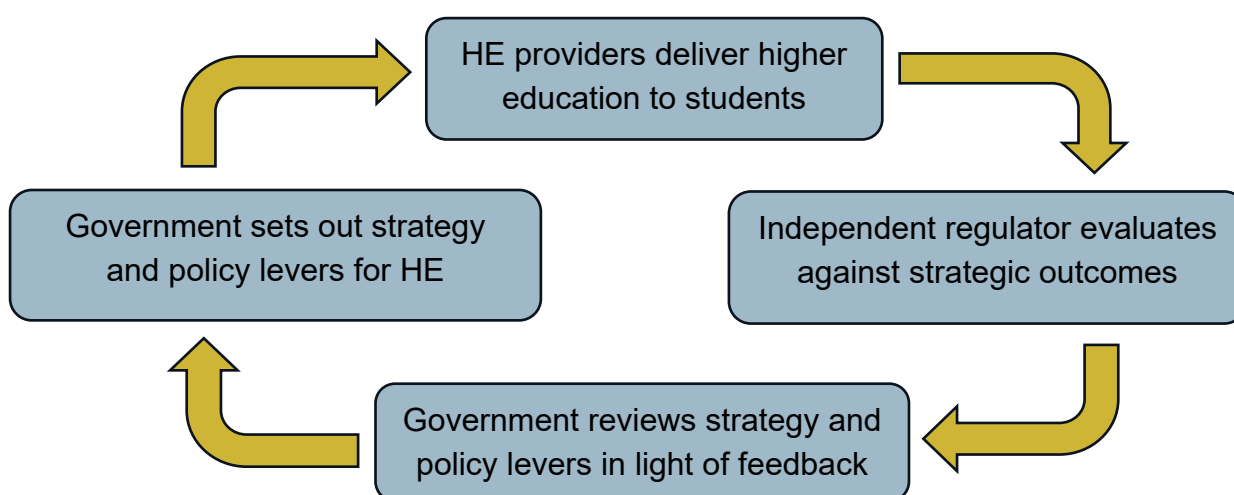
Responding to these challenges is too important to be left to the vagaries of arguably imperfect market mechanisms. There is a clear role for government as an active player, working with the sector to shape higher education teaching and research for the future. Government is the architect of the higher education system and has a fundamental role in defining a clear purpose for post-school education. The Department for Education (DfE) should work with the OfS to anticipate these trends and develop a model of regulation which is fit for the future.

The primary purpose of regulators in most sectors is to protect the public. Higher education regulation must ensure that it protects and promotes the student interest and that students receive a high-quality education as measured by outputs, outcomes, and experience. The aim of higher education regulation is to provide independent assurance of the quality of education when assessed against quality standards, to ensure accountability for the delivery of quality by providers and to contribute to encouraging and supporting improvement.

All regulators make a choice about the regulatory approach that they adopt, and this is the case with the OfS. This choice may be constrained because of the global and domestic trends described earlier. Arguably, its focus has been as a safety net regulator concentrating on those providers who do not meet the conditions of its registration. As the OfS builds its next five-year strategy, I recommend that it evolves this approach and develops a focus on enabling improvement.

For governments, regulators can provide an important function by contributing to the overall improvement of the higher education system through providing independent feedback on how well it is operating. It is possible to see a virtuous policy cycle, where government sets out its strategy for higher education and the policy levers it intends to deploy to achieve strategic outcomes, providers deliver higher education to students, the independent regulator evaluates the outcomes, and government then reviews its strategy and the effectiveness of policy in light of the feedback (see fig.1).

**Figure 1: Virtuous Policy Cycle**



Source: OfS review team

For a higher education provider, the regulator undertakes an independent assessment of quality, providing feedback which can then be used by the provider to benchmark performance and act as a catalyst for improvement. Improvement is made by providers themselves and is best secured when deploying improvement science techniques. The publication of these independent assessments of quality can provide information for potential students that will inform their course applications and offer current students reassurance that the provider is acting in their interests.

In addition, and in the spirit of improvement, the OfS should commission an independent evaluation of its approach, effectiveness, and impact. Receiving feedback is not always comfortable, but it is essential for improvement. Further, the OfS must safeguard against engaging in regulatory exceptionalism by drawing learning on policy and practice from the regulation of other sectors.

## **A more strategic regulator**

The OfS will need to be a confident, agile, positive player in this changing landscape, becoming a more active collaborator with its strategic partners; specifically, DfE, the Department for Science, Innovation and Technology, UK Research and Innovation and its councils, the Office of the Independent Adjudicator for Higher Education, and providers of higher and further education.

Whilst this strategic work is being developed, the OfS's increasing range of responsibilities risks diluting its important purpose. I recommend that it should in the short term, focus on four key priorities:

- The quality of higher education.
- The financial sustainability of higher education providers.
- Acting in the student interest.
- Protecting how public money is spent

These priorities should be underpinned by a continuing emphasis on access and participation as part of its assessment of the quality of higher education. Important issues that matter to students such as mental wellbeing and sexual harassment on campus should be taken forward as part of an assessment of the governance of higher education providers. Through a concentration on governance of providers, the OfS would have additional levers to consider the way that leadership of organisations shapes culture and behaviours, which are critical to successful organisations.

The OfS has a role to play in stress-testing the sector's ability to withstand the financial headwinds the sector faces.



As the sector begins to develop business models that optimise and transform its offer, it will need to continue to innovate. At the same time the OfS will need to be agile if it is to avoid the criticisms often levelled towards regulators that they can be a barrier to innovation.

In the body of the report, I focus more on these priorities, and make recommendations for the regulatory approach that underpins them.

## **The ‘market’, consumer protection and acting in the student interest**

Current and future regulation can and should offer the consumer protection. This is particularly important given the ‘market’ in higher education. During the review, we explored the concept of a market in higher education, which is a contested concept for some.

I am of the view that higher education is not a ‘pure’ or ‘perfect’ market, but rather a ‘quasi-market’. Some of the reasons for this include:

- There is a complex relationship of choice between the student and the provider whereby students’ choices are dictated not solely by their preferences, but also by their expectations at being accepted/rejected by the provider.
- Government not only sets the price of a domestic undergraduate course that a provider can charge, but also heavily funds the sector through student loans.
- There are numerous and significant cross-subsidies between cohorts of students.
- There are significant asymmetries of power and information between providers and students. Taking on a student loan and pursuing higher education is likely to be the biggest contract new undergraduate students will ever have entered.

Contracts are not always clear about what the student is consuming for the fees that are paid in their name, nor what recourse is available should delivery not equal expectation.

Additionally, there are two contracts in play. The one that exists between the student and the provider, as mentioned above, but also between the student as the borrower and the government as the lender. Where student loans are not repaid, this then creates an additional dynamic that legitimises the government interest in how the OfS protects public money.

What is clear is that students pay fees to higher education providers for the cost of their education, and therefore require protection of their interests, as do the taxpayers. This is the key purpose of regulation. The OfS is not able to take up individual concerns. That role falls to individual providers, and then to the Office of the Independent Adjudicator. There is also a formal role for the Competition and Markets Authority more widely. However, by assuring the quality of higher education providers and by regulating financial sustainability, the OfS plays an important sector-level role in protecting the interests of students. In the report, I make recommendations for how the consumer protection role of the OfS may be developed.

## Quality and improvement in higher education

Whilst regulation is important, quality cannot be achieved by baseline regulation alone. Quality is determined by a range of influences, including:

- The councils and boards of higher education organisations, where the governance of the organisation ensures that there are systems and processes in place to deliver and improve quality.
- The professionals that deliver education.
- The voice of students as consumers who provide feedback on their experience.
- DfE, which is the architect of the system of higher education, setting the price limit for undergraduate education and determining the funding system.
- The regulators, and principally the OfS.

Regulators are critical to sector-wide quality improvement. However, there can be an over-emphasis on baseline regulation at the expense of the other influences. In a high performing system, these influences are interdependent and must work together.

Higher education providers and professionals should use quality improvement methodologies to drive improvements. In some sectors there have been vigorous and at times adversarial debates as to whether a system requires quality improvement **or** quality assurance approaches. This is not a binary choice: **both** approaches are required. The OfS should develop its regulatory model to create a virtuous policy circle with the objective of driving improvements in the quality of the higher education sector, and thus acting in the interests of students. The OfS and higher education providers should regard quality improvement as their common shared goal.

## An independent regulator

The perceived lack of independence of the OfS was a recurring theme in our interviews. Where a regulator is established by government under legislation agreed by Parliament, independence is a nuanced concept. It is further nuanced given the way the sector and the regulator are funded. In higher education, teaching funds come from two sources; firstly, from government in the form of direct grants to providers and fees paid on behalf of domestic students via the student loan system, and secondly from direct fee payments, largely from international students. Research funding comes into universities via several routes, including public funding, industry, charities, and sources outside of the UK. The most significant source of funding for both teaching and research is UK public funding. Where taxpayers' money is used to fund higher education, government has a right to direct the spending of that money and to expect those that spend the money to account for how it is spent. The chief executive of the OfS is also the accounting officer for the resources allocated to them by government. They are also accountable to the principal accounting officer, the permanent secretary of DfE. Students as funders of higher education through their fees equally have a legitimate expectation to be assured how 'their' money is spent and that they receive value for their money.

The OfS is funded largely by the fees it levels against the registered higher education providers, and by grant from DfE. From a funding perspective, the OfS's independence is nuanced, as they have a funding relationship with government, higher education providers and students.

It is, however, critical that regulators are independent in the way they operate, in the judgements and decisions they make, and that they are perceived to be so. In this way, they act as an insulator of government. They must be operationally independent of the sector and government. The perception of the higher education sector is that the OfS is not sufficiently independent of government. If the public and students are to have respect, confidence, and trust in the OfS, it is essential it is seen as independent in the way it operates and in the judgements that it makes, whilst acknowledging the more nuanced relationship between the OfS and the government. Whilst I am satisfied that the OfS operates independently in discharging its regulatory role, there is more that can be done to address the perception of the lack of independence of the OfS from government.

In the report, I make recommendations about how DfE should revise the structure of appointments to executive and non-executive directors, ensuring that those in these

critical roles have the required experience of education, regulation, consumer affairs or finance to undertake them effectively.

## **Towards better sector relationships**

Effective regulation is built on the relationship between the regulator and the sector it regulates. Relationships built on respect, confidence and trust and reciprocity are the essential currency of regulation. The review heard numerous anecdotes about challenging and suboptimal relationships that were described as adversarial and overly legalistic in tone. Since the publication of the Industry and Regulators Committee's report, *Must do better: the Office for Students and the looming crisis facing higher education*, the OfS has made significant efforts to improve and develop its relationship with the sector. There were several positive comments to this end.

The OfS has accepted the challenge of developing and improving their relationships with the sector. I think that there is more they can and should do. It is also incumbent on the sector to accept its responsibility and demonstrate through its attitudes and behaviour, that it accepts regulation and works productively with the OfS.

Both the regulator and the sector want the same thing – high quality education provided by an effective, efficient, and sustainable system that operates in the interests of students. This is the basis of the mature dialogue that can secure that common and shared purpose. Let it be the foundation of their future work together.

## **Acknowledgements**

I would like to thank all who contributed to this review:

- The board and leadership of the OfS for their openness and active participation during the review.
- The many vice chancellors and senior staff of providers who contributed so willingly and thoughtfully.
- The students for their enthusiasm in articulating what matters to them and for expressing it so clearly.
- The civil servants in DfE and other departments for the quality of their input
- The mission groups for their input.
- The challenge panel for giving their time to provide such thoughtful and challenging feedback on this report.

I want to pay particular thanks to the talented review team of Chloe Lewis, Kate Webber, Matthew Williams, Rosie McCann, and Jenna Coles, so ably led by Miles Simpson, for their professionalism, commitment, and never-ending good humour. They were a joy to work with and I am indebted to them. The responsibility for the report, the conclusions and recommendations are mine as the independent reviewer.



A handwritten signature in black ink that reads "David Behan". The signature is written in a cursive style with a large, looped initial 'D'.

**Sir David Behan CBE**  
Lead Reviewer

## Executive summary and recommendations

This report presents the findings and recommendations from Sir David Behan's Independent Review of the Office for Students (OfS), undertaken as part of the Public Bodies Review programme. The review takes a forward-looking focus, concentrating on regulation which is fit for the future of higher education.

### Efficacy

#### Clarity of purpose

The OfS has clarity of purpose, and the Higher Education and Research Act (2017) (HERA) provides an appropriate legislative basis for the OfS, which is understood and accepted by the sector. However, the OfS's clarity of regulatory approach is less clear.

#### Clarity of focus

The growth of the OfS's responsibilities have diluted its clarity of focus and priorities. It is paradoxical for the Department for Education (DfE) to recognise the OfS's challenge in delivering on its current responsibilities and respond by increasing them. Some stakeholder critique of the OfS does not fairly distinguish between compliance with legislation and regulatory overreach. The OfS does not regulate in a vacuum, and government needs to clearly articulate its strategy for the future of higher education, considering both the private and public good of higher education, for individuals, the economy and society. This would then help the OfS to develop a clearer and sharper focus prioritising financial sustainability, quality, protecting public money and regulating in the interests of students.

#### **Recommendations:**

1. That the OfS reduces its number of strategic objectives, and focuses on the priorities of monitoring financial sustainability, ensuring quality, protecting public money, and regulating in the interests of students.
2. That government and the OfS further consider the legislative powers and tools required to enable the OfS to effectively regulate against these priorities.

## Regulating in the student interest

Regulation in the interests of and protection of students is critical to the activity of the OfS. Students are consumers of higher education and given the power asymmetry between students and their providers, there is a role for the OfS in ensuring their protection. The OfS should be given consumer protection powers in order to do so. The OfS does not have a role in individual student complaints but should work collaboratively with the Office of the Independent Adjudicator (OIA) - an independent body for the review of student complaints about higher education providers in England and Wales - for each to fulfil its complementary roles. To regulate in the interests of students, the OfS must engage more with students to understand their interests and priorities, including students in all modes and stages of higher education. The OfS should do more to involve students in its governance, leadership, and regulation. The OfS should consider alternative approaches to seeking assurance for areas of student interest, and specifically explore a focus on provider governance as a route to removing direct layers of regulation, focusing instead on the accountability of providers for ensuring their responsibilities to students are effectively discharged.

### **Recommendations:**

3. That to support the OfS to enact a strong, student championing role, the OfS be given consumer enforcement powers.
4. That the OfS and sector explore the development of a model students' contract for higher education.
5. That the OfS seeks opportunities to involve students directly in its formal governance and regulatory activity, by constituting the student panel as a formal committee to the board and including students in quality assessments and investigations.
6. That the OfS considers an enhanced focus on the assurance of the management and governance of providers and how they carry out the range of priority areas for their students and providers, by revising and strengthening the 'good governance' ongoing conditions of registration (E conditions).

## How the OfS regulates: risk-based regulation

The OfS should be a bold and confident regulator, anticipating, identifying, and responding rapidly to emerging risk. More could be done by the OfS to streamline and improve its approach to regulation. This could include considering more proportionate regulation and avoiding a 'one size fits all' approach for different types of providers.

The OfS may wish to consider global models of tertiary education regulation as examples of the choices regulators can make to minimise burden, especially for providers assessed as low risk. The review also recognises that the OfS collects data for multiple uses. The OfS, government, the sector, regulators, and other relevant bodies need to work collaboratively on data collection to consider where further improvements can be made to reduce the overall data burden. The sector and the OfS must work collaboratively to build more confident, respectful, and trust-based relationships as the basis for effective regulation. There is also a continued need for the sector to develop a more mature response to regulation and providers should ensure they are able to demonstrate their accountability for the quality of their organisation.

**Recommendations:**

7. That the OfS board reviews its risk appetite framework and approach with a view to becoming more proactive in anticipating, identifying, and responding rapidly to address emerging risk.
8. That DfE and the OfS engage the sector in an ongoing, constructive dialogue with a view to reducing unnecessary regulatory burden, including data burden, and to seek to embed the Regulators' Code principle of 'collect once, use many times.'
9. That the OfS works more collaboratively with other regulators and arm's length bodies within the wider higher education system to understand their collective requirements and identify opportunities to reduce areas of regulatory overlap and duplication.
10. That the OfS considers the benefits of an independent academic evaluation of its practice and approach, alongside stakeholder feedback, in seeking to improve itself. This should include an evaluation of the effectiveness of its regulatory intervention.
11. That the OfS consults the sector when implementing changes to regulatory methods and then pilots such approaches before formal roll out.



## How the OfS regulates: quality

The assurance and improvement of quality in higher education must be one of the OfS's key priorities. The OfS should bring this work together into an integrated assessment of quality, creating a regulatory model that incentivises ongoing improvement for all students. Baseline regulation to assure quality should use more predictive and lead indicators and qualitative intelligence. This will enable the OfS to regulate boldly and confidently; anticipating, identifying, and then responding rapidly to address emerging risk. Such intelligence includes whistleblowing and the OfS should become a prescribed whistleblowing organisation. When it develops new methods of assessing quality, it should consult and then pilot the new methods prior to roll out. Once new methods are adopted, the OfS should be clearer about how it selects providers for investigation. To enable this integrated model of quality regulation, the OfS should set and assess quality standards. The designated quality body functions should be removed from HERA to clarify that it is for the OfS to perform this role.

### **Recommendations:**

12. That the OfS's quality assessment methodologies and activity be brought together to form a more integrated assessment of quality.
13. That the OfS contributes to the overall improvement of the higher education system, providing a continuous improvement feedback loop and description of high-quality higher education. This will help ensure improvement of both the sector as a whole, and individual providers.
14. That the OfS be prescribed as an official whistleblowing body to ensure whistleblowers can be afforded full protections when providing information. This intelligence should inform the qualitative assessment of risk to quality.
15. That the OfS describes high quality education and the standards required to demonstrate high quality, without the need for a separate designated body to perform this function. The designated quality body functions as set out in HERA should therefore be removed to clarify that the OfS will perform this role.

## How the OfS regulates: financial sustainability

Financial sustainability is the most significant, growing challenge for the sector. Multiple risks are currently converging and crystallising into material issues, which pose a potentially existential threat to some providers. Urgent and decisive action is

required to address this. The OfS and government need to work together to manage these risks, sharing intelligence and data proactively at an early stage to ensure students are protected. The sector should plan responsibly and must be open with the OfS to allow it to better mitigate risks before they crystallise.

#### **Recommendations:**

16. That government undertakes policy work to revisit and clarify its position on market exit, and whether the non-interventionist positioning is still the most appropriate for meeting the challenges of today.
17. That the OfS and government continue to build an infrastructure to offer advice, guidance and support for providers experiencing financial sustainability challenges, considering options such as early warning identification, management of emerging risk and prevention of disorderly market exit.
18. That the OfS continues to work with the sector to build and share an accurate and current picture of financial risk in the system, developed through open and honest dialogue and the sharing of intelligence with the sector, government, UKRI and relevant partners. This should support sector planners to undertake realistic and prudent forecasting, scenario planning and decision making.
19. That the OfS revises the requirements for student protection plans to ensure these are current, detailed, and accurately consider risks to and mitigations for these risks to students.

## **Relationships with the sector**

An effective relationship between a regulator and the sector it regulates is fundamental to good regulation. The OfS should continue to prioritise work to build confidence, respect, and trust in its relationship with the higher education sector. While the OfS has improved recently, there is still more to be done to strengthen this. In turn, the sector must engage positively and productively with the OfS, accepting that regulation is key to its strength and health. This will aid the OfS and the sector in their pursuit of their shared purpose – high quality education delivered by effective, efficient, sustainable providers ambitious to act in the interests of students.

**Recommendations:**

20. That the OfS develops a comprehensive stakeholder strategy, including an annual stakeholder survey, to continue building on its relationship with the sector.
21. That the sector reciprocates with the OfS, engaging productively and willingly with regulation.

## Accountability

### Overall accountability to government

DfE's sponsorship of the OfS works effectively to manage the relationship between the OfS and government. Going forward, the sponsorship team should be the central point of managing wider policy teams' relationships with the OfS to offer the OfS more protection. The sponsorship team needs the capability and capacity to adequately represent, protect and advocate for the OfS in Whitehall; a greater understanding of regulatory principles and best practice through engagement with other regulators and academics would help achieve this. The OfS should partner with DfE and the Department for Science, Innovation and Technology (DSIT), sharing information as appropriate on areas of shared priority and risk to create an open dialogue around matters such as financial sustainability. The OfS should continue to advocate for itself and work together with its sponsorship team and wider government to assert itself as a confident and credible regulator, which plays a vital role in the sector wide improvement of higher education as part of a virtuous policy cycle.

**Recommendations:**

22. That the sponsorship team act as the central conduit between the OfS and government, managing the initial policy asks of the OfS. Outside of agreed business planning, all new and ad hoc requests for work should be managed by the sponsorship team, until such time as that work has been agreed as part of, or as an adjunct to the business plan.
23. That stronger information sharing protocols are put into place between the OfS and government to enable joined-up working and proactive feedback around key areas of shared priority and risk.
24. That there is regular contact between DSIT and DfE to enable a joined-up approach to sponsorship and to allow for more open dialogue regarding financial sustainability, as part of a wider cross-government approach to sharing knowledge and learning about regulation.

## Independence of the OfS

The OfS is operationally independent in the judgements and decisions it makes, but sector perceptions of the OfS's closeness to government undermines confidence, respect, and trust, and are damaging its credibility. It is critical that students, providers, higher education professionals and the public trust the independence of the regulator. The narrative that the OfS's actions are directed by the government could be counteracted by greater transparency around the OfS's regulatory approach and associated processes and procedures.

### **Recommendations:**

25. That the OfS develops a more transparent style of communications to demonstrate to the sector its independence from government.

## Governance

The OfS board must ensure it provides strong leadership that focuses on systemic and strategic issues that the higher education sector will face, as well as the day-to-day operational delivery of regulation. Current and near-term future vacancies present an opportunity to refresh and further strengthen the collective skillset of the OfS's board to ensure they reflect the sector's key challenges and risks. The review notes that the chief executive does not have the ability to appoint their full executive team, and this should be addressed. The OfS should strengthen the voice of students within the governance of the OfS. The board must also take action to ensure the OfS's approach is not risk averse. There should be a strong, ongoing board development programme.

**Recommendations:**

26. That the OfS commissions an independent board evaluation.
27. That DfE carefully considers upcoming appointments to the board, taking the opportunity of vacancies to ensure it has the required skills, experience, and expertise for the challenges the sector will face over the coming decade. This includes finance, risk, and regulatory experience.
28. That DfE reassesses which members of the OfS's leadership team are appointed by the Secretary of State. In keeping with other arms' length bodies, the Secretary of State should appoint the chair and non-executive directors. The board should then appoint the chief executive and the chief executive should in turn appoint their executive team. This will provide clear lines of accountability and avoid a dilution of the chief executive's authority. The review recognises new legislation would be required to enact this.
29. That there should be a review of which specific executive roles formally constitute towards the make-up of the board's membership.

## Efficiency

The OfS has shown a proactive and considered effort to identify and enact efficiencies, and no concerns on efficiencies were raised during interviews. Efficiency should be considered alongside effectiveness, and the OfS should take opportunities to continually improve both and explore how technology can be used to support this. The OfS faces resourcing pressures because of the introduction of new activities, and there are limits to what efficiency can achieve in managing these. It must focus primarily on its core business and consider resource capabilities before taking on additional asks.

The registration fees for the OfS are set collaboratively between DfE and the OfS. During evidence gathering, the review heard that smaller providers consider the fees to be disproportionately burdensome due to the fee range structure making OfS

membership cheaper per student for larger providers. There should be a review conducted by DfE of the OfS's fee structure.

**Recommendations:**

30. That the OfS continues to pursue efficiency savings and enhanced productivity as it considers the efficacy, accountability, and governance recommendations of this review.
31. The OfS should align its business planning with a continuous improvement cycle that considers efficiencies in line with effectiveness and agree a resourcing plan with DfE.
32. That DfE conducts a review into the OfS's fee structure within the context of the OfS's current and planned work on efficiency and productivity.

## Conclusion

As higher education faces unprecedented challenges, the OfS must evolve as a regulator, focusing on the priorities of quality, financial sustainability, student interest and management of public money. It can do so by focusing on a more transparent, dynamic approach, built on mature, trusting relationships with the sector. With this approach, the OfS can more effectively navigate the evolving higher education landscape towards 2035 and beyond.

## Introduction

This report provides the findings and recommendations from the Independent Review of the Office for Students (OfS), which has been conducted as part of the government's Public Bodies Review Programme.<sup>1</sup>

The report was finalised in May 2024, as the general election was called. A small number of statistics have been updated as new data has become available since May but the report remains otherwise unchanged.

## Scope and structure

The full terms of reference for the review are in Annex A. The review covers each of the four Cabinet Office functional standards laid out in the Guidance on the undertaking of Reviews of Public Bodies<sup>2</sup>: efficacy, efficiency, governance, and accountability. This report has one chapter for each functional standard, although they should not be considered in isolation from one another.

Each chapter and section follow the same structure: an opening which provides the context, a section dedicated to what the review heard and found during evidence gathering, a conclusions section which provides the analysis and views of the review, and recommendations.

## Methods

The review commenced in December 2023 and concluded in May 2024.

The Lead Reviewer and review team spoke to more than 110 stakeholders, including representatives from 44 providers. This included the leadership and staff of the OfS, senior representatives from higher education providers, mission groups and sector organisations, government officials from Department for Education (DfE), Department for Science, Innovation and Technology (DSIT), His Majesty's Treasury (HMT) and other government departments in England and the devolved governments, partner organisations, other regulators, and experts.

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<sup>1</sup> [Public Bodies Review Programme](#), (gov.uk)

<sup>2</sup> [Guidance on the undertaking of Reviews of Public Bodies](#), (gov.uk)

This engagement took the form of interviews, group discussion and roundtables. Interviews followed a semi-structured approach, and the output of all engagements was subsequently coded for analysis.

The Lead Reviewer and team also conducted five site visits in different regions to meet with provider representatives and students. Six student roundtables were held with student attendees from a range of providers. These included domestic and international students, studying in full and part time models and those on undergraduate, postgraduate and apprenticeship programmes. Students were asked about their experiences at their providers as well as their awareness, understanding and interactions with the OfS. One of these roundtables had a specific emphasis on the experiences of students with protected characteristics.

A survey was sent out to all OfS registered providers. Overall, 307 individual responses were received from more than 150 providers.<sup>3</sup> Of those providers, 44% were universities, 28% were further education colleges, and 28% were specialist and other providers. The survey questions explored respondents' experiences and views of the OfS, with a mix of quantitative and qualitative questions.

The team also reviewed publicly available documents and data, as well as information and documents provided by the OfS and by DfE's OfS sponsorship team.

Following the guidance on undertaking reviews of public bodies, a challenge panel was convened to support the review. The membership included sector expertise from the higher and further education sectors, other arm's length bodies, and consumer rights organisations. The role of the panel was to hear from the Lead Reviewer, understand the evidence base, and challenge emerging thoughts and recommendations in a rigorous and constructive manner. The panel met three times between February to April 2024.

## **Equalities Impact**

This review has not been subject to an Equality Impact Assessment (EIA), as it has concentrated on a review of the efficacy, efficiency, governance, and accountability of implemented policy and delivery by the OfS and DfE. The policy within scope of this review has been subject to an EIA. It is expected that both government and the OfS

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<sup>3</sup> Not all individual respondents answered all questions.



may wish to consider the equality impact implications or carry out further EIAs in responding to the recommendations set out in this report.

# Chapter 1: Efficacy

## Section 1: Clarity of purpose

The OfS was established in 2018 as the regulator for higher education. In the establishing legislation – the Higher Education and Research Act (HERA) 2017 – the OfS is required to have regard to a range of core principles. These include the need to:

- Protect institutional autonomy
- Promote quality, choice, and opportunities for students
- Encourage competition where it is in student and employer interests
- Promote value for money
- Promote equality of opportunity with access and participation
- Use resources efficiently

In parallel, the OfS must have due regard to principles of best regulatory practice which are:

- Transparency
- Accountability
- Proportionality
- Consistency
- Targeted only where action is needed

Cumulatively, these give an outline of the regulator's purpose and organisation.

The OfS regulates all registered higher education providers in England. To be registered, providers must meet the eligibility requirements and the requirements of the initial conditions. Registration with the OfS is optional but the OfS has a duty to register providers which satisfy the initial conditions of registration and the eligibility requirements. These include, but are not limited to, access and participation, quality, student outcomes, finance and management, and governance conditions.

Once registered to a category, providers can access the benefits of that registration category including public grant funding, the ability to apply for degree awarding powers and for a university title. There are currently two categories of registration, 'Approved', and 'Approved (fee cap)'. The latter imposes additional requirements, but also gives access to public funds and additional student loan funding. 'Approved (fee cap)'

providers must also have an access and participation plan in order to charge higher fees.<sup>4</sup>

Beyond registration, providers must meet the ongoing conditions of registration, and may be subject to enforcement action if there appears to be or has been a breach of these ongoing conditions.

In order to fulfil its purpose, the OfS sets its own mission, strategic focus, and objectives (see Figure 2) and establishes strategic goals (see Figure 3). The OfS's activity spans duties, functions and powers (see Figure 4). This activity combines what is set out in legislation, and also how this has been interpreted through the regulatory framework,<sup>5</sup> the DfE agreed framework document, and the OfS's own strategy. Taken in the round, these documents form the full picture of the organisation's operation.

The OfS has distilled its role and purpose into its stated mission: 'We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers.' Through this, the OfS defines an explicit, student-centred orientation, as an organisation primarily focused on protecting and championing the interests of students. Indeed, in the policy development that led to the OfS's establishment, the government sought to position the regulator in this way:

'Given the student is now the primary funder of higher education, there is a case for a new regulator that is capable of regulating the whole sector and operating on behalf of the student by supporting a competitive environment to promote choice, quality and value for money.'<sup>6</sup>

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<sup>4</sup> [Benefits of registration](https://www.officeforstudents.org.uk), (officeforstudents.org.uk)

<sup>5</sup> [Securing student success: Regulatory framework for HE in England](https://www.officeforstudents.org.uk)', (officeforstudents.org.uk)

<sup>6</sup> [Case for creation of the Office for Students](https://www.gov.uk)', (gov.uk)

**Figure 2: Table of the OfS’s mission, objectives, and strategic focus**

<b>OfS’s mission</b>	We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers.
<b>OfS’s objectives</b>	Participation: all students supported to access, succeed in and progress from higher education.
	Experience: all students receive a high-quality experience, and their interests are protected.
	Outcomes: all students can progress into employment or further study; qualifications hold value over time.
	Value for money: All students, from all backgrounds, receive value for money.
<b>OfS’s strategic focus</b>	Quality and standards.
	Equality of opportunity.

Source: Office for Students<sup>7</sup>

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<sup>7</sup> [Our strategy](https://www.officeforstudents.org.uk), (officeforstudents.org.uk)

**Figure 3: Table of the OfS’s goals**

<b>Quality and standards goals</b>	Students receive a high-quality academic experience that improves their knowledge and skills, with increasing numbers receiving excellent provision.
	Students are rigorously assessed, and the qualifications they are awarded are credible and comparable to those granted previously.
	Providers secure free speech within the law for students, staff and visiting speakers.
	Graduates contribute to local and national prosperity, and the government’s ‘levelling up’ agenda.
<b>Enabling regulation goals</b>	Providers are financially viable and sustainable and have effective governance arrangements.
	Students receive the academic experience they were promised by their provider and their interests as consumers are protected before, during and after their studies.
	The OfS minimises the regulatory burden it places on providers, while ensuring action is effective in meeting its goals and regulatory objectives.
<b>Equality of opportunity goals</b>	Students’ access, success and progression are not limited by their background, location or characteristics.
	Prospective students can choose from a diverse range of courses and providers at any stage of their life, with a wide range of flexible and innovative opportunities.
	Providers act to prevent harassment and sexual misconduct and respond effectively if incidents do occur.
	Providers encourage and support an environment conducive to the good mental health and wellbeing that students need to succeed in their higher education.

Source: Office for Students<sup>8</sup>

**Figure 4: Table of the OfS’s general duties, duties, functions and powers<sup>9</sup>**

<b>OfS’s general duties</b>	Need to protect institutional autonomy of English higher education providers.
	Need to promote quality, greater choice and opportunities for students.
	Need to encourage competition where that is in student and employer interests.
	Need to promote value for money.
	Need to promote equality of opportunity with access and participation.
	Need to use resources efficiently.
	Principles of best practice in regulation: transparent, accountable, proportionate, consistent and targeted where action is needed only.

<sup>8</sup> [Our strategy](https://www.officeforstudents.org.uk), (officeforstudents.org.uk).

<sup>9</sup> This table does not comprehensively cover every specific duty, function and power of the OfS outlined in HERA. It instead serves as an overall summary.

<b>OfS's duties</b>	Duty to compile, make available and publish higher education information.
	Duty to protect academic freedom with regard to access and participation plans.
	Duty to monitor and report on financial sustainability.
	Duty to publish a list regarding the fee limit condition.
	Duty to monitor the provision of arrangements for student transfers.
	Duty to report on availability and uptake of student transfer arrangements.
	Exempt charities duty: Principal regulator of providers that are exempt charities.
	Prevent duty: Monitoring authority under the Counter-Terrorism and Security Act 2015 for relevant higher education bodies.
	Public sector equality duty: Subject to the public sector equality duty as defined in The Equality Act 2010.
<b>OfS's functions</b>	Regulation of English higher education providers through registration on a register of English higher education providers and determining conditions of registration. Enforcement of initial and ongoing conditions of registration in a risk-based way.
	Assessing or arranging to assess quality and standards of higher education – in relation to the designated quality body and enabling OfS to operate the Teaching Excellence Framework.
	Improving access and participation.
	Financial support: may make grants, loans or other payments to an eligible provider and may impose terms and conditions of funding.
<b>OfS's powers</b>	Impose sanctions.
	Provide grants, loans and other funding to eligible registered higher education providers.
	Award, vary or revoke degree awarding powers and to authorise or revoke university title.
	Powers to require information from providers and to share information.
	Facilitate or promote arrangements for student transfers.
	Arrange for studies for improving economy, efficiency and effectiveness in the management or operations of a registered higher education provider.

Source: OfS review team

## What the review heard

Throughout evidence gathering, a significant proportion of stakeholders interviewed agreed that the OfS has a well understood purpose. In the review's provider survey, 72% of respondents agreed that the OfS clearly articulated its purpose.<sup>10</sup> This view was expressed strongly in the sector, where most cited the clarity of HERA:

'It does have a very clear purpose. It's set out very clearly in HERA – to the extent you can in a bill – and all the follow up materials produced; it is quite clear what it's going to do...' (Mission Group chief executive).

Within this broad consensus, a few interviewees caveated that there were some ambiguities in HERA, which were largely attributed to the pace and nature of the legislative process. Stakeholders interviewed outlined their perception that the additional amendments, lack of time for detailed scrutiny, and the attempts to transition from the previous regulatory arrangements and map all functions onto the OfS created limitations within the legislation.

The main issue cited was the compatibility of the different roles ascribed to the OfS within HERA, namely that the OfS holds a grant allocation function alongside its regulatory responsibilities. This was noted by some as an unusual feature of the organisation's design, with one stakeholder with extensive regulatory experience specifically highlighting that the dispersal of taxpayer funds is a very different function from regulatory activity. However, a few stakeholders noted that this was a pragmatic solution to the reallocation of this function from the Higher Education Funding Council for England (HEFCE), and that it is being delivered by a team within the OfS with significant experience from the predecessor organisation.

The review also heard strong support for the autonomy of individual providers during evidence gathering. This autonomy is guaranteed by HERA and is a long-established tradition of higher education in England.

A range of stakeholders highlighted that the OfS's stated student-centred purpose was not clear in its operation. Most students welcomed the idea of an external body to champion their consumer rights, but it was clear that they did not currently see the OfS occupying this position.

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<sup>10</sup> Survey question: 'Does the OfS clearly articulate its purpose?' Responses: 72% yes, 27% no, 1% don't know.

A small number of interviewees felt that the OfS's student-centric brand conveyed the wrong focus, and that the OfS should be an office for the whole of higher education, not solely the interests of students. One mission group representative stated:

'...the name is a bit of a gimmick in the minds of ministers which sets up expectations it can't possibly realise. I think a regulator of such importance ought to care about institutions and care about the landscape of higher education provision, which is important to the country.'

## Conclusions

The institutional autonomy of higher education providers is a defining characteristic of the English system, but autonomy does not come without accountability. The review strongly believes that effective regulation by an independent body is an essential part of the accountability framework for the English higher education system. Both sector and government stakeholders felt that there was a sufficiently clear legislative basis for independent regulation and the OfS as the responsible body. Sector stakeholders had a strong understanding of this regulatory landscape, the content of HERA and the corresponding purpose of the OfS. Overall, the OfS's purpose was found to be clearly defined and understood.

Despite the legislative clarity, several of those interviewed said that the OfS's approach to their regulatory objectives and architecture was less clear. This will be discussed further in *Chapter 1, Section 4: Risk Based Regulation*.

The dual roles of regulator and grant allocator are an area of challenge for the OfS's clarity of purpose. In practice, there was no evidence of operational incompatibility, as the work of the grant allocation function is distinct from regulatory functions, and there were no material concerns around the allocation of grants. Therefore, while it is not conventional for a regulator to discharge these dual roles, it has been possible for them to co-exist, and for grant allocation to be delivered effectively. However, this is an area which has the potential to influence views about the absolute independence of the OfS as a regulator, given that it is disbursing government money in accordance with government guidance and priorities. The impact of this on the sector's perception of independence from government is discussed further in *Chapter 2, Section 2: Independence of the OfS*.

The review recognised and endorsed the OfS's role as a student champion. At a macro-level, the OfS has a critical role to play in the protection of the student body as a whole. This will be explored in further detail in *Chapter 1, Section 3: Regulating in the student interest*.



## Section 2: Clarity of focus and delivery

Accepting that the purpose of the OfS is clear, largely understood and accepted by the sector, the key challenge to the OfS's efficacy is how this purpose is being delivered. Over the last six years, the OfS's responsibilities have evolved and grown as it seeks to regulate against changing conditions in higher education such as the COVID-19 pandemic, changes to the DfE ministerial team and priorities, new legislation, and increased financial pressures on the sector, alongside significant activity to register almost 400 providers in its early years.

With these have come additional roles for the OfS, including preventing harassment and sexual misconduct, and preparation for implementation of free speech functions. These are all in addition to its existing core regulatory work, such as:

- Registration of providers.
- Monitoring of providers.
- Assessing or arranging to assess quality and standards of higher education.
- Data collection and analysis.
- Notification review and responses.
- Sector engagement.
- Roles inherited from HEFCE and the Office for Fair Access (OFFA), including managing the National Student Survey (NSS), supporting student mental health and monitoring access and participation arrangements.

### What the review heard

In the review's provider survey, although 78% of respondents were aware of the OfS's mission, only 5% felt that it 'completely' delivered on it.<sup>11</sup>

The OfS highlighted to the review that there were a range of powers or provisions that it lacked, undermining its overall confidence in the delivery of some of its functions. These included but were not limited to investigatory powers, such as the power to impose interim measures to deal quickly with serious risks of harm to students or public

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<sup>11</sup> Survey question: 'The Office for Students defines its mission as "to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers." Were you aware of this mission before today?' Responses: 78% yes, 16% no, 6% not sure. Survey question: 'To what extent do you think the OfS delivers in accordance with its mission?' Responses: 5% completely, 51% to some extent, 35% not to a great extent, 7% not at all, 2% don't know.

money, and the power to disclose information to particular relevant bodies and receive information from any such body for the purposes of its functions. The OfS also cited a lack of consumer enforcement powers, and a lack of student protection functions that could be needed in responding to market exit situations, which will be discussed further in *Chapter 1, Section 3: Regulating in the student interest* and *Chapter 1, Section 5: Financial sustainability* respectively.

As the OfS's roles and responsibilities have grown, its focus and effectiveness have struggled to keep pace. As illustrated in figure 2, the range, volume and complexity of its many activities are significant, and the review heard that this has failed to translate coherently to its stakeholders. One stakeholder from wider government observed that:

'[No] organisation can have 11 strategic objectives and be truly strategic.'

Another sector mission group stakeholder stated:

'There is a long list [of responsibilities in HERA] to begin with, and they've been added to, [which] makes it less clear what the focus is.... It creates a regulator that is heavily burdened, it dilutes impact, and it creates a lot of burden and confusion for those that are being regulated by it, and it calls into question their own resources and expertise in these areas, because responsibilities were added to on what felt like a monthly basis.'

This is illustrative of a wider sector perception of scope creep. The new freedom of speech functions and duties were the most oft-cited example of this, despite it being a legislative requirement for the OfS to deliver, following Royal Assent of the Higher Education (Freedom of Speech) Act 2023.<sup>12</sup>

The review also heard about areas where the OfS's work was clear and well-focused, and where it was well understood and received by stakeholders. Work around equality of opportunity through access and participation plans (APPs) was reported as effective and well embedded. APPs are agreements in which providers set out their approach to improving equality of opportunity of disadvantaged groups and are a requirement for providers wishing to charge up to the higher fee limit. Providers must design interventions with a strong underpinning evidence base and undertake a collaborative approach with other partners to achieve positive outcomes for underrepresented and disadvantaged groups. Throughout the duration of evidence gathering with senior leaders in the sector, the review heard frequently that access and participation activity

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<sup>12</sup> [Higher Education \(Freedom of Speech Act\) 2023](https://www.legislation.gov.uk), (legislation.gov.uk)

was well thought through and enacted. This was highlighted as an area of organisational good practice, with one university senior pro-vice chancellor stating that this work 'is the best practice in the OfS currently in terms of partnership working.'

In addition, activity connected to the Teaching Excellence Framework (TEF), a national scheme run by the OfS that aims to encourage higher education providers to improve and deliver excellence, was mostly well recognised by students, and relatively well regarded by sector stakeholders. For instance, a number of students were not familiar with the OfS but recognised the TEF as a tool to support their decision making. One student stated: 'with TEF, I considered it as a 'well if they have it, good' when selecting universities... I would advise people to go for a university with a silver as a bare minimum.' This is a clear example of good practice in regulation through the development and maintenance of a tool which leads to a direct benefit in the interests of students. It also provides a clear metric and high-quality information on teaching quality, which is an area of key importance to students' experience. One full-time undergraduate student recounted that there is a saturation of league tables in their decision making, and that 'all universities will use the fact they are first position for something' rendering them 'meaningless, but the TEF is more objective'. Similarly, while it had limitations, some students also made use of the NSS as a further tool to help refine and differentiate their choice of providers at application stage.

## Conclusions

The breadth, complexity, and growth of the OfS's responsibilities have diluted the clarity of focus and priorities of the OfS. This view was reinforced by sector stakeholders who perceived the addition of roles and responsibilities over the past six years as lacking in a coherent and strategic approach. Delivery of these new functions appears to be layered on top of the existing regulatory model rather than integrated into it.

As highlighted by interviewees, work in access and participation and the TEF are examples of effective delivery and clarity of focus. The review found that it is the *approach* taken, of developing a relationship and dialogue with providers by offering a chance to comment meaningfully on changes before they were implemented, that was most valued by interviewees. This demonstrates that an evidence-based approach, combined with a continuing dialogue, results in strong regulatory practice and supports continued improvement.

However, the review found that there were several areas where the OfS's clarity of focus and delivery was less well executed, which can be attributed to the

organisation's operational capacity being overstretched. With the volume of activity and a growing remit, the review found it paradoxical that DfE as the sponsoring department recognises the OfS's challenge in effectively delivering its current responsibilities and responds by increasing these responsibilities further. In this environment, it is inevitable that the OfS continues to struggle to meet all its obligations effectively.

The review found that the sector's critique of the OfS was not always sufficiently nuanced, and often failed to account for the increasing roles that the OfS is required to undertake because of government policy and/or primary legislation. Freedom of speech and academic freedom regulation is perhaps the clearest example of this.

Yet, those interviewed did not always fairly distinguish that the OfS was carrying out requirements with which it had to comply because they had been enacted through legislation, rather than extending its reach out of regulatory will. In addition, at the time of drafting this report, freedom of speech functions were still under consultation, so some of the views shared were based on speculation about how the OfS may enact this regulation, rather than a reflection on the reality.

The review also acknowledges that in some instances, the growth in activity has concentrated on the support and wellbeing of students, in areas such as mental health and mitigation of sexual harassment, and therefore were more closely aligned to the core focus of the OfS. Students told the review that both these issues matter to them.

Some stakeholders critiqued the OfS for activities that were not in fact being carried out. For instance, a small number highlighted the OfS's 'narrow' focus on quality using earnings metrics. While this was an element of political discourse, it was not an indicator or data source for regulatory monitoring. This is an example of areas in which views about the OfS's regulation may require a more nuanced consideration of DfE's role within the creation of higher education policy. Further commentary on the sector's perception of the independence of the regulator is in *Chapter 2, Section 2: Independence of the OfS*.

The review notes that some aspects of the OfS's responsibilities had not evolved as originally envisaged. DfE's impact assessment for HERA anticipated a sector that would grow at a more substantial rate than has been borne out in reality – with 424<sup>13</sup> providers currently registered against the forecasting of 606 in 2023-24. Given that the expected sector growth has not materialised, the anticipated dynamic regulation of

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<sup>13</sup> [The OfS Register](https://officeforstudents.org.uk) (officeforstudents.org.uk)

new entrants to the market has been less than expected. Following the first two years of operation where the OfS registered 390 providers, only 36<sup>14</sup> providers have been registered between 2021 and 2024. Therefore, the OfS now regulates a largely static market with increasing financial sustainability challenges, whilst absorbing a developing range of ministerial priorities. The OfS has adapted the way it regulates to accommodate these developments.

The review acknowledges that the OfS does not regulate in a vacuum. Government, primarily via DfE and Department for Science, Innovation and Technology (DSIT), who are responsible for the teaching and research elements of higher education – is the architect of the infrastructure of the higher education system. The government therefore needs to clearly articulate its strategy for higher education and its future. This system should not be thought of as only student focused, nor can its future be shaped solely by the ‘accumulated individual choices of students’, as one sector stakeholder suggested had been the government viewpoint expressed leading up to the passage of HERA.

There are clear benefits for individuals that participate in higher education, but it serves a broader purpose too, playing a critical role in the economy, cultural life and wider society. To be fit for the future, the higher education sector needs to develop the skills needed to meet emerging national and global challenges. Without an intentional focus and strategic direction, the sector risks being shaped – as one stakeholder clearly articulated – by ‘consequence, not by design’.

The review believes it is essential that government provides this strategic direction, combining an emphasis on both student interest and the public good of higher education, while continuing to recognise the autonomy of the sector. This would support the OfS, working closely alongside UK Research and Innovation (UKRI), Research England and other partners, to collaborate in effectively stewarding the system, creating a more coherent approach to regulation. In turn, the sector would have a greater understanding of the OfS’s purpose and priorities. While the OfS is the primary regulator, there is a shared teaching and research interest in issues such as quality and financial sustainability. Therefore, constructive engagement between relevant parties will enable a more strategic approach.

To move forward more effectively, the review believes that the OfS should demonstrate and communicate a clearer and more strategic narrative about its focus and activity. In a complex and contested landscape, the OfS needs the confidence to

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<sup>14</sup> From data and information provided by the OfS for the purposes of the review.

make well considered choices about what it will and will not focus on, and why. Without this, the concern will persist that the organisation is a vehicle for the delivery of government policy, rather than a body that provides independent assurance of the quality and sustainability of providers:

'DfE and ministers see them [as a] body to deliver... don't consult enough [and] do not respect OfS enough for the expertise that they do have. OfS might not do a good enough job in promoting their expertise' (Government stakeholder).

With a confident articulation of its strategic focus, the OfS could cut through the critique, and signal its priority areas more clearly to the sector and how these will be reflected in its activity.

During the development of this report, senior OfS colleagues highlighted that this would be addressed in its forthcoming organisational strategy.

The review believes that to increase its efficacy, the OfS needs to concentrate on doing fewer things more effectively. The OfS should prioritise:

- Monitoring financial sustainability of individual providers and the sector
- Ensuring the quality of individual providers and the sector
- Protecting public money (and students' fees)<sup>15</sup>
- Regulating in the interests of students

A focus on these priorities will enable the OfS to be more effective whilst continuing to emphasise the importance of widening access and participation in higher education.

The review believes that HERA broadly provides the powers, duties, and functions that the OfS requires for this focus. However, the OfS should work with government to consider whether it requires any additional powers.

## **Recommendations:**

- That the OfS reduces its number of strategic objectives, and focuses on the priorities of monitoring financial sustainability, ensuring quality, protecting public money, and regulating in the interests of students.
- That government and the OfS further consider the legislative powers and tools required to enable the OfS to effectively regulate against these priorities.

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<sup>15</sup> For the purposes of the review, the term 'public money' encompasses taxpayer funds allocated for student loans through the Student Loans Company, the write-off of student loans, and other financial resources financing higher education such as self-funding.

## Section 3: Regulating in the student interest

As outlined in *Chapter 1, Section 1: Clarity of purpose*, the OfS's name and mission statement indicate that the interests and protection of students are primary in its organisational purpose and focus. The current focus of the OfS's student engagement is clearest in the NSS, student membership of the TEF panel, the student representative on its board and its student panel. The panel's role is to advise the OfS's board and help the OfS understand students' perspectives to support its policy making. The OfS chief executive and chair also meet with the National Union of Students quarterly.

The OfS sits within a wider ecosystem of support and protection for students, alongside the Office of the Independent Adjudicator (OIA). In addition, the OfS has a collaborative working relationship with the Competition and Markets Authority (CMA), a UK wide enforcer of consumer law. While CMA do not operate as a dedicated enforcer in higher education, it has issued guidance on what higher education providers need to do and has taken enforcement action in a number of cases. The OfS also has a partnership with National Trading Standards, which can pursue cases on its behalf.

### What the review heard

Among the sector stakeholders interviewed, there was broad consensus that student voice and perspective was noticeably absent from the OfS. The review heard that there is a lack of meaningful engagement with student bodies, and that interaction with the NUS does not include an ongoing dialogue about student priorities. Another sector stakeholder highlighted that, given that students see student unions as being their representative bodies, the lack of clear links between student unions and the OfS undermined its positioning as 'for students'.

The OfS's student panel recognised that they were used in a consultative capacity, and while their views were solicited on important issues, they were not a source of intelligence on student priorities. Therefore, they believed they did not have the opportunity to input on the issues they felt were most important to students.

At focus groups across the country with domestic, international, undergraduate, and postgraduate students, the OfS was largely unknown as an entity. Students were unfamiliar with its brand, identity, or purpose, and most had only come into awareness of it through engagement with a role or responsibility such as a course representative or sabbatical officer:

'No one here seems to know of the OfS and what their purpose is. Who are they talking to? Are they only speaking to university staff? – If they aren't talking to students, they are failing them' (Degree Apprenticeship Student).

Rather than engaging with the OfS, students who participated in roundtables told the review that in the event of challenges, feedback mechanisms within their providers or student unions would be their routes for escalation and sources of support. They had overall high confidence in these internal structures. A key exception to this was students with protected characteristics, and particularly disabled students, who fed back that they often had challenges seeking support or redress to their complaints internally, having to navigate multiple complex systems, or exhaust all options before they could seek external redress. One care experienced student perceived complaints systems as designed to frustrate students, so they were deterred from pursuing their complaints. A stakeholder from an organisation that represented the views of students with protected characteristics expressed that many disabled students are unable to go through the system of complaints processes as it stands, due to its inaccessible and time-consuming design. The review heard that this in effect blocks many disabled students from their right to redress. The OfS recently launched the Disability in Higher Education Panel to consider these issues and provide advice on enhancing disabled students' experiences.<sup>16</sup>

While the concept of students as consumers of higher education is a complex and contested terrain, the review heard from consumer regulation officials that students should be thought of as consumers where it pertains to their consumer protection. This is also the OfS's position. As one stakeholder of a consumer protection body stated, higher education has:

'...[all] of the features of a market that you want to function well, and where you are looking to establish a very high benchmark for consumer protection'.

This is because students are paying directly for or incurring significant debt to access their higher education, they make this commitment for an extended period, and their ability to switch courses is limited.

A small number of examples were heard – directly and indirectly – of instances where providers refunded students part of their tuition fees because of failures to meet their contractual obligations to those students, regarding marking boycotts or strike action.

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<sup>16</sup> [Disability in Higher Education Advisory Panel](https://officeforstudents.org.uk), (officeforstudents.org.uk)



Some students interviewed for the review reflected that they did not feel ‘empowered’ as consumers, and there were mixed views about whether they felt they were receiving value for money from their courses. One said: ‘You don’t feel like a consumer. You feel like a student still, so you don’t feel empowered.’ Most recognised the importance of an organisation purposed for their consumer protection and empowerment. The kinds of roles they envisaged for this body would be in situations such as ensuring quality, advocating for international students, and enforcing the contractual requirements that a provider has to its students.

## Conclusions

Regulation in the interests of and for the protection of students is critical to the activity of the OfS. The review is clear that there is a contractual relationship between students and higher education providers, even when not explicitly stated, or where students are not directly aware of it. This was reinforced by examples of tuition fee refunds, and by the existence of agreements such as universities’ student charters that set out the rights and responsibilities of students, their providers and often the role of their student unions.

In addition, the second contractual relationship is between the student as borrower and government as lender. This, alongside the write off of student loans not repaid, creates an additional dynamic that legitimises the government interest in how the OfS protects public money.

The review notes the young age at which many students begin their applications and start their courses. In most cases this will be the first time they have made a consumer decision with such long-term consequences. In addition, students with protected characteristics and from underrepresented groups may not have access to the support they need to make informed decisions as consumers. Given all this, there is a power asymmetry between students and their providers which the regulator addresses, consistent with the primary purpose of regulation – public protection. There is also a role for providers of secondary education and providers of higher education to be more transparent.

The OfS should work with the sector to consider how to better ensure clarity about the contractual relationship between students and higher education providers. Model contracts which set out students’ rights and obligations as consumers alongside the obligations of providers are a potential way forward.

While the OfS has a positive and collaborative working relationship with CMA, there is an opportunity for the OfS to exercise greater oversight in respect of consumer law. It

is the view of the review that the investigatory and consumer enforcement powers that the OfS highlighted as missing from its regulatory toolbox should be considered by DfE, particularly those that would enable the OfS to enact student protection and management of public money as critical functions more directly. This might include greater powers of access and additional sanctions to be used in the most severe of circumstances.

It is a credit to providers and student unions that most students interviewed had strong awareness of, and high confidence in the internal mechanisms for seeking support in the event of a challenge with their higher education experience. It is key for providers to have strong and supportive mechanisms for the escalation of student concerns and complaints. The review found that the notion of protection of individual students is beyond the reasonable scope of the OfS, and the OIA is the legitimate route of escalation for individual complaints. While the relationship between the OIA and OfS is broadly functional, it needs to grow further in trust and maturity – with each body enabling the other to fulfil their distinct but complementary roles for students through mutual sharing of intelligence to be used in the assessment of risk.

While the OfS clearly states that its regulatory purpose is to act in the interests of students, the review concludes that it has more to do in articulating the nature of that interest. It was not clear how this stated policy ambition was delivered through its activity, or the connection between the regulatory methods and the student interest. A clear and confident articulation of this would support the OfS's positioning as a regulator which carries out activity with the whole higher education sector, but for the overarching benefit of students.

The OfS's current limited engagement with students undermines its position as acting primarily for their benefit. The review notes that the students interviewed were largely unfamiliar with the OfS, but the visibility of the organisation with students is not a key issue. Rather, the review concludes that to regulate in the interests of and for the protection of students, the OfS must more effectively engage with them to better understand the nature of the student interest. At the time of the review, the OfS was undertaking work on this, which will underpin and support its forthcoming organisational strategy. This will be critical to help the OfS understand the requirements and wishes of its student stakeholders and in turn, this understanding would support it to justify the interventions and safeguards it implements to regulate on students' behalf.

It is important that the OfS has an expansive and representative understanding of the 'student' that it regulates in the interests of. The definition of student must continue to

go beyond the full time undergraduate, incorporating all modes of study, including part time, full-time and distance learning, all stages of study from undergraduate through to doctoral levels, and domestic and international students. This would enable the OfS to actualise its mission statement of ensuring that every student, whatever their background, has a fulfilling experience of higher education.

More should be done to promote the voice of the student within the OfS's leadership and activity. As will be expanded on in *Chapter 3: Governance*, the OfS should strengthen the role of the student panel within its formal governance arrangements by tying it more closely to the board and its formal decision-making processes, potentially by making it a committee of the board. Further, the OfS should seek to build upon areas of good practice in which students are involved as lay experts. Serious consideration should be given to expanding student involvement in quality assessments and investigations as a mechanism for strengthening the student voice in the OfS and its regulation. This would build on the good practice of the inclusion of student submissions in APPs and the TEF, and student memberships of the TEF panel, which the review heard function very effectively.

The OfS should consider alternative approaches to seeking assurance for areas of student interest. The review recommends exploring how it might better ensure student priorities are adequately addressed through a more robust focus on providers' own governance structures. By doing this, the OfS could ensure that it was satisfied with the adequacy of councils and boards – each of which have their own processes and accountability for supporting positive student outcomes and shaping positive organisational culture. This would provide a different mechanism for monitoring the ways providers respond to, for example, sexual harassment, student mental health or complaints processes. This would remove some layers of direct regulation and focus more on providers' accountability for ensuring their responsibilities are effectively discharged.

There is a question for the sector about whether compositions of higher education provider councils, boards or governance bodies have sufficient expertise and experience to deal with these effectively. The review heard from the OfS their preliminary plans to revisit the approach to their governance regulatory standards to improve the clarity of requirements and support improvement. The review endorses the further development of this activity.

## Recommendations:

- That to support the OfS to enact a strong, student championing role, the OfS be given consumer enforcement powers.
- That the OfS and sector explore the development of a model students' contract for higher education.
- That the OfS seeks opportunities to involve students directly in its formal governance and regulatory activity, by constituting the student panel as a formal committee to the board and including students in quality assessments and investigations.
- That the OfS considers an enhanced focus on the assurance of the management and governance of providers and how they address the range of priority areas for their students and providers.

## Section 4: How the OfS regulates – Risk-based regulation

The OfS's approach to regulation is described as risk-based. Outlined in the regulatory framework, this is based on the principle that providers that pose less regulatory risk require lighter touch regulation, and therefore should experience less regulatory burden. The OfS does this by assessing risk in relation to conditions of registration which are outlined in *Chapter 1, Section 1: Clarity of purpose*.

This is a two-stage approach. The OfS undertakes an initial risk assessment when a provider is first registered, making a judgement about whether providers meet initial conditions of registration. If it has concerns that a provider could breach a condition after registration, it may impose specific conditions on that provider until it is satisfied the risk is low, for example, by limiting the number of students a provider could recruit.

Once registered, ongoing risk-based monitoring takes place. Updates are made to the risk assessment when new information and intelligence, such as reportable events and notifications, are received. Reportable events are 'notifiable events' submitted by the provider to the OfS that may negatively affect a provider's ability to comply with conditions of registration or affect eligibility for registration, degree awarding powers, or holding a university title.<sup>17</sup> Notifications are a process by which students, staff or members of the public can inform the OfS about a concern or issue with a university or college that is relevant to the OfS's regulatory remit.<sup>18</sup>

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<sup>17</sup> [Regulatory advice 16: Reportable events](#), (officeforstudents.org.uk)

<sup>18</sup> [Regulatory advice 18: Notifications about providers from third parties](#), (officeforstudents.org.uk)

If a provider is assessed as being at risk of or in breach of its conditions, the OfS may impose increased monitoring requirements or specific conditions of registration. If a provider is found to have breached a condition of registration the OfS can also impose sanctions. To date, this has happened twice.<sup>19</sup>

As outlined in *Chapter 1, Section 2: Clarity of focus and delivery*, the OfS registered 390 providers from 2018 to 2019 and 36 providers between 2021 to 2024. Therefore, within the OfS's core regulatory activity, the emphasis on registration has reduced and there is now a greater focus on general monitoring, compliance, and enforcement.

Registration with the OfS and adherence to the regulatory framework bring significant benefits, allowing providers access to a significant amount of public funding (in addition to around £1.5 billion of grant funding paid directly to providers,<sup>20</sup> DfE has estimated an annual student loan outlay of £24.6 billion in 2028-29,<sup>21</sup> and repayments of £7 billion in that same year).<sup>22</sup> Therefore, while the review recognises the criticality of institutional autonomy within the sector as a central tenet of higher education in England, accountability for public money is also essential.

## What the review heard

During evidence gathering, some government stakeholders outlined concerns with the OfS's approach to regulation. Several mentioned that they believed the OfS was risk averse. It was argued that the Bloomsbury Institute's successful court appeal in 2020 against the OfS's decision not to register the provider had a significant and long-term impact of reducing the organisation's risk appetite.<sup>23</sup> This was suggested to have led to the OfS's caution of legal challenge from the sector.

One key stakeholder observed that the OfS was overly cautious in sanctioning providers, lacking regulatory 'bite' and therefore the sector may not take the OfS's statutory powers seriously. For example, no sanctions have been applied to any provider in relation to ongoing quality conditions in the past six years.

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<sup>19</sup> [The OfS fines University of Buckingham for breaching condition of registration; The OfS fines Raindance Educational Services Limited for breaching condition of registration](#), (officeforstudents.org.uk)

<sup>20</sup> [Strategic Priorities Grant sets out funding for 2024-25](#), (officeforstudents.org.uk)

<sup>21</sup> [Student loan forecasts for England, Financial year 2022-23](#), (gov.uk)

<sup>22</sup> [Forecast student loan outlay, repayments, capitalised interest accrued by loan borrowers and cancelled loans](#), (gov.uk)

<sup>23</sup> [Judgment - Bloomsbury Institute Limited v Office for Students](#), (www.judiciary.uk)

It was also highlighted by some that they ultimately felt this cautious and overly risk averse approach meant the OfS was not always able to operate with sufficient pace and agility to identify and respond to emerging risk. The review was made aware of several instances where the OfS did not react quickly to address emerging problems and government then considered or made policy interventions.

Several government stakeholders expressed a desire for the OfS to operate in a more confident manner. Some also highlighted an effective regulator must, when warranted, confront the sector, and expect challenge from providers. One stakeholder noted that legal challenge does not necessarily mean the OfS has made a mistake or is in the wrong, and the OfS should not shy away from taking decisive regulatory action for fear of litigation.

The review heard the sector assert it strongly supports the principle of the regulation of the higher education sector and a risk-based approach. However, there were mixed views about how this was interpreted and delivered by the OfS. The common and consistently heard critique was that the OfS's interpretation of risk-based regulation has led to a 'one size fits all' approach, which was not working. For well-established providers, many felt that regulation was neither proportionate nor risk-based and failed to reflect that they believed they had been consistently assessed as low risk. In addition, they viewed the requirements set out by the OfS as increasing over time. One stakeholder described this as:

'One size fits all which then had implications at either end, there was too much burden on the top end and then it wasn't really dealing properly with the bottom end.'

This was said to have resulted in a perception of regulatory burden, and a relationship between the OfS and the sector that was built on a lack of trust. One vice chancellor stated that:

'... [the OfS] perceives risk as a combination of volume [multiplied by] risk indicator, so if a university has lots of students, they say the risk is greater, but if you look at the register, you have hundreds of very small providers where data and outcomes are really poor... it damages perceptions of the sector with individual and outside agencies...'

To build a better relationship between both, the review also heard that the sector wishes to have more involvement through a relational approach. For example, some providers critiqued that the process for consultations does not take on board input from

the sector; one described them as feeling ‘performative’, as opposed to genuinely seeking the sector’s view.

Some small and specialist providers also cited a ‘one size fits all’ style, but for these providers, it resulted in what they perceived to be disproportionate burden and additional cost, and unfair assessment. They argued that the regulatory model was built around providers offering primarily ‘traditional’ full-time, three-year academic degrees for young undergraduates. Specific issues cited included the OfS’s approach to designing conditions and metrics, which they viewed as lacking in consideration of alternate forms of learning, assessment, and student demography. For example, the review heard concerns related to the OfS’s expectations about the retention of assessed work for five years. This was regarded as highly impractical by some providers that do not have the physical space to store all assessed work, such as garments for fashion assessments or pieces of large artwork, without incurring significant additional cost. The review also heard from one provider that offered non-traditional provision. This provider was concerned about being judged incorrectly regarding student outcomes standards for progression to graduate employment (or further study) because the metrics did not consider its specific type of provision.

Further to this, data burden was raised as a key challenge by higher education providers, with the high volume of data collection required resulting in high associated costs and administrative burden. Specific challenges of data requirements raised by providers included the additional narrative that the OfS requests on top of data returns, the lack of communication regarding the context for data collection and having to provide or reformat the same data into different formats. In addition, one stakeholder highlighted the complexities of tracking cohorts with multiple intakes throughout the year. Another noted the high specificity or granularity of the data requested. One provider outlined that, as information required goes well below course level, their returns include 150 distinct data fields for each student, leading to millions of lines of data returns. The review also heard about issues related to the data transformation programme, Data Futures, although it was noted that Jisc, the designated data body, lead this programme and not the OfS. It was argued that it was challenging for the sector to adapt, which added to the perception of burden. It was, however, also suggested that issues providers faced were related to a lack of investment into their own data collection systems.

Sector stakeholders interviewed were clear that the OfS is not the only body which regulated them in some way. The review heard that higher education providers were subject to regulation or reporting from others, including Ofsted, the Student Loans Company (SLC), the Higher Education Statistics Authority (HESA), the Education and

Skills Funding Agency (ESFA), professional statutory and regulatory bodies, and research councils. One vice chancellor cited that they interacted with approximately 140 different bodies. Therefore, given the number of organisations and regulators providers report and account to, they felt there were some areas of overlap in these requirements. This was particularly raised by providers offering degree apprenticeships, where there was a suggested overlap between the OfS and the Office for Standards in Education, Children's Services and Skills (Ofsted). For further education colleges registered with the OfS, this was described by one provider as operating in a 'twin kingdom'. One respondent also noted that they felt this issue was due to the lack of clarity regarding which organisation is the principal lead. In the review's provider survey, 78% of respondents either disagreed or strongly disagreed that the OfS works effectively with other regulators to minimise burden on providers.<sup>24</sup> Key concerns also raised were not just the duplication of requests but the requirement to format data differently for each body.

## Conclusions

The OfS must be able to act as a bold and confident regulator, anticipating, identifying, and responding rapidly to address emerging risk. Challenge from the sector is to be expected and the OfS should be ready to defend such challenges. The OfS should have confidence in its decisions and legal powers and take decisive regulatory action when required, including sanctions when that would be proportionate to a breach of conditions of registration. The deterrent effect of regulation will only work when and if providers believe sanctions will be applied for such breaches. The review also believes that acting in a confident and less risk averse manner, in part, will allow the OfS to regulate with greater pace and agility to address emerging issues.

The OfS should also take opportunities to continuously improve. It should consider the benefits of an independent academic evaluation of its regulatory practice and approach, alongside stakeholder feedback, in seeking to improve itself. This should include an evaluation of the effectiveness of its regulatory intervention, considering the extent to which its activity is producing intended or unintended outcomes with providers and for students. The OfS should seek all opportunities to learn from regulatory policy and practice in other sectors. Through recent additions to the senior staffing team, the review recognises the OfS is growing its regulatory expertise, and it is clear that this is having an impact. There are also further opportunities to find

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<sup>24</sup> Survey question: 'To what extent do you agree or disagree with the following statement: "The OfS works effectively with other regulators to minimise burden on higher education providers."'

Responses: 1% strongly agree, 11% agree, 36% disagree, 42% strongly disagree, 11% don't know.



mechanisms to learn from other regulators, within and beyond higher education, and to be both a reflective and evidence-based regulator in its own practice. The OfS reported it was developing a cycle of evaluations of work aligned to its regulatory approach, which the review hopes will go towards supporting this wider evaluation.

The higher education market is heterogeneous in nature. While the OfS has two categories of registration, as outlined in *Chapter 1, Section 1: Clarity of purpose*, it has only one methodology for regulating the breadth of provider types. The review is clear that the same standards of consumer protection and quality should exist and need to be applied to all higher education providers, irrespective of type and without exceptionalism. However, the review heard that for new providers there is the risk that the full burden of regulation creates barriers to entry. The OfS should determine whether there is a substantive issue and how that might be addressed with the sector.

The review observed a strong perception in the sector that the OfS regulates using a 'one size fits all' approach. The OfS should consider where more can be done to acknowledge and differentiate between providers who are consistently assessed as presenting a low level of risk and those that are of greater concern.

Within the ongoing global conversation around tertiary education and its regulation, there are examples of other choices regulators can make to reduce burden and recognise different levels of risk. The 2013 Australian review of the Tertiary Education Quality and Standards Agency (TEQSA)<sup>25</sup> highlighted the need for genuine risk-based regulation with adapted approaches for different types of providers. In response, TEQSA first implemented a significant reduction to its regulatory framework, dropping the number of indicators annually assessed for every provider from 44 to 11, thereby reducing the amount of data requested from providers. It also introduced an annually updated traffic light rating system for every provider. TEQSA then focused regulatory attention towards those rated as presenting the highest risk. This is just one example of the approach the OfS could consider in seeking to minimise the regulatory burden on higher education providers it considers to be low risk.

Guidance released in March 2024 relating to the retention of assessed work is a good example of a constructive and mature dialogue leading to the streamlining of requirements in a way that is appropriate to a variety of provider types.<sup>26</sup> The review was also encouraged to hear that the OfS came to a resolution with the previously mentioned provider offering non-traditional provision with concerns about student

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<sup>25</sup> [Expert Panel's Review of Higher Education Regulation Report](#), (education.gov.au)

<sup>26</sup> [OfS issues further guidance on retaining students' assessed work](#), (officeforstudents.org.uk)

outcomes standards on progression. The review hopes this pragmatic consideration of different types of provision continues. However, it is important to note some of these issues, and the related tensions they caused, could have been avoided with closer engagement and more upstream dialogue between the OfS and the sector. Before implementing new regulatory methods, it is best practice to consult and then pilot such approaches. This would allow the OfS to assess their impact, refine its approach and take steps to ensure the process is communicated and well-understood before a formal roll out.

Effectively regulating and ensuring the quality of the higher education system will inevitably require data collection. Some level of regulatory burden is therefore unavoidable; the primary problem is 'unnecessary' burden. In the review's provider survey, when asked if 'the OfS collects data from providers that no one needs', respondents were divided. 46% either agreed or strongly agreed, while 40% either disagreed or strongly disagreed.<sup>27</sup> It was difficult to ascertain the precise proportion of data the OfS requests that providers would not already collect for their own internal governance arrangements. This refers to data that would be necessary to provide full and satisfactory oversight of the effectiveness of their systems. However, the review was clear that a significant amount of data would be required for this. Equally, the OfS collects data for multiple uses. This includes the calculation and payment of grants to providers and for statistical purposes by Jisc, including on behalf of UKRI and Research England.

The review notes current and ongoing work undertaken by the OfS and government to reduce data burden, duplication, and overlap, including the OfS's 2022 to 2025 strategic goal of minimising regulatory burden on providers<sup>28</sup> and the OfS Data Strategy 2018 to 2021 that included several provisions to reduce regulatory burden.<sup>29</sup> The review acknowledges that because of this, there has been a reduction in enhanced monitoring requirements<sup>30</sup> and in data and information requests.<sup>31</sup> In addition, the government's September 2020 policy paper: *Reducing bureaucratic burden in research, innovation, and higher education*<sup>32</sup> and corresponding work to introduce the higher education Data Reduction Taskforce is a positive step. More

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<sup>27</sup> Survey question: 'To what extent do you agree or disagree with the following statement: "The OfS collects data from HE providers that no one needs."' Responses: 13% strongly agree, 33% agree, 33% disagree, 8% strongly disagree, 14% don't know.

<sup>28</sup> ['Office for Students strategy 2022 to 2025'](#), (officeforstudents.org.uk)

<sup>29</sup> ['Office for Students data strategy 2018 to 2021'](#), (officeforstudents.org.uk)

<sup>30</sup> [Further reductions in the burden of OfS regulation](#), (officeforstudents.org.uk)

<sup>31</sup> [KPM 11: Efficient regulation - Office for Students](#), (officeforstudents.org.uk)

<sup>32</sup> [Reducing bureaucratic burden in research, innovation and higher education](#), (gov.uk)

efforts of this nature are encouraged and endorsed by the review. The review also welcomes the independent research commissioned this year by the government to understand and address the nature, scale, and cumulative burden of data collection requirements across higher education. Through effective conversation between the sector and the regulator, this should be an important catalyst for a renewed focus on reducing data burden for providers.

Despite this progress, the current approach to data collection still creates challenges and burden for the sector. The OfS, DfE, and the sector should engage in constructive dialogue and collaborate on plans to continue to identify and reduce unnecessary burden, adhering to the principle of 'collect once, use many times.' Such work could involve seeking opportunities to rationalise the timing, volume, and style of data collection from providers to ensure it is proportionate and appropriate, and carefully considering where further streamlining and efficiencies can be made.

The review observed that the OfS should work more collaboratively with other regulators and arm's length bodies within the wider higher education system, including Ofsted, SLC, HESA, ESFA, professional statutory and regulatory bodies and research councils. The purpose of this collaboration should be to understand their collective requirements and to look for opportunities to reduce areas of regulatory overlap and duplication. This more collaborative approach should include looking for opportunities to synthesise data and create a more robust data sharing infrastructure. Independence means a clear independence of judgement, but it does not mean separation from other complementary bodies and a lack of collaboration. Not sharing data and intelligence can create risks in other parts of the systems, for example, the payment of student loans.

In the time available to the review, it was unable to come to a conclusive position on the quality of data systems and infrastructure of providers. However, the review believes there may be a case for some providers to consider greater investment in data systems and infrastructure to meet the regulatory and grant funding needs of the OfS, Jisc, and assurance bodies, to alleviate administrative burden and reduce associated running costs. It may be possible to learn from other sectors and the use of real time data dashboards, to reduce reporting burdens and allow for more dynamic risk assessment, as one vice chancellor suggested:

'If I were looking forward, I'd really like to see the risk-based, data driven approach being used... why don't we have a transparent dashboard between the OfS and us. I know where my numbers are going wrong, [and] I know that

before you do as my data is real time and I'm putting it in. Then you would know where you are going to focus your resource on...'

The review also considers there is a need for the development of a more positive, respectful, and mature relationship between the OfS and the providers it regulates. Effective relationships are based on dialogue, respect and trust and there is more work to be done on both sides. The review endorses a genuinely risk-based approach, with a regulator that uses relationships as the basis for differentially engaging with a heterogeneous sector, making best use of intelligence and qualitative and quantitative data. Sufficiently informed, the OfS can be confident in deploying appropriate tools and methods with different providers, rather than seeking to treat each provider the same. The sector should accept that regulation by an independent body is essential. Providers should also ensure they can demonstrate their accountability for the quality of their organisation. The subject of the overall relationship between the OfS and the sector is explored in more depth in *Chapter 1, Section 7: Relationship with the sector*.

Lastly, when there is clarity of purpose and focus, and this is clearly communicated to the regulated sector, as outlined in *Chapter 1, Section 2: Clarity of focus and delivery*, this will also support higher levels of self-compliance and self-regulation. The more effectively the OfS can describe its regulatory regime, the more embedded this is likely to be within the sector.

## **Recommendations:**

- That the OfS board reviews its risk appetite framework and approach with a view to becoming more proactive in anticipating, identifying, and responding rapidly to address emerging risk.
- That DfE and the OfS engage the sector in an ongoing, constructive dialogue with a view to reducing unnecessary regulatory burden, including data burden, and to seek to embed the Regulators' Code principle of 'collect once, use many times.'
- That the OfS works more collaboratively with other regulators and arm's length bodies within the wider higher education system to understand their collective requirements and identify opportunities to reduce areas of regulatory overlap and duplication.
- That the OfS considers the benefits of an independent academic evaluation of its practice and approach, alongside stakeholder feedback, in seeking to improve itself. This should include an evaluation of the effectiveness of its regulatory intervention.

- That the OfS consults the sector when implementing changes to regulatory methods and then pilots such approaches before formal roll out.

## Section 5: How the OfS regulates – Quality

### Quality regulation

The regulation and improvement of quality standards lies at the heart of the OfS's purpose and objectives and is a cornerstone of its regulatory regime. The role of risk-based regulation to enable quality improvement was envisaged in the 2016 white paper that preceded the OfS's creation, *Success as a Knowledge Economy*:

'[The OfS] will operate a more risk-based approach so that we can focus attention where it is needed most to drive up quality'.<sup>33</sup>

The OfS's regulation of quality comprises two key components. It undertakes quality assurance to ensure providers meet minimum standards and incentivises improvement above minimum standards. The OfS's quality assurance is primarily delivered through assessing providers' compliance with the minimum standards set out in the quality conditions of registration (the B conditions are set out in full at Annex D). The TEF is designed to incentivise providers to continuously improve beyond these minimum standards and raise sector standards through promoting excellence and sharing best practice. In March 2024, the OfS cited its published reports of quality investigations and assurance visits as a means to disseminate best practice and as a resource for providers detailing how they can continue to improve.<sup>34</sup>

Until April 2023, the Quality Assurance Agency for Higher Education (QAA) supported the OfS's quality assurance work, by fulfilling the function of the designated quality body (a role defined in HERA) and providing quality and standards assessments of higher education providers.

### Quality assurance

There are three initial conditions of registration a provider must meet to be registered and six ongoing conditions providers are monitored against thereafter. The ongoing conditions seek to ensure students are: receiving a high-quality academic experience, resources, support and effective engagement; receiving effective, valid and reliable

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<sup>33</sup> ['Success as a Knowledge Economy'](#), (gov.uk)

<sup>34</sup> [Transcript of OfS CE speech to the Association of Colleges](#), (officeforstudents.org.uk)

assessment; and that providers participate in the TEF. In 2022, the OfS revised the B conditions which updated B3, delivery of positive student outcomes, to specify numerical thresholds<sup>35</sup> for student continuation, completion, and progression across different provision types. This is the only B condition with cyclical annual monitoring and quantitative data-based thresholds. According to the OfS's data,<sup>36</sup> the vast majority of courses delivered at registered providers meet B3 thresholds,<sup>37</sup> with a small but not insignificant minority of providers performing below thresholds.<sup>38</sup> Provision below the thresholds is subject to qualitative assessment, which considers contextual factors such as intake demographic.

The other ongoing B conditions are monitored in line with the OfS's risk-based approach, whereby regulatory information and intelligence is used to identify risks of a provider no longer meeting these conditions. These 'indicators'<sup>39</sup> include information from TEF submissions, patterns of applications, offers, acceptances and degree and other outcomes, as well as reportable events submitted by providers to the OfS and third-party notifications submitted by students or others, including whistleblowers. Most of the indicators are lagged, meaning that to some extent, they report what has happened in the past. While past performance may provide indication of future risk, the lag inherent in this approach is a disadvantage when trying to identify rapidly crystallising risks. The OfS recognises this and attempts to compensate for it by using trend analysis, along with additional contextual indicators it believes signal risks to quality to identify the direction of travel for performance.

The OfS uses this triangulated information and intelligence to identify the highest risk provision, which should be subject to more detailed scrutiny and/or investigation. Since 2022, the OfS has conducted 26 investigations (also referred to as assessments). These include: 12 in relation to providers' compliance with the condition to deliver positive student outcomes (B3); three relating to awards credibility (B4); and 11 subject themed assessments, which looked at computing and business and management provision. Of the 11 subject themed investigations, the outcomes of nine have been published. Of these nine, no concerns were found in four cases, some concerns in

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<sup>35</sup> [How we regulate student outcomes](https://www.officeforstudents.org.uk), (officeforstudents.org.uk). For example, 85% of full-time PGCE students expected to progress; 70% of undergraduate apprentices expected to continue their course.

<sup>36</sup> [Student outcomes data dashboard](https://www.officeforstudents.org.uk), (officeforstudents.org.uk)

<sup>37</sup> All courses were above the threshold except for undergraduate degrees with postgraduate components where 80.3% of 700 courses are below the completion threshold, and for postgraduate apprenticeships, where 0.9% of 530 courses are below the completion threshold.

<sup>38</sup> Aggregated OfS data shows 38 of 281 providers (14%) with available data were below the threshold of 75% for completion rate; 66 of 284 providers (23%) were below the threshold of 60% for progression; and 43 of 301 providers (14%) were below the 80% threshold for continuation.

<sup>39</sup> [Regulatory framework for HE in England](https://www.officeforstudents.org.uk), (officeforstudents.org.uk)

four, and serious concerns in one case. No reports of the investigations relating to B3 or awards credibility have been published, despite being announced in September 2022.<sup>40</sup> To date, no sanctions have been imposed in relation to any quality investigation.

## Supporting providers to drive quality improvement

The TEF is a national scheme established in 2016 and now administered by the OfS, as one of its statutory functions. It is designed to promote excellence above the minimum standards – the OfS states the TEF ‘encourages universities and colleges to deliver excellent teaching and learning’ and ‘create an incentive to improve by putting a spotlight on the quality of a provider’s courses, influencing providers’ reputations and informing student choice’.<sup>41</sup> The TEF is the primary lever the OfS uses to drive quality improvement of the sector.

The TEF process runs every four years. Providers submit information<sup>42</sup> to be assessed by the OfS’s expert panel, who then allocate ratings to providers: gold (outstanding), silver (very high quality), bronze (high quality), and requires improvement (insufficient evidence of excellence). Providers are given an overall rating and two underpinning ratings for student outcomes and experience, all of which remain in place until the next cycle of the TEF four years later. The panel assesses providers using qualitative and quantitative data, including from the provider’s submission, evidence submitted by students (where available), and the TEF dashboard (which details providers’ continuation, progression and access and participation data). The OfS publishes summary statements<sup>43</sup> of all assessments and allows providers to submit representations if they disagree with their rating. Providers with more than 500 students must participate in the TEF. Smaller providers with fewer than 500 students are not required to participate but can do so voluntarily. In 2023, 228 providers took part out of the then 423 providers registered with the OfS.

The review notes that the OfS has developed case studies<sup>44</sup> detailing initiatives or approaches from gold rated providers as part of the TEF assessment process, to enable the identification and sharing of best practice across the sector. As noted

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<sup>40</sup> [New OfS investigations to examine credibility of degrees](https://www.officeforstudents.org.uk/news-events/news/2022/09/2022-09-20-01), (officeforstudents.org.uk)

<sup>41</sup> [About the Teaching Excellence Framework \(TEF\)](https://www.officeforstudents.org.uk/news-events/news/2016/06/2016-06-20-01), (officeforstudents.org.uk)

<sup>42</sup> As per ‘[Regulatory advice 22: Guidance on the TEF 2023](https://www.officeforstudents.org.uk/news-events/news/2023/03/2023-03-20-01)’, (officeforstudents.org.uk)

<sup>43</sup> [TEF 2023 Outcomes](https://www.officeforstudents.org.uk/news-events/news/2023/03/2023-03-20-01), (officeforstudents.org.uk)

<sup>44</sup> [TEF enhancement resources](https://www.officeforstudents.org.uk/news-events/news/2023/03/2023-03-20-01), (officeforstudents.org.uk)

previously, these case studies, along with reports of investigations and assurance visits, are cited by the OfS as examples of it sharing best practice with the sector.<sup>45</sup>

## Designated quality body

HERA sets out the OfS's responsibility to consult on there being a suitable body to be appointed as the designated quality body, to assess the quality of and standards applied to English higher education as a complement to the OfS. At the time of the OfS's inception, the QAA had been undertaking quality assurance work, and *Success as a Knowledge Economy*<sup>46</sup> encouraged them (or any other body) to undertake reforms in order to be the sector's designated quality body.

In April 2023, the QAA demitted itself as the designated quality body, citing as the reason the suspension of its membership of the European Quality Assurance Register for higher education (EQAR) due to the English quality assurance process using a risk-based approach, rather than via a regular cyclical approach as prescribed by EQAR.<sup>47</sup> Following the statutory requirement of consultation, the functions of the designated quality body reverted to the OfS in April 2023.

The QAA continues to be commissioned by providers to work with them to enhance academic quality above the regulatory baseline by reviewing standards and quality. It produces key sector guidance and provides practical support on a voluntary but chargeable basis for providers in England. For higher education providers in Scotland, Wales and Northern Ireland, QAA membership is a requirement of their respective funding councils; the QAA delivers quality arrangements on their behalf.

## What the review heard

Stakeholder views on the B3 condition were mixed. Several welcomed the clarity of numerical thresholds, believing them 'a force for good' and enabling comparison against competitors. Others held the perception that the B3 condition did not give sufficient weight to provider and student context, and that a more nuanced definition of a 'positive outcome' was required, although this did not always accurately reflect the relevant guidance. For example, one stakeholder stated creative arts graduates were penalised by the 'managerial or professional employment' requirement of the graduate progression metric, as such graduates often undertake low paid or freelance work alongside building their portfolio to enable a successful career in the arts at a

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<sup>45</sup> [Transcript of OfS CE speech to the Association of Colleges](https://www.officeforstudents.org.uk/news-events/2023/04/12/ce-speech-to-the-association-of-colleges), (officeforstudents.org.uk)

<sup>46</sup> ['Success as a Knowledge Economy'](https://www.gov.uk/government/consultations/success-as-a-knowledge-economy), (gov.uk)

<sup>47</sup> [QAA demits DQB status to focus on sector and students in England](https://www.qaa.ac.uk/news/2023/04/12/qaa-demits-dqb-status-to-focus-on-sector-and-students-in-england), (www.qaa.ac.uk)



later stage. However, the OfS has published guidance that confirms developing an artistic portfolio can be counted as a positive outcome.<sup>48</sup> There were also concerns about the absence of specific published criteria for how providers are assessed for compliance with the other B conditions and in what circumstances that would lead to further regulatory interventions, including B condition investigations – in essence, a desire for a rules-based process rather than subjective judgements.

The review heard feedback from a selection of providers that had been subject to an investigation, as well as other sector stakeholders with views on the investigation process. This included concerns from several stakeholders that the characterisation of the investigations as being focused on ‘poor quality’ provision was unfair, as it appeared to prejudge the investigations’ outcomes, although this was subsequently amended.<sup>49</sup> More generally, some providers not subject to investigations felt that greater contextual information around B3 metrics should be taken into consideration before becoming the basis of investigation. Specifically, one stakeholder felt that the use of B3 conditions meant low-entry tariff providers were disproportionately being selected for investigation, as on average, students from lower socio-economic backgrounds have worse outcomes than those from more affluent backgrounds. The OfS does note, however, that contextual factors are taken into consideration when assessing risk, and it will not use performance thresholds or ‘crude triggers’ to monitor risk.<sup>50</sup>

Of providers that had been subject to an investigation, the review heard frustrations expressed around the OfS’s media statements ahead of their investigation but also a positive view that the process was constructive once underway, where the OfS’s team adapted its approach based on provider suggestions. One example given was implementing briefing sessions at the start and end of each day.

One provider described a ‘huge gap’ between how the OfS ‘broadly described’ B conditions and providers’ autonomy in interpreting how they should meet them, compared to assessors’ interpretations over the course of their investigation. This provider believed the OfS should clarify to providers what guidance is given to its assessors to ensure judgements are reliable and consistent. This provider also alleged that assessors refused to consider more recent data that was available demonstrating progress had been made against a given measure, determining this to be out of scope.

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<sup>48</sup> [‘Description of student outcome and experience measures used in OfS regulation’](#), (officeforstudents.org.uk)

<sup>49</sup> [Regulator opens investigations into quality of higher education courses](#), (officeforstudents.org.uk)

<sup>50</sup> [Regulatory framework for HE in England](#), (officeforstudents.org.uk)

Of those who had been subject to an investigation, providers reported the reasons for investigation or specific triggers in the OfS's assessment were never confirmed, even after the investigation concluded and the report was published. This arguably created the conditions where one provider felt the timings of their investigations were politically motivated, to tie in with a policy announcement relating to quality and before the OfS was ready to start substantive work on the investigation.

Some stakeholders were concerned about the timeliness of investigation processes, noting some had still not concluded in some cases more than a year after being announced and that they were unclear as to the reasons for the delay. Moreover, concerns were expressed about the OfS's overall approach to quality. One sector stakeholder reflected to the review:

‘...they may have lost sight of some of the really big problems... regarding quality. We need to get our hands around these issues with the pace that they deserve. [The] OfS should prioritise and seize the importance of protecting students' access to a high value experience, but I don't see them gripping that’.

The review heard several positive reflections on the TEF, which was widely recognised as: a system-wide assessment of excellence; a helpful tool for students to identify high-quality providers; and a vehicle for the dissemination of best practice in the delivery of high-quality provision and outcomes. The TEF was felt to have had a major impact on assessment, quality, and feedback. One respondent to the review's provider survey felt that the revised TEF approach held providers accountable, thereby ‘[driving] up the quality of student experience’.

The review notes the OfS has published six case studies of initiatives the TEF panel deemed excellent, along with two recent evaluations, one of educational gains at gold rated TEF providers<sup>51</sup> and another detailing the approaches to strategic improvement in providers' TEF 2023 submissions.<sup>52</sup>

Some leaders of providers with fewer than 500 higher education students told the review that the significant time and resource required to produce a submission was a material consideration when deciding to opt in. Some opted to delay TEF participation to ensure they had fully implemented quality improvement strategies first to increase the likelihood of being rated gold in a later cycle. The appropriateness of seeking a TEF rating was also cited as a factor by some college leaders, given higher education

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<sup>51</sup> [‘Educational gains explored’](#), (officeforstudents.org.uk)

<sup>52</sup> [‘Stepping up: Approaches to strategic improvement described in TEF 2023 submissions’](#), (officeforstudents.org.uk)

students in further education settings were less likely to recognise the TEF compared to a college's Ofsted rating.

The review consistently heard sector concerns regarding the OfS carrying out its quality and standards assessment functions without working with a separate designated quality body, including perceptions it could not assess quality independently given it also makes regulatory decisions based on its own standards. Some highlighted concerns about the divergence of English higher education from EQAR, meaning it is no longer recognised by various international higher education quality assurance bodies, and the discrepancy between English providers and providers in Wales, Scotland and Northern Ireland that now precludes UK-wide benchmarking. One pro-vice chancellor noted:

‘...having a UK-wide quality body that conforms to EU standards is very helpful as opposed to a parochial English system.’

Some interviewees incorrectly believed that HERA states the designated quality body should be independent, and thus precludes the OfS from fulfilling this function. However, HERA stipulates that if there is no designated quality body, the OfS is able to carry out its own assessments of the quality and standards applied to higher education; it is not obligated to have a separate body perform this function instead.

Some felt that QAA's focus on quality enhancement and identifying and sharing best practice has not been fully emulated by the OfS, although this element of the QAA's work falls outside the designated quality body statutory function of quality assessment.

## Conclusions

The quality of higher education is and must remain a key priority for the OfS. The OfS's activity is currently split into two distinct strands, ongoing and in the case of B3, annual assessment of compliance with the B conditions (baseline regulation) and once every four years, the TEF (improvement).

Interactions between these strands of work are unclear and seemingly minimal. The OfS's quality initiatives and activity need to be brought together to form a more coherent and integrated assessment of quality. This would create a regulatory model that has a greater emphasis on incentivising the improvement of quality beyond minimum standards, across the sector and for all students.

The TEF is currently the primary tool the OfS uses for incentivising improvement; it is regarded as a well-run exercise and is broadly welcomed by the sector. Participating

in the TEF is not, however, mandatory for small providers and the administrative burden of voluntarily taking part in the exercise is clearly a disincentive for some. This bureaucratic burden is also the reason cited by government as the rationale for the TEF becoming a periodic exercise, running once every four years, rather than annually.<sup>53</sup> Given the intensive nature of the exercise, the review recognises this is a reasonable and proportionate approach. This does however underscore the need for ongoing work outside of the TEF cycle and its cohort to ensure this work is regular and applicable to all providers.

Baseline regulation can play a role in improvement. The quality conditions, especially B3, should lead to behavioural change which drives improvement beyond minimum standards. The OfS has also signalled that it expects providers to learn from quality assessment reports, but the small number of published reports to date have been narrow in focus (covering computing, and business and management). The broader improvement aspects of these reports are not clear, and whilst cited by the OfS, were not referred to by stakeholders in the review's discussions about improvement. The review understands that the OfS plans to evaluate B3 and quality investigation visits and encourages the evaluation of the improvement gains to be included in the scope of this work.

The review believes the OfS should bring together qualitative and quantitative intelligence to form a view of what quality above minimum standards looks like, and to use that intelligence to disseminate best practice and drive quality across the sector for all providers and students. By developing an integrated methodology of assessing quality, the OfS should work with the sector to establish an approach to embed a culture of continuous improvement that encourages excellence and innovation beyond the minimum standards. This approach can act as a critical feedback loop that reinforces the OfS's role in enabling providers to undertake effective quality improvement. The OfS indicated to the review that it was seeking to bring its quality improvement, quality assurance and access and participation strands together to better articulate how its quality and equality activity and tools are consistent and mutually reinforcing.

There is also more to be done on baseline regulation. The OfS's model is heavily reliant on lagged indicators, which can be an ineffective tool for identifying emerging risks. This is for a sector which is fast-moving and increasingly volatile, and where new provision can be introduced and grow rapidly, long before such lagged metrics highlight quality concerns. Whilst the trend analysis and contextual indicators

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<sup>53</sup> [Government response to the independent review of TEF](#), (gov.uk)

signalling risk to quality employed by the OfS helps provide a more rounded view of risk, the review encourages the OfS to build on this. It should develop an effective basket of qualitative predictive and lead indicators, that allow it to regulate quality boldly and confidently, anticipating, identifying, and then responding rapidly to address emerging risk.

One qualitative indicator is information from whistleblowers. The review notes that the OfS is not currently the prescribed body for whistleblowing in the way that many other regulators are,<sup>54</sup> and therefore is unable to provide adequate assurance and protection for whistleblowers. The OfS should work with government to become a prescribed body for whistleblowing and embed this into its regulatory model.

The OfS should be clearer with the sector and better articulate the risk factors that could lead to providers being selected for further regulatory intervention, including assessment visits and investigations. The lack of transparency and clarity around this process was repeatedly cited as a concern by stakeholders, undermining trust and confidence in these regulatory decisions. Among some stakeholders, this exacerbated the perception of the OfS being reactive to government pressure, although the review found no evidence to support this in the way the OfS made its regulatory decisions.

In response to providers' feedback, the OfS is working to reframe some of its investigation activity as routine assessment to help normalise providers being selected for investigation. It plans to improve transparency regarding how it selects providers for investigation<sup>55</sup> and will publish guidance on the assessment process. The review welcomes these steps and encourages the OfS to expedite this work.

These planned changes react to some of the legitimate concerns providers raised following the first tranche of quality investigations. Whilst it is encouraging that the OfS is responding to sector feedback to improve future regulatory interventions, as noted in the conclusions of *Chapter 1, Section 4: Risk-based regulation*, the review believes any new regulatory methods the OfS introduces in the future should first be piloted.

To enable this more coherent and integrated model of assessment and improvement regulation, the review is clear that as the independent regulator of higher education, the OfS should have prime responsibility for holding the sector to account by setting and assessing quality and standards. It should not rely on a separate designated quality body.

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<sup>54</sup> [Whistleblowing: list of prescribed people and bodies](#), (gov.uk)

<sup>55</sup> [Transcript of Philippa Pickford's speech at GuildHE's annual conference](#), (officeforstudents.org.uk)

There is a strong precedent in many sectors for regulators to set their quality standards and regulate against them. Conversely, having a separate body carry out this function is highly unusual. The legislation<sup>56</sup> should be updated by removing the provision for a designated quality body to carry out the assessment function.

However, the review also recognises that English higher education providers operate in a UK-wide and global market. Therefore, it is of key importance that the OfS reflects on how its standards and processes can demonstrate equivalence with EQAR requirements to enable English higher education providers to align to international standards. This should be done through constructive dialogue with the sector and government. Further, the OfS requires capacity and capability to take this work forward and should continue to build on its existing expertise.

Several stakeholders highlighted the work that QAA, which had fulfilled the role of the designated quality body until April 2023, did to disseminate best practice and incentivise improvement. Such work falls outside the remit of the designated quality body but can be taken forward as part of the integrated model of quality envisioned by this review.

## **Recommendations:**

- That the OfS's quality assessment methodologies and activity be brought together to form a more integrated assessment of quality.
- That the OfS contributes to the overall improvement of the higher education system, providing a continuous improvement feedback loop and description of high-quality higher education. This will help ensure improvement of both the sector as a whole, and individual providers.
- That the OfS be prescribed as an official whistleblowing body to ensure whistleblowers can be afforded full protections when providing information. This intelligence should inform the qualitative assessment of risk to quality.
- That the OfS describes high quality education and the standards required to demonstrate high quality, without the need for a separate designated body to perform this function. The designated quality body functions as set out in HERA should therefore be removed to clarify that the OfS will perform this role.<sup>57</sup>

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<sup>56</sup> [Higher Education and Research Act, 2017](#), Schedule 4 Assessing Higher Education: Designated Body (legislation.gov.uk)

<sup>57</sup> The review notes this will require an amendment to primary legislation.

## Section 6: How the OfS regulates – Financial sustainability

The OfS has a duty to monitor and report on the financial sustainability of registered higher education providers.<sup>58</sup> The OfS does this through the ongoing condition of registration (Condition D), which requires all registered providers to:

- i) Be financially viable
- ii) Be financially sustainable
- iii) Have the necessary financial resources to provide and fully deliver the higher education courses as it has advertised and as it has contracted to deliver them
- iv) Have the necessary financial resources to continue to comply with all conditions of its registration.

Following an initial assessment as part of the registration process, all registered providers are required to submit financial data to the OfS on an annual basis. This includes full, audited financial statements and financial forecasts for the following five-year period. The OfS uses this information to assess the financial viability of providers, with more detailed assessments carried out of those considered to be at greatest risk.

Outside of this annual cycle, providers are also required to notify the OfS of any issues that may indicate a material risk to the provider's financial viability. If the OfS has concerns, it may impose additional 'enhanced' monitoring arrangements on the provider, which require more frequent reporting of the provider's financial position.

Based on this data and intelligence, the OfS produces an annual analysis report on the overall financial sustainability of the higher education sector.

*Success as a Knowledge Economy*<sup>59</sup> envisioned a more diverse and competitive higher education market, and considers the possibility of market exit and clearly sets out the government position on such closures:

'The possibility of exit is a natural part of a healthy, competitive, well-functioning market and the government will not, as a matter of policy, seek to prevent this from happening. The government should not be in the business of rescuing failing institutions – decisions about restructuring, sustainability, and possible closure are for those institutions' leaders and governing bodies. We want, however, to ensure that students are protected – so for the first time we will be

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<sup>58</sup> [How we regulate financial sustainability within higher education](https://www.officeforstudents.org.uk), (officeforstudents.org.uk)

<sup>59</sup> [Success as a Knowledge Economy](https://www.gov.uk), (gov.uk)

able to require providers to set out and publish plans to protect their students in the event of exit or course closure.’

In accordance with this vision, the OfS sets out its role clearly on the *How we regulate financial sustainability* page of its website, explaining:

‘We expect that in a competitive higher education market, providers will enter and leave the sector. We seek to ensure that any exits are as orderly as possible and to minimise the negative impact of an exit on students.’

The OfS requires, through the initial and ongoing condition of registration C3 (see Annex E), that all providers have in force and publish a student protection plan which ‘has been approved by the OfS as appropriate for its assessment of the regulatory risk presented by the provider and for the risk to continuation of study of all of its students’.

In 2021 and following consultation, a further condition of registration, C4, was added to the regulatory framework,<sup>60</sup> which gives the OfS powers to impose student protection directions, if it is concerned there is material risk of a provider exiting the market. This may require the production of a market exit plan, and/or that a provider puts in place and/or implements student protection measures. The OfS can choose to publish these directions but has not yet done so, as it would clearly indicate the scale of the risk the provider was managing and potentially exacerbate it.

The OfS also has a key performance measure (KPM) relating to the proportion of students whose provider exits the market during their studies that continue their qualification (or equivalent) at another provider (KPM 10).<sup>61</sup>

## What the review heard

The review heard significant concerns about the sector’s future financial sustainability, which reflected the OfS’s analysis of medium-term risk set out in its 2023 annual report on the financial sustainability of the higher education sector.

Central to this were concerns about the downward pressure on income. The primary source of income for the sector are the tuition fees charged to domestic students.<sup>62</sup> Maximum tuition fee limits stand at £9,250 and have remained largely unchanged since £9,000 fee limits were introduced in 2012. They will remain frozen until 2025/26

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<sup>60</sup> [Regulatory notice 6: Condition C4: Student protection directions](#), (officeforstudents.org.uk)

<sup>61</sup> [Key Performance Measure 10: Student protection](#), (officeforstudents.org.uk)

<sup>62</sup> DfE analysis of HESA finance statistics, 2022-23



and many sector stakeholders recognise that there is no certainty that the government will choose to increase fees after that. In July 2023, GuildHE chief executive Gordon McKenzie told the Times Higher Education:<sup>63</sup>

‘I don’t think it’s a given that [fee limits] will rise in 2026-27 or 2027-28 because I think universities are some way behind in the queue for any extra money, whoever forms the next government.’

There have also been significant changes to the international higher education landscape in recent years. Most notably, the UK left the European Union (EU) in January 2020. With this came changes to the fees EU students pay to study in England. Having previously been subject to the domestic fee limit of £9,250 and entitled to the same fee loans as domestic students, students from EU countries moved to the uncapped international fee limit regime with no access to fee loans. Correspondingly, the Higher Education Statistics Agency (HESA) reported<sup>64</sup> that in 2021/22, 11,500 EU students enrolled in an undergraduate first degree, down from 33,000 students in 2020/21.

The full economic cost of research in universities has also increased and continues to exceed the income for research activities. In November 2023, UKRI calculated there was a research funding deficit of over £5 billion across the sector in the 2021 to 2022 academic year, equating to a cost recovery ratio (the proportion of research costs covered by research income) of just under 70%.<sup>65</sup>

In combination, these factors have led higher education providers to lean more heavily on the recruitment of international students. In this competitive international market, fees are driven by the international reputation of both English higher education providers and the national higher education system more broadly, along with comparative fees at international competitors – but these fees are uncapped by regulation. Following the outcome of the UK EU membership referendum, the proportion of higher education fee income generated by English higher education providers attributed to international students has steadily increased, from 17% in 2017/18 to 21% in 2021/22.<sup>66</sup>

International student recruitment is vulnerable to national policy and geopolitical factors outside the control of higher education providers. For example, the majority of

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<sup>63</sup> [No Westminster government will raise fee cap, universities warned](#), (timeshighereducation.com)

<sup>64</sup> [Figure 9 - HE student enrolments by domicile 2017/18 to 2021/22](#), (www.hesa.ac.uk)

<sup>65</sup> [Research financial sustainability: issues paper](#), (ukri.org)

<sup>66</sup> Source: DfE analysis of HESA data

international students come to study in England from a small number of origin countries. Of a total of 350,000 non-European domiciled new entrants in 2021/22, over 60% came from three countries: China (100,000); India (87,000); and Nigeria (33,000).<sup>67</sup> With this concentration of recruitment comes a concentration of risk. The reliance of some parts of the higher education sector on international students means that the crystallisation of this or any risk that reduces the flow of students from abroad, would have significant consequences for those providers.

The latest Home Office data on visa applications, which act as a bellwether for international student recruitment, suggest the numbers of these students are likely to decline. Study visas issued in quarter four (Q4) of 2023 (48,707) dropped by 37% compared with the previous year (Q4 2022 – 77,141),<sup>68</sup> a trend that has continued into 2024, which saw a 22% drop in quarter one of 2024 (37,451) compared with the previous year (Q1 2023 – 48,200).<sup>69</sup> This will be of grave concern to the sector. One vice chancellor summarised starkly:

‘The sector has become dependent on international students’ fees; they are not the icing on the cake, they are the cake.’

Alongside this downward pressure on income, the higher education sector has also experienced increased costs. Inflation has been persistently high in recent times. The consumer price index 12-month rate was 9% in April 2022, remaining steadfastly above that level for the entirety of the 2022-23 financial year,<sup>70</sup> and peaking at 11.1% in October 2022, a 41-year high.<sup>71</sup> This has driven up the prices of goods and services, thus increasing running costs, and as the Bank of England has increased the base rate to dampen inflation, the cost of borrowing has also increased. Additionally, many providers have seen increased staff wages, and those with staff in the Teachers’ Pension Scheme will also see higher employer contributions from April 2024.<sup>72</sup>

The OfS annual analysis report on the overall financial sustainability of the higher education sector, published in May 2023<sup>73</sup> (and updated in June 2023), noted many of these risks and that:

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<sup>67</sup> [Where do HE students come from?](#), (hesa.ac.uk)

<sup>68</sup> [Immigration systems statistics, year ending March 2024](#), (gov.uk)

<sup>69</sup> [Why do people come to the UK? To study](#), (gov.uk)

<sup>70</sup> [Consumer price inflation, UK: March 2023](#), (ons.gov.uk)

<sup>71</sup> [Rising cost of living in the UK](#), (commonslibrary.parliament.uk)

<sup>72</sup> [Pensions Increase and career average revaluation](#), (teacherspensions.co.uk)

<sup>73</sup> [Financial sustainability of higher education providers in England](#), (office for students.org.uk)

‘The financial environment remains challenging in the medium to long-term... risks could have a significant impact on a provider’s financial sustainability and could result in some providers having to make significant changes to their operating model or face a material risk of closure.’

Following the publication of this OfS analysis, Universities UK (UUK) commissioned consultants PricewaterhouseCoopers (PwC) to carry out a further assessment of the financial sustainability of the sector.<sup>74</sup> This considered financial returns of 70 providers in England and Northern Ireland made to the OfS in December 2022 – the same return on which the OfS’s annual analysis of the higher education sector’s overall financial sustainability was based. PwC’s report, published in January 2024, provided a somewhat sharper articulation of the potential impact of these risks.

PwC noted that 40% of UUK members were expecting to fall into deficit in 2023/24 but this number would reduce to 13% by 2026/27, based on the assumptions that income will grow faster than expenditure, capital expenditure will decrease, and borrowing will fall below historic averages. It applied sensitivities to this base case scenario, for example a sharp contraction in international student numbers, which it predicts would cause around 80% of UUK members to fall into deficit in 2025/26. Similarly, an increase in expenditure of two percentage points was forecast to cause 63% of UUK members to fall into deficit in the same period.

The PwC analysis did not attempt to combine sensitivities and consider the cumulative effect of one or more risks crystallising at once. Such a scenario would increase the likelihood of providers falling into deficit. Moreover, the forecasts on which this analysis was based were made in late 2022, before the sustained period of high inflation, changes to immigration policy and the recent increases in Teachers’ Pension Scheme contributions, outlined in the risks section above. It is, therefore, very likely that several higher education providers are now experiencing the compound effect of these risks crystallising. One sector group chief executive reflected on the converging risks:

‘Fundamentally, we’re staring at a scenario where things steadily get worse with no obvious solution. The thing that has propped everything up, i.e., international students, is now extraordinarily politically vulnerable and it won’t be easy for an incoming government to fix that.’

As this review concluded, the OfS published its latest financial sustainability report on 16 May 2024. As expected, this reported that the sector’s financial performance was

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<sup>74</sup> [‘UK Higher Education Financial Sustainability Report’](https://www.universitiesuk.ac.uk/financial-sustainability-report), (universitiesuk.ac.uk)

weaker in 2022-23 than the previous year. In line with PwC's analysis, projections for 2023-24 are weaker than previously anticipated too, with 40% of providers expecting deficits, after which a gradual improvement is anticipated.

The OfS's view, however, is that this position is based on overly optimistic forecasts of student recruitment for the sector as a whole and that this does not accurately reflect intelligence regarding actual recruitment levels in 2023/24, or the latest application trends for 2024/25. This is particularly pronounced for international students, where the sector is forecasting an aggregate increase of 35% between 2022/23 and 2026/27, whereas intelligence points towards a possible significant downturn in international student numbers (see visa data above). Without the predicted growth in student recruitment, the OfS analysis suggests that the recovery providers are forecasting would be reversed, and the financial position would continue to weaken across the period to 2027-28. While there is still significant variation between providers in terms of financial strength, and thus impact, the OfS suggests that an increasing number of providers will need to make changes to their business models to respond to the emerging challenges.

The review heard mixed views on what the OfS can or should do to support and work with providers facing such financial sustainability issues, and how visible that should be. Some stakeholders noted that there is some reluctance within the sector to be open and honest with the OfS about its financial sustainability position, for fear of imposition of regulatory action. However, these concerns were raised by stakeholders who, it would seem, were not directly involved in discussions with the OfS about financial sustainability – and only 5% of respondents to the review's provider survey said they have had contact with the OfS in relation to financial sustainability.<sup>75</sup>

The review spoke to two providers who were open about their financial difficulties, and both had engaged directly with the OfS on this issue. One vice chancellor described the process:

[We] referred ourselves to [the] OfS – they determined [we] weren't at huge risk [and that] we had a plan... Their fin-sus team looked at our data, asked for some further data, which was reasonable... Their team explained what was

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<sup>75</sup> Survey question: '*Which of these areas have you had contact with the OfS about?*' Responses: Registration conditions 11%, the TEF 9%, APP plans 8%, NSS 8%, quality and standards 8%, Data Futures 7%, graduate outcomes survey 6%, freedom of speech 5%, payments from the OfS to your provider 5%, payments from your provider to the OfS 5%, financial sustainability 5%, another data collection 5%, regulatory activity 5%, sexual harassment/bullying 4%, student wellbeing/safety 3%, something else 2%, none of the above 0%, don't know 0%.

going on, and they wrote back in [a] reasonable timeframe to say they were happy to meet in six months to review progress... Overall, they were proportionate and reasonable in their approach.'

Another commented on the nature of similar discussions:

'We have decent relationships with them – and it's got better over time.'

However, the same vice chancellor noted that whilst the relationship was good, the practical help the OfS could offer a larger provider was limited:

'I'm not sure how far they can genuinely... In terms of intervening, if a university needed to change something it was doing – I don't think there's the tools available to the OfS on a sector wide basis to do any of that... It's hard to have a conversation with [the] OfS about them effectively being able to support those transitions an organisation would need to make, as they don't have access to funding to [support] transformation, to support students to go elsewhere perhaps. [Intervention] has happened in the sector but that has been in small, focused areas.'

## Conclusions

Financial sustainability is the cornerstone of the future of the higher education sector in England. The confidence and stability that underpins the improvement of quality, creates the foundation for future innovation and protects the sector's reputation as a world leader in both teaching and research. It is the most fundamental facet of protecting the interests of students and underpins every aspect of the OfS's purpose and objectives.

The review expects volatile market conditions outlined in this section to continue in the near to medium term, and many of the risks outlined in this report, and the OfS and PwC financial sustainability analyses, are now rapidly crystallising. The sector's overoptimism about student recruitment is cause for real concern. Some providers will be better placed to endure these financial shocks through the strength of brand and reputation or large cash reserves, but others will be more exposed. The review notes that a large number of providers which have already forecast deficits have announced measures such as redundancies or the closure of provision to rebalance their accounts. This number is now likely to increase markedly, as many providers respond to these challenges and the aggregate impact of these discrete decisions could increase system level risks, such as reduced student choices in some subject areas, in some regions, or for some student groups.

Effectively managing these risks is a key challenge for the regulator, government, and the sector. All have a role to play. Failure to do so will undoubtedly lead to market exit, potentially in the near-term of one or more larger providers.

The review believes that open and honest dialogue between the sector and the OfS is essential to build a better picture about financial risk in the system and protect the interests of students from the potentially damaging effects of a market exit, disorderly or otherwise. The OfS should consider how it can continue the work it has been doing to build confidence to facilitate such discussion, and the sector must adopt a pragmatic approach to such engagement. Realistic and prudent modelling and forecasting is an essential enabler for the dialogue between the sector and the OfS.

Going forward, the sector needs to accept that trade-offs will need to be made. Not every provider will be able to grow their way out of this period of financial contraction. Many will need to review current operating models, and some will need to plan to deliver their offer with more limited resources, as income declines in the future. As autonomous institutions, this is for providers to consider in the first instance, but as part of the open and honest dialogue, the review believes it is essential providers should seek advice, guidance, and support from the OfS at an early stage if they believe they cannot adequately address these issues alone. In the process of conducting the review, the OfS team emphasised the importance of proactive engagement by providers in these circumstances.

Current student protection plans do not appear to adequately consider or mitigate the risk of market exit to students, nor protect their interests. Many are out of date and do not reflect the operational reality of current economic conditions. Student protection directions may be a more effective tool, although they are not visible to students and are put in place when there is an impending and material threat of market exit. The review considers that moving very large numbers of students from one provider to another to continue their studies may simply be unrealistic, given the inherent capacity and accommodation issues associated with such an endeavour. Even if achieved, it would be unacceptably disruptive for those students affected.

Moreover, the review believes that there are broader risks that should be considered. Many providers are critical research and innovation assets, forming part of the UK's strategic research capability, in which government made significant investment to developing infrastructure, staff, and facilities. Further, many higher education providers have a teaching focus or specialisation. Some are anchor institutions, rooted in 'place', serving the educational needs of their community, providing employment, fostering economic well-being and social cohesion.

As architects of the infrastructure of the higher education system (see *Chapter 1, Section 1: Clarity of focus and delivery*), government should consider whether the prospect of such a provider exiting the market is conducive to a more strategic organisation of higher education in England. It should also consider whether the non-interventionist positioning set out in *Success as a Knowledge Economy* in 2016 is still appropriate for meeting the challenges of today and truly protecting the interests of students.

If government concludes that it is not and that intervention is warranted in some or all circumstances, the review is clear that the OfS does not currently have the legal powers or the capacity it needs to intervene in such a manner, or to assure the financial sustainability of the sector. It is, however, well placed to monitor financial sustainability and proactively share this intelligence with DfE. Government and the OfS should continue to work collaboratively to agree what steps should be taken in the event of the rapid crystallisation of the risks outlined in this report leads to potential market exit, and how multiple instances could be managed simultaneously.

This could include:

- **Establishing a robust ‘early warning’ risk identification and escalation process.** This should include the proactive sharing of intelligence and data, scenario planning, exit event simulations and developing protocols to facilitate the secure sharing of commercially sensitive information.
- **Managing emerging risk.** Acting swiftly to mitigate risks, rather than simply monitoring them, is a key step in any credible plan to avoid a disorderly market exit. This could include tailored advice and guidance from specialists in financial restructuring.
- **Prevention of disorderly market exit.** If and when such an exit becomes inevitable, steps such as funded intervention may be required. Government may also consider whether the current legislative framework for insolvency provides sufficient opportunity for all types of providers to manage a potential market exit in an orderly fashion.

## **Recommendations:**

- That government undertakes policy work to revisit and clarify its position on market exit, and whether the non-interventionist positioning is still the most appropriate for meeting the challenges of today.
- That the OfS and government continue to build an infrastructure to offer advice, guidance and support for providers experiencing financial sustainability challenges, considering options such as early warning identification, management of emerging risk and prevention of disorderly market exit.

- That the OfS continues to work with the sector to build and share an accurate and current picture of financial risk in the system, developed through open and honest dialogue and the sharing of intelligence with the sector, government, UKRI and relevant partners. This should support sector planners to undertake realistic and prudent forecasting, scenario planning and decision making.
- That the OfS revises the requirements for student protection plans to ensure these are current, detailed, and accurately consider risks to and mitigations for these risks to students.

## **Section 7: Relationship with the sector**

Relationships between the regulator and the sector it regulates are fundamental to effective regulation. Building reciprocal relationships that are rooted in confidence, respect, and trust benefit communication and collaboration between the regulator and the regulated. This is the hallmark of a credible and mature regulator.

From the establishment of the OfS, it intended to position itself as different from its predecessor, HEFCE. It wished to avoid the criticism of ‘regulatory capture’, which was levelled at HEFCE. This has shaped the subsequent nature, tone, and style of the relationship between the OfS and the sector.

There are numerous communication channels between the OfS and the sector, including newsletters, monthly mission group meetings with the chief executive, quarterly events with accounting officers and webinars and events for chairs of governors and other provider stakeholders. There are also increased efforts to target communications, for example ensuring that further education providers delivering higher education receive tailored messaging.

### **What the review heard**

Evidence gathered via interviews with higher education providers presented mixed views on the effectiveness of the relationship between the OfS and the sector. Those interviewed suggested the relationship required improvement. Issues cited included the timeliness, tone, and style of the OfS’s communications, the transparency of the OfS’s decision making and a lack of contact and guidance. Some stakeholders also highlighted a lack of early engagement or meaningful consultation between the regulator and regulated.

Several stakeholders highlighted the tone and style of communication between the OfS and the sector. In doing so, they often described HEFCE’s more partner focused, co-regulatory approach. Many distinguished this with what they viewed as the OfS’s



'unnecessarily adversarial and arm's-length' approach. Some felt that the OfS regulates with the assumption of a sector that is hostile to regulation, and therefore has developed a culture of mistrust, whereby the regulated are in opposition to the regulator. It was expressed to the review that this hostility and opposition reflects that the OfS has 'over-corrected' from the perceived shortcomings of HEFCE.

The review consistently heard that the nature of written communication epitomised these challenges, with a tone that was overly legalistic and officious. One vice chancellor noted that this 'repeatedly [caused] concerns and distress amongst the organisation's senior leaders.' Furthermore, within the review's provider survey, 40% of respondents disagreed that the tone of communications they receive from the OfS is helpful, and a further 15% strongly disagreed.<sup>76</sup>

Stakeholders also described the lack of transparency demonstrated by the OfS. While the investigation process itself is expanded upon in *Chapter 1, Section 5: Quality*, this area of OfS activity exemplified most acutely the transparency challenges of the organisation. The review heard from a senior leader of one provider that over two and a half years had passed since the OfS had announced they would be investigated, yet there was still no report published, and they had 'no idea what was going on.'

Another vice chancellor raised that there was a lack of openness around the reason for investigation, and the process by which it would take place. This led to significant difficulties in leading teams through this process:

'How do you go out and talk to your staff when at that point you don't know what the review entails, there's no structure to it, you don't know who the reviewers are...or the basis on which the review is going to be structured.'

Similarly, one of the most recurrent critiques of the OfS made to the review was that communications to the OfS go into a 'black hole', with many providers that contacted the OfS often experiencing a significantly delayed response, or no response at all.

Several interviewees highlighted that, when making returns to the OfS, they were set strict and challenging deadlines to comply with, which they worked hard to meet due to fear of intervention. However, in return, they felt that the OfS had little regard for timeliness, and it regularly failed to respond in a reasonable timeframe. Some providers therefore felt that there was one rule for them, and another for the OfS. An

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<sup>76</sup> Survey question: 'To what extent do you agree or disagree with the following statement: "I find the tone of the communications I receive from the OfS is helpful."' Responses: 5% strongly agree, 35% agree, 41% disagree, 15% strongly disagree, 5% don't know.

example cited by one provider was when they were expected to report to the OfS regarding a HESA audit within a fixed timeframe; although the OfS stated they would respond to this report in June, they did not respond until October. In the round, this paucity of communication further contributed to the perceived lack of transparency.

The review also heard some providers describe their interactions with the OfS as being 'faceless' in nature. Others noted the OfS has sought to improve its signposting, so that providers and accountable officers have a named contact within the regulation team should an issue arise. However, this is not always translating into the sector as many respondents reported that correspondence rarely has a name attached to it, or that they are unaware who they are communicating with. One respondent stated that this made them feel isolated, and another that 'universities don't know who to call since HEFCE disbanded.' Some providers drew distinctions between the OfS and other bodies where they interact with regional account managers as a point of contact for any issues they may have.

There were also a range of more positive views, noting that there has been a step change in interactions between the sector and the OfS in recent months. There has also been increased stakeholder engagement and a new schedule of provider visits, which have been well received. Most stakeholders attributed this change in approach the OfS has taken as a response to the House of Lord's Industry and Regulators Committee's report,<sup>77</sup> reflecting on the increased frequency of contact, improved tone of communications and a move towards mutually beneficial engagement.

As already cited in *Chapter 1, Section 2: Clarity of focus and delivery*, the OfS's access and participation activity demonstrates the benefits of effective relationship management and communication. Here, sector stakeholders experienced early sector engagement, openness to share drafts of plans informally and a willingness to trust the sector to understand and manage their work in access and participation. This is a good example of the OfS listening to the sector and responding to the desire for more early engagement, consultation, and mature dialogue. The review notes that access and participation functions were transferred from HEFCE and the OFFA, and as such, are likely to be better embedded and accepted by the sector. In addition to this, there is continued strong and relational practice in the approach undertaken to administering APPs, which is to be commended.

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<sup>77</sup> ['Must do better: the Office for Students and the looming crisis facing higher education'](https://publications.parliament.uk), (publications.parliament.uk)

Several senior sector stakeholders acknowledged that conversations and direct engagement with the OfS's senior team were largely positive and constructive in tone. Collaborative work around financial sustainability, explored in greater depth in *Chapter 1, Section 6: Financial sustainability*, was also highlighted as good practice, but due to the sensitive nature of these discussions, is not widely visible.

## Conclusions

The review is clear that effective relationships between a regulator and the sector it regulates are fundamental to good regulation. The current relationships between the sector and the OfS are suboptimal. There are several existing challenges between the OfS and the higher education sector which must be addressed. While a regulator should not expect to be liked, the OfS should aim to be respected by the sector as this will entail a more confident relationship between the regulator and regulated. It is acknowledged that work towards this has begun and it must continue.

There is a feeling of asymmetry in expectations that the OfS holds for the sector, as the OfS do not adhere to the standards similar to those it sets for providers, particularly around deadlines and data sharing. This has exacerbated tension between both parties and should be addressed; mutuality of the terms of obligations would help build confidence, respect, and trust.

In addition, as set out in *Chapter 1, Section 5: Quality*, a lack of transparency in the communications around the reasons providers are selected for investigation contributes to a lack of trust between the OfS and the sector. This mistrust in turn leads to uncertainty in the sector about how its information will be used and creates 'an ever-existent threat of what may happen, which is a complete unknown.' The review observed that the overall nature of interaction has been characterised by an adversarial approach, hostile communications and a lack of timeliness and transparency. All of this has eroded the confidence, respect and trust that should exist between the OfS and the sector.

The OfS highlighted their work to address challenges around timeliness, and improvements are evident in areas such as the time taken to respond to reportable events.<sup>78</sup> This is commended by the review and must extend to other areas of sector-regulator engagement.

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<sup>78</sup> [Operational measures, OM 1: Reportable events](https://www.officeforstudents.org.uk/operational-measures/om-1-reportable-events), (officeforstudents.org.uk)

To progress and mature the relationship and interactions with the sector, the OfS must build on areas of its good practice – including the style of work on access and participation and financial sustainability – and continue efforts to improve the tone and style of its communications. Ensuring that providers are all familiar with, and have the chance to engage meaningfully with, their key contact will also help them to grow confidence, respect, and trust in the OfS.

The review strongly believes that relationships are two-way, so in turn, the sector must show a willingness to engage constructively with the OfS, adjusting to the regulatory regime and heightened challenge as the ‘new normal’. To ensure the relationship between the OfS and the sector functions effectively and reciprocally, the sector must demonstrate through its attitudes *and* behaviour that it both accepts this regulatory regime and is committed to working productively with the OfS. There are opportunities to continue to constructively engage with the OfS, given that regulation is a critical factor in maintaining the health and global competitiveness of the higher education sector and ensuring it realises its fullest opportunities.

To strengthen the relationship between the OfS and the sector, the review recommends that the OfS should develop a comprehensive stakeholder strategy that seeks to improve the confidence, respect, and trust between the regulator and the regulated. This should include an annual stakeholder survey, which is used to identify strengths and areas for development, and to drive improvement. Both the OfS and the sector can work collaboratively to foster a stronger relationship and an open dialogue which focuses on improvement of both the relationships between the OfS and individual providers, and the sector.

### **Recommendations:**

- That the OfS develops a comprehensive stakeholder strategy, including an annual stakeholder survey.
- That the sector reciprocates with the OfS, engaging productively and willingly with regulation.

## Chapter 2: Accountability

### Section 1: Overall accountability to government

The OfS is a young regulator. It commenced operations in 2018 and spent the majority of its first two years registering providers. The onset of the COVID-19 pandemic forced it into a period of crisis management, due to in-person teaching disruptions and financial stress placed upon providers. Therefore, it has only been regulating on a business-as-usual basis for around two years. Concurrently, ministerial change has meant government views on the OfS's operational and strategic focus has shifted during this time, with different ministers setting different priorities.

As set out in the framework document,<sup>79</sup> the Secretary of State has ultimate accountability for the OfS in Parliament and the Minister of State for Higher and Further Education has lead responsibility for oversight of the OfS on a day-to-day basis. DfE's senior sponsor for the OfS and their sponsorship team are the primary contacts for the OfS. Both parties are expected to have an open, honest, and trust-based partnership built upon purpose, assurance, value, and engagement as laid out in the *Partnerships between departments and arms' length bodies: code of good practice*.<sup>80</sup> The OfS and the sponsorship team should clearly understand the strategic aims and objectives of the other party and commit to keeping each other informed of any significant changes, risks, issues, and concerns. The sponsorship team is the critical link between the OfS and government, and therefore a strong relationship between both parties is fundamental.

The sponsorship team holds the OfS accountable in areas such as finance, operations, and performance, whilst managing the relationship between government and the regulator to ensure strategic alignment. This includes holding quarterly performance reviews between the senior sponsor and the OfS's chief executive and chair. It also includes regular liaison between the sponsorship team and OfS officials to review performance against plans, achievement against targets, and expenditure against spending limits and allocations.

#### What the review heard

The review heard from both government and the OfS's stakeholders that there are positive working relationships between the sponsorship team and the OfS. It was

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<sup>79</sup> ['Office for Students \(OfS\): Framework document between DfE and the OfS'](#), (gov.uk)

<sup>80</sup> [Partnerships between departments and arm's length bodies: code of good practice](#), (gov.uk)

noted that the sponsorship team are focused on solving problems, ensuring the OfS has clarity on DfE's positions, and seeking to have a relationship that is as transparent as possible. One respondent characterised the relationship between DfE and the OfS as being focused on collaboration, with an emphasis on understanding shared objectives. It was also felt that the relationship management and strategic guidance provided to the OfS works effectively.

The review also heard the sponsorship team is initiating a programme of work to improve the relationship between the OfS and government and build regulatory capability. This work aims to expand understanding as a directorate of regulatory principles and practice and consider these principles in the light of a changing higher education market and provider base. In addition, there are plans to engage with a range of other government departments, their regulatory arm's length bodies, and academics to grow their knowledge base on regulation. DfE will also undertake research into the shape of the higher education market and provider base to inform possible future models of regulation in respect of financial sustainability, system controls and managing public money and quality. These changes are intended to enable a better understanding of the OfS's objectives and priorities so that the sponsorship team can support and advocate for the OfS across government.

The OfS reflected that its sponsorship would be strengthened by greater government understanding of regulation, its constitution as an independent body from government, and the implications of this for its relationship with government. The OfS also felt it would benefit from the sponsorship team playing an enhanced role in managing engagement between itself and DfE policy teams.

One area that stakeholders raised as a challenge in the working arrangements between the government and the OfS was the desire for more effective information and intelligence exchange. It was noted that while there is acute sensitivity of the disclosure of confidential commercial information pertaining to the viability of providers, failure to do so at an early stage creates difficulties in taking a view on the financial health of the sector, preventing effective horizon scanning and risk assessment.

As outlined in *Chapter 1 Section 2: Clarity of focus and delivery*, the review also notes the widening remit of the OfS's responsibilities. This was recognised by multiple respondents, who commented that the OfS has been 'tasked with an enormous amount since 2017'. Another highlighted that DfE is not sufficiently 'strategic in these requests.' For some, there was the perception that the nature of these requests leads to a reactive way of working.

## Conclusions

As set out in this report, with government as the architect of the education system, the OfS's role is to steward the system through its regulatory functions. Therefore, an effective working relationship and the strength of DfE's sponsorship team is critical to facilitating this dynamic. The review notes that DfE's sponsorship of the OfS is characterised by positive working relationships and commitment to improving regulatory knowledge to further departmental understanding of the OfS. However, work should continue to be undertaken to strengthen the capacity and capability within DfE, including ensuring strong understanding of regulatory principles of best practice and underlining the OfS's independence from government.

The review believes that the sponsorship team should act as the primary conduit between the department and the OfS, managing all initial and ad hoc policy asks of the OfS, until work strands have been agreed as part of the OfS's business planning. They should also maintain oversight of the relationship between individual policy teams across DfE and DSIT. This would offer the OfS more protection and support from the collective asks of government and enable it to better represent and advocate for itself across both DfE and DSIT. Moving forward, the OfS and the sponsorship team should establish this framework, at both formal commissioning and less formal working relationship levels and communicate it clearly on both sides of the partnership.

The review concludes that more effective partnership and collaboration between government and the OfS is needed to make rapid progress on shared priorities. Establishing more effective protocols on information and data sharing that manage the balance of commercial sensitivity would enable increased transparency and trust.

To further strengthen the relationship between the OfS and DSIT and improve collaboration and partnership between government and the OfS as a whole, it would be beneficial to establish and formalise regular contact between DSIT and the sponsorship team. This could include regular liaison between respective director generals and bi-annual inter-ministerial meetings to move towards a joined-up approach to sponsorship. More collaboration between the two sponsoring departments would create space for an open dialogue between UKRI and the OfS on matters such as financial sustainability, to identify risks and prevent disorderly market exit, as outlined previously in *Chapter 1, Section 6: Financial sustainability*.

There have been several ministerial changes over the last five years and with this, the government requirements of the regulator have evolved. This has led to more reactivity than proactivity in focusing on the OfS's own goals and objectives. The recent general

election will lead to further changes. To function as a confident and credible regulator, the OfS should continue to advocate for itself, highlighting its expertise and its role in independently assuring the quality of higher education and acting in the student interest. This will help to counter the perception that it is a delivery mechanism for government policy. It should work alongside DfE to provide assurance and evaluation of the effectiveness of higher education policy, strategy, delivery, and outcomes. This is a virtuous policy cycle and can be used to drive sector-wide quality improvement.

### **Recommendations:**

- That the sponsorship team act as the central conduit between the OfS and government, managing the initial policy asks of the OfS. Outside of agreed business planning, all new and ad hoc requests for work should be managed by the sponsorship team, until such time as that work has been agreed as part of, or as an adjunct to the business plan.
- That stronger information sharing protocols are put into place between the OfS and government to enable joined-up working and proactive feedback around key areas of shared priority and risk.
- That there is regular contact between DSIT and DfE to enable a joined-up approach to sponsorship and to allow for more open dialogue regarding financial sustainability, as part of a wider cross-government approach to sharing knowledge and learning about regulation.

## **Section 2: Independence of the OfS**

It is critical that regulators are independent in the way they operate; in the decisions and judgements they make, they must be independent of the sector they regulate and be independent of government. This is fundamental to generating the trust, respect, and confidence that is the basic currency of regulation. Independence also insulates government from the operational decisions of the OfS.

### **What the review heard**

The review heard from a significant majority of sector interviewees a clear perception that the OfS is not independent of government, and that in order to carry out its duties effectively, it has to be. Many believed that government exerts undue influence over the OfS to align to its policy priorities, using it as a vehicle to manage the sector and deliver policy rather than regulate it.



This perception was borne out in the review's provider survey. When asked whether the OfS was independent of government, 68% of respondents either disagreed or strongly disagreed.<sup>81</sup>

During the review, three areas were identified where the OfS's perceived independence was liable to challenge, namely, its function as both a funding body and regulator, appointments to the executive team, and the chair's retention of the party whip. The most frequently raised issue by sector representatives as evidence of the OfS not being independent of government was the chair's retention of the whip.

The review notes other prominent appointees to independent regulators have both kept and resigned the whip without reducing the perceived effectiveness of their respective public bodies; Sally Morgan did not resign the Labour whip on taking up her role as chair of Ofsted whilst Jeff Rooker resigned the Labour whip for the duration of his being chair of the Food Standards Agency. Michael Grade and Chris Patten resigned the Conservative whip when taking up posts as chair of Ofcom and chair of the BBC Trust respectively. Dido Harding retained the Conservative whip when she became chair of NHS Improvement.

The other two challenges identified by the review, the OfS's functions as funding body and regulator, and appointments to the executive team, were not cited in sector interviews or the review's provider survey. However, the review notes the OfS's chief executive and Directors for Fair Access & Participation and Freedom of Speech & Academic Freedom are appointed by the Secretary of State (as set out in HERA<sup>82</sup> and the Higher Education (Freedom of Speech) Act).<sup>83</sup> The appointment of this number of members of the executive of an independent arms' length body by government is unusual, though this did not appear to have a bearing on the sector's assessment of the OfS's independence.

As noted in *Chapter 1, Section 1: Clarity of purpose*, the OfS's roles in grant allocation and regulation have been cited as evidence of it not being independent, but these are distinct functions. The review found no material concerns and there is no question of the OfS's ability to carry out its dual roles.

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<sup>81</sup> Survey question: 'To what extent do you agree or disagree with the following statement "The OfS is independent of the UK government"'. Responses: 5% strongly agree, 22% agree, 35% disagree, 33% strongly disagree, 6% don't know.

<sup>82</sup> [Higher Education and Research Act, 2017](https://www.legislation.gov.uk), (legislation.gov.uk)

<sup>83</sup> [Higher Education \(Freedom of Speech Act\) 2023](https://www.legislation.gov.uk), (legislation.gov.uk)

The OfS's dual roles are exemplified in ministerial guidance letters issued to the OfS. Annual funding letters that set out the OfS's grant allocation and strategic priorities every funding year are an established process between government and the OfS as a *funding body*. Additional guidance from ministers, both within the funding letters and in separate guidance letters, were perceived to encroach on the OfS's independence from government in its role as the *regulator*. The review notes that as of April 2024, the OfS has been sent 27 guidance letters. 22 of these letters pertain to grant funding allocated to the OfS either in annual funding letters or in relation to short-term funding objectives, for example in relation to supporting students and providers over the course of the pandemic.<sup>84</sup>

Some interviewees believed in issuing the OfS ministerial guidance, the government 'doesn't consult with them enough or respect their expertise.' Others felt the OfS too readily adopted rhetoric<sup>85</sup> that also featured in ministerial guidance letters, for example the use of 'robust regulatory investigations' to 'root out poor quality HE',<sup>86</sup> characterised by ministers as 'boots-on-the-ground'<sup>87</sup> investigations.

A further example of the OfS being seen to act in accordance with the government's agenda was the timings of announcements in response to issues with elevated levels of ministerial and media interest, for example the quality of specific courses, spelling, punctuation and grammar, and franchising arrangements. Whilst these areas are legitimate concerns for the OfS, some believed it would enhance the credibility and independence of the OfS if it pro-actively worked with the sector to identify and investigate issues and agreed how best to resolve them collaboratively. It was felt that rather than acting in an apparently reactive, 'knee-jerk response' to ministerial guidance, the OfS and sector working in a confident, respectful, and trusting way (as set out in *Chapter 1, Section 4: Risk-based regulation*), would be more beneficial.

## Conclusions

Overall, the review found that the OfS's perceived proximity to government has been detrimental to the sector's confidence, respect, and trust of the OfS, but many of the concerns raised were not borne out in the review's assessment and remain as

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<sup>84</sup> Of the 27 letters, 11 were sent during the pandemic period (March 2020 to August 2021), including two annual funding letters, one strategic guidance letter and seven letters regarding COVID-19 related support including hardship funding, additional dentistry and medical places, and funding to support providers due to increased intake and additional high-cost subjects as a result of the pandemic. The final letter in this period concerned funding allocation for specialist providers unrelated to COVID-19.

<sup>85</sup> [OfS sets out plans to crack down on poor quality courses](https://www.officeforstudents.org.uk/news-events/news/2023/06/06/office-for-students-sets-out-plans-to-crack-down-on-poor-quality-courses), (officeforstudents.org.uk)

<sup>86</sup> [Guidance to the OfS on strategic priorities for FY22-23](https://www.officeforstudents.org.uk/news-events/news/2023/06/06/office-for-students-sets-out-plans-to-crack-down-on-poor-quality-courses), (officeforstudents.org.uk)

<sup>87</sup> [Eight providers face 'boots-on-the-ground' OfS investigations](https://www.timeshighereducation.com/news/2023/06/06/eight-providers-face-boots-on-the-ground-ofs-investigations), (timeshighereducation.com)

perceptions only. The review concludes that the OfS is operationally independent, and that the government does not influence the OfS's regulatory judgements and decisions.

During this review, no evidence was found to suggest the chair, executive leadership or wider organisation were being unduly influenced in its operational decisions and judgements either by ministers or government officials. Where the sector cited issues such as the appointment of a Director for Freedom of Speech & Academic Freedom, the review notes this was passed in legislation and the OfS therefore has a duty to enact this, regardless of its own judgements on this matter.

Government issuing 22 letters to the OfS pertaining to annual or grant funding is entirely appropriate given the OfS is the delivery mechanism for the disbursement of these funds. An additional five letters regarding strategic priorities supplemental to the funding letters, where ministerial priorities were more explicitly set out, gave rise to the perception government was directing the OfS and thus compromising its independence.

The review notes all of the total 27 letters comply with the duties as set out in HERA on issuing guidance,<sup>88</sup> which states ministers must have regard to the need to protect the institutional autonomy of English higher education providers,<sup>89</sup> and that the OfS must have regard to guidance given to it but is not obliged to comply with it. Government has never issued a formal direction to the OfS but has used terms and conditions (T&Cs) in its funding letters three times.<sup>90</sup> The use of T&Cs means the OfS is explicitly told how it must allocate specific amounts of money; without T&Cs, funding letters are treated as guidance, meaning the OfS can allocate funding how it sees fit to achieve government's aims.

Given the strength and consistency of feeling in the sector, the review believes the OfS could take steps to counteract the narrative its actions are directed by government. The OfS's ability to function effectively as a regulator depends heavily on it being regarded as independent. This is connected to the relationship between the

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<sup>88</sup> [HERA Section 2](#), (gov.uk) requires guidance given by the Secretary of State to the OfS about the performance of its functions to comply with the restrictions described below in footnote 89.

<sup>89</sup> Guidance (as well as T&Cs and directions) may be framed by reference to particular courses of study, but they must not relate to particular parts of courses of study, their content, how they are taught, supervised or assessed, criteria for selection, appointment or dismissal of academic staff or criteria for admission of students. Guidance, T&Cs and directions framed by reference to a particular course of study must not guide the OfS to perform a function in a way which prohibits or requires the provision of a particular course of study.

<sup>90</sup> Letters dated [25 March 2021](#); [19 July 2021](#); [4 April 2024](#), (officeforstudents.org.uk)

regulator and the regulated. As explored in *Chapter 1, Section 7: Relationship with the sector*, a more confident, trusting, and respectful relationship between the OfS and the sector would help mitigate many of the perceptions regarding the OfS's independence from government.

The OfS would benefit by setting out its reasoning behind its actions in response to ministerial guidance. The sector should be mindful of the distinction between actions the OfS takes to comply with conditions attached to government allocated grants or legislation, and those it takes based on its own judgement of ministerial guidance (which it has a duty to regard, but not necessarily to comply with).

### **Recommendations:**

- That the OfS develops a more transparent style of communications to demonstrate to the sector its independence from government.

## Chapter 3: Governance

The OfS board is responsible for setting the OfS's strategy and ensuring it delivers this. The framework document sets out the governance and accountability arrangements of the OfS.<sup>91</sup> It outlines the OfS will have a board in line with good standards of corporate governance that comply with the relevant government guidance. This includes: the *Corporate governance code for central government departments 2017*;<sup>92</sup> the *Code of conduct for board members of public bodies*;<sup>93</sup> and the *Partnerships with arm's length bodies: code of good practice*.<sup>94</sup>

In addition to this, the OfS's board proceedings and code of conduct document describes the internal arrangements and standards the board must follow when conducting its business.<sup>95</sup> The OfS's scheme of delegation also sets out and clarifies which matters are reserved to the board for decision.<sup>96</sup>

Performance monitoring of the board includes annual board appraisals of each member and board effectiveness reviews to support its operation.<sup>97</sup> Also, an externally facilitated review of the effectiveness of the OfS's board was conducted in 2021. The corporate governance in central government departments code of practice advises that board effectiveness evaluation is carried out annually, and with independent input at least once every three years.<sup>98</sup>

### What the review heard

Over the course of evidence gathering regarding the OfS's governance, a key concern raised was that its board lacked the necessary skills, experience, and expertise to be effective and understand the diverse nature of the sector. Some felt members were not sufficiently representative of the sector. It was also suggested that the board could improve its understanding of government thinking, finance, risk, law, and regulatory expertise.

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<sup>91</sup> ['Office for Students \(OfS\): Framework document between DfE and the OfS'](#), (gov.uk)

<sup>92</sup> [Corporate governance code for central government departments 2017](#), (gov.uk)

<sup>93</sup> [Code of conduct for board members of public bodies](#), (gov.uk)

<sup>94</sup> [Partnerships with arm's length bodies: code of good practice](#), (gov.uk)

<sup>95</sup> [OfS board proceedings and code of conduct](#), (officeforstudents.org.uk)

<sup>96</sup> [OfS scheme of delegation](#), (officeforstudents.org.uk)

<sup>97</sup> [Minutes of the OfS board meeting, 30 March 2023](#), (officeforstudents.org.uk)

<sup>98</sup> [Corporate governance code for central government departments 2017](#), (gov.uk)

Some stakeholders also noted concerns that too many members of the board had conflicts of interest, meaning they had to recuse themselves from discussions, although one interviewee noted they did not think this problem was widespread.

It was also felt stronger leadership was required from the board, with non-executives effectively holding the executive to account and providing more robust challenge. Others believed the board's effectiveness and confidence had been subdued by a culture of risk aversion, which is described in further detail in *Chapter 1, Section 4: Risk-based regulation*. Some interviewees wanted to see a stronger sense of direction from the board; one felt the board was not sufficiently forward looking, whilst another cited any important cultural change the OfS needs to undergo must come from the board and leadership first.

## Conclusions

The review identified no major concerns regarding the overall structure and defined approach of the OfS's governance mechanisms, and this was not raised in evidence gathering as a concern. The expected documentation, processes, procedures, and core components are in place, while the roles and work of the board are clearly documented and evidenced.

As recommended in *Chapter 1, Section 3: Regulating in the student interest*, the OfS should consider how to strengthen the role of the student panel and its input into governance arrangements. By tying the student panel more closely to the board within its formal governance arrangements, the OfS would better promote the voice of the student within the OfS's leadership.

When assessing board membership, the review recognises a detailed and thorough process has been put in place by DfE to manage appointments. DfE highlighted the governance code for public appointments is closely followed and a balance of knowledge and experience from diverse backgrounds is a central consideration.<sup>99</sup> Despite this well managed process, the board lacks the full range of required skills, experience and expertise given the current and emerging challenges for providers and students.

In this context, the review believes that some in the sector have conflated stakeholder engagement with board effectiveness. As outlined in *Chapter 1, Section 7: Relationship with the sector*, it is critical to ensure that higher and further education stakeholders are well engaged, and this should be addressed within a comprehensive

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<sup>99</sup> [Governance Code on Public Appointments](#), (gov.uk)

stakeholder strategy. However, the emphasis for the board membership should be on having members with the required skills, experience, and expertise for good governance in light of the key challenges the sector faces and will face over the next decade. This is opposed to primarily focusing on full representation of the sector. This will enable the board to focus on key priorities, holding the executive to account for their delivery whilst ensuring that the organisation is well-run and led with effective systems and processes in place. This new arrangement would help to address the perception of the OfS's independence, as outlined in *Chapter 2, Section 2: Independence of the OfS*.

Filling current and future board vacancies presents an opportunity to refresh and further strengthen the collective skillset of the board, and address concerns articulated by the sector. The OfS and DfE should work in collaboration to ensure induction procedures and learning and development opportunities for members are up-to-date, robust, accessible, and thorough.

The review recognises the challenge of appointing those with sector knowledge whilst also avoiding conflicts of interest on the board. However, this should be carefully considered when making new appointments, including opportunities to appoint those who have recently retired from the sector, or now work elsewhere. Reducing conflicts of interests where possible, particularly on complex issues, will enhance the board's collective responsibility, ensuring decisions made have the support and sign off by all or most of its full membership. Focusing on expertise of good governance over stakeholder representation will help reduce members with live conflicts.

Given that the OfS's board is responsible for establishing and taking forward the OfS's strategic aims and objectives, it is imperative that it provides strong and robust leadership of the OfS. The board must be agile and dynamic in leading this change in the OfS through proactive and effective horizon scanning focused on the systemic and strategic issues facing the future of higher education. Board appointments, induction and training play an important role by ensuring members have the necessary skillset to not only address the current state of the sector, but to also steer the OfS into its future. The review also notes that the OfS's sponsor from DfE attends board meetings as an observer. While noting the criticality of the board maintaining closed meeting times, it also encourages the board to make better use of sponsor attendance to stay abreast of government policy and developments to steward and assure the higher education system most effectively.

To build an effective leadership team, the review concludes that the responsibility for appointing board members should be revised. As outlined in *Chapter 2, Section 2:*

*Independence of the OfS*, the Secretary of State appoints not just the chair and non-executive board members, but also the chief executive and two other executive team board members. This is not a common arrangement in comparison to other arms' length bodies. This could be regarded as an impediment to the chief executive's ability to create their required team, a dilution of their authority, and a blurring of the lines of accountability. The review believes that the Secretary of State should appoint the chair and non-executive directors. The board then should appoint the chief executive, and the chief executive should in turn appoint their executive team. The review acknowledges legislation will need to be amended to enact this.

The review also recognises and approves that the OfS currently have an integrated board with executive and non-executive members, including a non-executive majority. However, there should be a review of which specific executive roles should be formal board members. This should be done to ensure they reflect the key challenges and risks that exist within the sector, such as financial sustainability. Complementary to ensuring members have the necessary skillset, this will also go towards having a board that will confidently shepherd the OfS in the future.

It is important to note that the board is ultimately responsible for setting the culture of the OfS. Therefore, the board must also take action to ensure the OfS's approach is not risk averse. It should lead behaviour to support the OfS in being a bold and confident regulator, anticipating, identifying, and responding rapidly to address emerging risk.

Lastly, the OfS should look to commission an independent board evaluation. The review notes this was last done in 2021 and best practice advises this should be undertaken at least once every three years.<sup>100</sup>

## **Recommendations:**

- That the OfS commissions an independent board evaluation.
- That DfE carefully considers upcoming appointments to the board, taking the opportunity of vacancies to ensure it has the required skills, experience, and expertise for the challenges the sector will face over the coming decade. This includes finance, risk, and regulatory experience.
- That DfE reassesses which members of the OfS's leadership team are appointed by the Secretary of State. In keeping with other arms' length bodies,

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<sup>100</sup> [Corporate governance code for central government departments 2017](#), (gov.uk)



the Secretary of State should appoint the chair and non-executive directors. The board should then appoint the chief executive, and the chief executive should in turn appoint their executive team. This will provide clear lines of accountability and avoid a dilution of the chief executive's authority. The review recognises new legislation will need to be amended to enact this.

- That there should be a review of which specific executive roles formally constitute towards the make-up of the board's membership.

## Chapter 4: Efficiency

### Section 1: Efficiency of the OfS

As noted in *Chapter 1, Section 2: Clarity of focus and delivery*, the responsibilities of the OfS have grown since 2018. Starting with establishing a regulatory framework and registration activities as a primary focus, the OfS then faced the challenges of the COVID-19 pandemic where it needed to suspend some regulatory requirements and shift its focus to monitoring and intervention. Since the pandemic, its responsibilities have grown further still with the development of a new, more active, regulatory strategy; revised B3 metrics; developing the Teaching Excellence Framework; freedom of speech activities; preparation for the Lifelong Learning Entitlement; growing financial pressures on providers; and taking over the functions of the designated quality body from the QAA.

#### What the review heard

The OfS provided information to the review on its business and efficiency planning. It reported that to account for its increasing remit, the OfS has taken several efficiency measures. Its plans report that 44% of staff work on two or more activities and 22% work on three or more activities. Also, to combat resourcing pressures and increase agility, the OfS recently reviewed and altered its internal structure to comprise four directorates: Data, Foresight and Analysis; Regulation; Resources and Finance; and Strategy, Delivery and Communications. Staff within the regulation directorate (including enabling regulation, quality, equality, and freedom of speech teams) are allocated by project or policy to allow flexible prioritisation. The OfS are also centralising oversight and resource management functions to improve efficiency.

The OfS also reported plans to increase the capability of the organisation through its People Strategy for 2024 to 2028<sup>101</sup> which includes investment into the skills of its staff. In 2021, it launched, in collaboration with the London School of Economics, a series of modules on regulatory theory. Also in development are a range of OfS-specific modules on regulatory practice including conducting consultations, HERA and the regulatory framework, and freedom of speech.

In addition to plans for future efficiencies, examples of efficiency savings already achieved include a £1.4m saving over five years from reducing its physical estate in

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<sup>101</sup> From data and information provided by the OfS for the purposes of the review.

Bristol and a further £400,000 saving from moving its London offices. Additionally, the OfS's spend on contingent labour has reduced from 13% in 2019 to 3% in 2023. The OfS is also investigating potential savings and efficiencies in IT and operations, including system and infrastructure changes for better hybrid working, increasing automation, and upgrades to existing software.<sup>102</sup>

In addition to efficiency savings, the increasing asks on the OfS have necessitated an increase in income to resource new activities. Increased registration fees, the ability to charge for some investigations and assessments, and specific funding for activities has increased the OfS's operational income from £37.9m in 2018-19 to £40.7m for 2023-24, an increase of 7.4%. Of that £40.7m, 79% was spent on pay costs and the rest on non-pay costs. Non-pay costs included premises costs, legal and professional services, IT costs, and academic panel payments.<sup>103</sup>

The increasing asks made of the OfS have resulted in its full-time equivalent (FTE) staff count growing from 367 in 2018 to 490 in 2024 (an increase of 34%). Despite this increase, according to Cabinet Office and HMT analysis benchmarking of the efficiencies of arms' length bodies, the OfS is generally considered to be at benchmark for most functions and activities in comparison to other arms' length bodies in its comparison group. However, this analysis did suggest that the OfS was above benchmark on the cost of the communications function.<sup>104</sup>

During evidence gathering, interviewees from DfE reported that there are positive working relationships with the OfS (as discussed in *Chapter 2, Section 1: Accountability to Government*). However, one stakeholder also highlighted their perception that the organisation is understaffed, that 'staff turnover was an issue', and that 'they've constantly felt under-resourced'. The sentiment regarding resource was consistent with what the review heard from the OfS itself, which reported that resourcing was a considerable concern that efficiency measures alone would not resolve. From information provided by the OfS, staffing turnover had decreased over the last financial year from 14.5% in 2022-2023 to 11.9% in 2023-2024.

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<sup>102</sup> From data and information provided by the OfS for the purposes of the review.

<sup>103</sup> From data and information provided by the OfS for the purposes of the review.

<sup>104</sup> This benchmarking analysis should be considered with caution and should be viewed with the following risks in mind: incomplete data, complexity of the landscape for public bodies, difference in financial reporting methods, and that the methodology and design of benchmarking analysis can affect the accuracy of the results.

## Conclusions

The review identified no immediate concerns regarding the OfS's efficiency. This was reflected in the evidence gathering process with no significant concerns on efficiency raised by officials or the sector. The materials provided by the OfS indicate procedures are in place to ensure efficiencies are identified and worked towards.

Although the OfS can be judged as efficient against the measures set out for reviews of arms' length bodies, the review also notes the importance of taking a joined-up view on organisational efficiency in accordance with efficacy. *Chapter 1* of this review explores the effectiveness of the OfS and makes strategic recommendations for improvement. As the OfS seeks continual efficiencies, measures should be directed towards efforts which increase effectiveness to ensure these have positive outcomes. Efficiencies for efficiency's sake are not conducive to a successful business model. The future the sector is facing, as explored in *Chapter 1, Section 6: Financial sustainability*, is challenging and the OfS is a critical part of that ecosystem. Therefore, the OfS needs to focus on efficiency measures which support the further development of its regulatory capability and ensure it is fit for the future. For instance, the OfS needs to continue its invest to save options, explore improved use of technology, and consider options that best utilise developments such as artificial intelligence.

The review acknowledges that in the context of increasing asks, and the recommendations included within this report, there must be considerations of the resource requirements needed to enact these changes. There are limits to what efficiencies can achieve and the OfS's resources are already stretched. The OfS should continue to review its strategy plans to ensure its workforce is aligned with its priorities. The OfS should also focus primarily on its core business, considering its resource capabilities before taking on additional asks of government. Further, the OfS should look to have a continuous improvement cycle whereby they judge their effectiveness alongside their efficiency during business planning processes.

## Recommendations:

- That the OfS continues to pursue efficiency savings and enhanced productivity as it considers the efficacy, accountability, and governance recommendations of this review.
- The OfS should align its business planning with a continuous improvement cycle that considers efficiencies in line with effectiveness and agree a resourcing plan with DfE.

## Section 2: Fees

As indicated in *Chapter 4, Section 1: Efficiency of the OfS*, the OfS's ability to make efficiencies is intricately linked to its income. The fee structure sustains the OfS and must therefore be sufficient to allow the OfS to fulfil its functions. The review recognises that the fee charges are a concern for the sector and this section explores the opinions collected during evidence gathering.

The OfS charges registered providers fees. The Secretary of State is empowered to make regulations governing the initial registration fee and annual fee that the OfS can charge providers.<sup>105</sup> The precise fee amounts are determined collaboratively by DfE and the OfS. Fees are calculated by the number of FTE students at each provider amongst other relevant factors. Below is a table containing the full range of fees charged by the OfS for 1 August 2024 to 31 July 2025:<sup>106</sup>

**Figure 5: Table of fee range charged to OfS registered providers, 2024-25**

Band	Full Time Equivalent number range	Band Fee
A	Not more than 25	£14,220
B	More than 25 and no more than 50	£17,597
C	More than 50 and no more than 75	£22,041
D	More than 75 and no more than 100	£27,611
E	More than 100 and no more than 300	£34,543
F	More than 300 and no more than 500	£43,312
G	More than 500 and no more than 1,000	£54,332
H	More than 1,000 and no more than 1,500	£68,197
I	More than 1,500 and no more than 2,500	£85,616
J	More than 2,500 and no more than 5,000	£107,598

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<sup>105</sup> [The Higher Education \(Registration Fees\) \(England\) Regulations 2019](#), (legislation.gov.uk)

<sup>106</sup> [Payment of annual OfS registration fees: Technical guidance for registered providers](#), (officeforstudents.org.uk)

K	More than 5,000 and no more than 10,000	£135,327
L	More than 10,000 and no more than 20,000	£170,344
M	More than 20,000	£214,485

Source: OfS review team

The secondary legislation stipulates discounted rates for those it deems ‘micro-providers’ or ‘new providers’. Micro-providers are entitled to a 100% discount and new providers are entitled to a tapering discount over the first full three years of registration.<sup>107</sup>

When the OfS was established in 2018, it was almost entirely funded by DfE, who provided £36.9m of its total income of £37.9m. Its income streams are now divided between registration fees, DfE funding, and other income. In the financial year 2023-24, 73% of its income was from registration fees, 21% was from DfE, and 6% from other income.<sup>108</sup>

## What the review heard

The review heard that increases to fees had caused ‘tension’. One interviewee observed that ‘[fee] increases last year, to reflect free speech functions, led to sector outrage’, due to some sector stakeholders being unhappy with the increase in the cost of regulation, at a time when tuition fee limits were frozen.

Other stakeholders believed the OfS’s fee structure needed to be reviewed. One noted the OfS would soon be registering smaller and further education providers offering modular or small Lifelong Learning Entitlement (LLE) courses, and that these types of providers might find the fees to be ‘unduly burdensome’. Small and vocational teaching, they commented, requires the OfS to go through ‘an existential change’. Another stakeholder noted that although fees may be the ‘only sustainable way’ of funding the OfS, the way the fees are calculated causes friction with the sector.

The review heard from some smaller providers, who felt that the fees were unfair. The fee band range shown in the table above indicates that smaller providers pay more per student per annum than larger providers. If a provider has 1,000 students, they

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<sup>107</sup> [‘Payment of annual OfS registration fees: Technical guidance for registered providers’](#), (officeforstudents.org.uk)

<sup>108</sup> From data and information provided by the OfS for the purposes of the review.

pay £54.33 per student per annum. If they have 10,000 students, the figure is £13.53. If they have 30,000 students, it is £7.14.

One representative from a smaller provider argued there was also a wellbeing cost for their staff as they have less resource to comply with OfS requests, so having a higher cost of regulation compared to larger providers with more staff felt particularly incommensurate.

## **Conclusions**

The review accepts that the principle of charging registered providers fees is an appropriate method of funding the OfS and that this model is replicated in the regulation of other sectors. Financial sustainability is essential for any regulatory body and by imposing fees on members, the OfS has a reliable stream of funding to conduct critical functions. However, the review acknowledges the current fee structure results in a disparity of burden for smaller providers compared to larger providers. Noting the LLE is due to be introduced in 2026, the review encourages a thoughtful evaluation of how the fee structure impacts providers of different sizes. The fee structure should take into consideration fairness, proportionality, and future-proofing.

## **Recommendations:**

- That DfE conducts a review into the OfS's fee structure within the context of the OfS's current and planned work on efficiency and productivity.

## Annexes

### Annex A: Terms of Reference

#### Scope and purpose of the review

As described in the Secretary of State's Letter of Commencement, the government is committed to delivering brilliant outcomes for the public. To achieve that ambition, public bodies must become more accountable, efficient, effective, and aligned to the government's priorities. No public body exists in isolation and the Review must also consider the efficiency and effectiveness of DfE's sponsorship team.

The Lead Reviewer will consider the government's Requirements for Reviews of Public Bodies. The Review will especially consider the quadrants and themes below.

#### Efficacy

That the OfS:

- Meets the conditions to be an arm's length body (ALB), with a clear purpose, and in the correct delivery model.
- Performs effectively and delivers services that meet the needs of citizens.

The Review will consider:

- Whether the OfS continues to meet one of the government's 'Three Tests' of ALBs.

If the OfS has:

- sufficient clarity of purpose,
- a clearly and transparently defined role, functions, and objectives,
- an approach for weighting and resourcing these functions to facilitate effective delivery,
- planned for effectively discharging its role, functions, and duties, and managing changing priorities, and that these are sufficiently future proofed (e.g., following the launch of the Lifelong Learning Entitlement (LLE)).
- The extent to which the OfS's regulatory approach:
  - delivers against its regulatory objectives,
  - has regard to its statutory duties,
  - is aligned with the approach as envisaged by the passing of HERA,
  - is underpinned and enabled by sufficient and appropriate legislative powers.
- The extent to which the regulatory baseline, and the indicators used to monitor conditions of registration, allow the OfS to react promptly and with sufficient



agility to emerging regulatory risk, both at present and following the introduction of the LLE.

- The extent to which the OfS effectively allocates grants from the Secretary of State to eligible higher education providers, and other organisations/programmes.
- The extent to which the OfS has the resources, people, skills, and competences to deliver its functions, duties, and objectives.
- Higher education providers' and sector representative bodies' experience of the OfS, and the relationship between the OfS and the sector.
- Students' and student representative bodies' experience of the OfS, and the relationship between the OfS and students.
- The extent to which the regulatory burden placed on higher education providers is appropriate, proportionate, and commensurate with the OfS effectively discharging its statutory functions.

### **Governance**

That the OfS board and its supporting committees meet the expectations of governance for ALBs.

The Review will consider:

- The extent to which the current OfS's governance and assurance mechanisms:
  - are appropriate for the type and scale of the organisation,
  - enable the board to effectively hold the executive to account,
  - are evidenced in up-to-date documentation.
- The processes the OfS has in place to review the effectiveness of its board and address governance issues.
- The processes the OfS has in place to develop its board members and appraise their performance.
- The OfS's strategy for engaging with other regulators and relevant bodies, including counterparts in the devolved governments.

### **Accountability**

That:

- Lines of accountability and communication between DfE and the OfS are clear.
- DfE sponsor function works effectively for both DfE and for the OfS, and is consistent with the purpose, role, and function of the OfS.

The Review will consider:

- The governance relationship between DfE and the OfS.
- The appropriateness of government oversight of the OfS for the balance of control and day-to-day operational independence, and the effectiveness of this relationship.

## Annexes

- DfE sponsor function and how it supports the relationship between the OfS, Ministers, and the Principal Accounting Officer, as well as facilitating the OfS's delivery of government objectives and policy priorities, such as the higher education reform measures, including good student outcomes.

### Efficiency

That the OfS meets expectations for:

- Financial management processes in place and in line with current guidance.
- Identification of cashable efficiency gains that can be made.

The Review will consider:

- Opportunities for the OfS to make efficiency savings in its administrative costs.
- The extent to which the fees the OfS charges to providers are set at an appropriate and sustainable level.

## **Annex B: Recommendations**

### **Efficacy**

#### **Clarity of purpose and clarity of focus and delivery**

1. That the OfS reduces its number of strategic objectives, and focuses on the priorities of monitoring financial sustainability, ensuring quality, protecting public money, and regulating in the interests of students.
2. That government and the OfS further consider the legislative powers and tools required to enable the OfS to effectively regulate against these priorities.

#### **Regulating in the student interest**

3. That to support the OfS to enact a strong, student championing role, the OfS be given consumer enforcement powers.
4. That the OfS and sector explore the development of a model students' contract for higher education.
5. That the OfS seeks opportunities to involve students directly in its formal governance and regulatory activity, by constituting the student panel as a formal committee to the board and including students in quality assessments and investigations.
6. That the OfS considers an enhanced focus on the assurance of the management and governance of providers and how they carry out the range of priority areas for their students and providers, by revising and strengthening the 'good governance' ongoing conditions of registration (E conditions).

#### **Risk-based regulation**

7. That the OfS board reviews its risk appetite framework and approach with a view to becoming more proactive in anticipating, identifying, and responding rapidly to address emerging risk.
8. That DfE and the OfS engage the sector in an ongoing, constructive dialogue with a view to reducing unnecessary regulatory burden, including data burden, and to seek to embed the Regulators' Code principle of 'collect once, use many times.'
9. That the OfS works more collaboratively with other regulators and arm's length bodies within the wider higher education system to understand their collective requirements and identify opportunities to reduce areas of regulatory overlap and duplication.
10. That the OfS considers the benefits of an independent academic evaluation of its practice and approach, alongside stakeholder feedback, in seeking to improve itself. This should include an evaluation of the effectiveness of its regulatory intervention.

11. That the OfS consults the sector when implementing changes to regulatory methods and then pilots such approaches before formal roll out.

### Quality

12. That the OfS's quality assessment methodologies and activity be brought together to form a more integrated assessment of quality.
13. That the OfS contributes to the overall improvement of the higher education system, providing a continuous improvement feedback loop and description of high-quality higher education. This will help ensure improvement of both the sector as a whole, and individual providers.
14. That the OfS be prescribed as an official whistleblowing body to ensure whistleblowers can be afforded full protections when providing information. This intelligence should inform the qualitative assessment of risk to quality.
15. That the OfS describes high quality education and the standards required to demonstrate high quality, without the need for a separate designated body to perform this function. The designated quality body functions as set out in HERA should therefore be removed to clarify that the OfS will perform this role.

### Financial sustainability

16. That government undertakes policy work to revisit and clarify its position on market exit, and whether the non-interventionist positioning is still the most appropriate for meeting the challenges of today.
17. That the OfS and government continue to build an infrastructure to offer advice, guidance and support for providers experiencing financial sustainability challenges, considering options such as early warning identification, management of emerging risk and prevention of disorderly market exit.
18. That the OfS continues to work with the sector to build and share an accurate and current picture of financial risk in the system, developed through open and honest dialogue and the sharing of intelligence with the sector, government, UKRI and relevant partners. This should support sector planners to undertake realistic and prudent forecasting, scenario planning and decision making.
19. That the OfS revises the requirements for student protection plans to ensure these are current, detailed, and accurately consider risks to and mitigations for these risks to students.

### Relationship with the sector

20. That the OfS develops a comprehensive stakeholder strategy, including an annual stakeholder survey, to continue building on its relationship with the sector.
21. That the sector reciprocates with the OfS, engaging productively and willingly with regulation.

## Accountability

### Overall accountability to government

22. That the sponsorship team act as the central conduit between the OfS and government, managing the initial policy asks of the OfS. Outside of agreed business planning, all new and ad hoc requests for work should be managed by the sponsorship team, until such time as that work has been agreed as part of, or as an adjunct to the business plan.
23. That stronger information sharing protocols are put into place between the OfS and government to enable joined-up working and proactive feedback around key areas of shared priority and risk.
24. That there is regular contact between DSIT and DfE to enable a joined-up approach to sponsorship and to allow for more open dialogue regarding financial sustainability, as part of a wider cross-government approach to sharing knowledge and learning about regulation.

### Independence of the OfS

25. That the OfS develops a more transparent style of communications to demonstrate to the sector its independence from government.

## Governance

26. That the OfS commissions an independent board evaluation.
27. That DfE carefully considers upcoming appointments to the board, taking the opportunity of vacancies to ensure it has the required skills, experience, and expertise for the challenges the sector will face over the coming decade. This includes finance, risk, and regulatory experience.
28. That DfE reassesses which members of the OfS's leadership team are appointed by the Secretary of State. In keeping with other arms' length bodies, the Secretary of State should appoint the chair and non-executive directors. The board should then appoint the chief executive and the chief executive should in turn appoint their executive team. This will provide clear lines of accountability and avoid a dilution of the chief executive's authority. The review recognises new legislation would be required to enact this.
29. That there should be a review of which specific executive roles formally constitute towards the make-up of the board's membership.

## **Efficiency**

### **Efficiency of the OfS**

30. That the OfS continues to pursue efficiency savings and enhanced productivity as it considers the efficacy, accountability, and governance recommendations of this review.
31. The OfS should align its business planning with a continuous improvement cycle that considers efficiencies in line with effectiveness and agree a resourcing plan with DfE.

### **Fees**

32. That DfE conducts a review into the OfS's fee structure within the context of the OfS's current and planned work on efficiency and productivity.

## **Annex C: Challenge Panel members**

**The panel was composed of individuals selected for their expertise in education, the public sector, consumer rights and regulation.**

- Anne-Marie Canning – CEO of the Brilliant Club
- Dame Sally Dicketts – Chair of the Learning with Parents and the Education and Training Foundation
- Professor Lynn Dobbs – VC and Chief Executive of London Metropolitan University
- Christine Forde – CEO of Solihull Action through Advocacy and Council member at Which?
- Nick Hillman – Director of the Higher Education Policy Institute
- Professor Sir Chris Husbands – Former VC of Sheffield Hallam University
- John Latham – VC of Coventry University
- Cindy Rampersaud – Non-Executive Director at Sage Homes, Chair of the Audit and Risk Committee at the London Film School and Chair of Audit and Risk at the UK Health Security Agency
- David Wallace – Deputy Chief Executive of the Student Loans Company
- Professor Kieran Walshe – Professor of Health Policy and Management at Alliance Manchester Business School, Director of Health, and Care Research Wales

## Annex D: Office for Students B Conditions

### Condition B1 (ongoing condition)

The provider must ensure that the students registered on each **higher education course** receive a high quality academic experience.

For the purposes of this condition, a high quality academic experience includes but is not limited to ensuring all of the following:

- a. each **higher education course** is **up-to-date**;
- b. each **higher education course** provides **educational challenge**;
- c. each **higher education course** is **coherent**;
- d. each **higher education course** is **effectively delivered**; and
- e. each **higher education course**, as appropriate to the subject matter of the course, requires students to develop **relevant skills**.

### Condition B2 (ongoing condition)

The provider must take all reasonable steps to ensure:

- a. each **cohort of students** registered on each **higher education course** receives **resources** and **support** which are sufficient for the purpose of ensuring:
  - i. a high quality academic experience for those students; and
  - ii. those students succeed in and beyond higher education; and
- b. effective **engagement** with each **cohort of students** which is sufficient for the purpose of ensuring:
  - i. a high quality academic experience for those students; and
  - ii. those students succeed in and beyond higher education.

### Condition B3 (initial and ongoing condition)

The provider must deliver positive outcomes for students on its **higher education courses**.

For the purposes of this condition, delivering positive outcomes means that either:

- a. in the OfS's judgement, the **outcome data** for each of the **indicators** and **split indicators** are at or above the relevant **numerical thresholds**; or
- b. to the extent that the provider does not have **outcome data** for each of the **indicators** and **split indicators** that are at or above the relevant **numerical thresholds**, the OfS otherwise judges that:
  - i. the provider's **context** justifies the **outcome data**; and/or
  - ii. this is because the OfS does not hold any data showing the provider's numerical performance against the **indicator** or **split indicator**; and/or
  - iii. this is because the OfS does hold this data but the data refers to fewer than the **minimum number of students**.



### Condition B4 (ongoing condition)

The provider must ensure that:

- a. students are **assessed effectively**;
- b. each **assessment** is **valid** and **reliable**;
- c. **academic regulations** are designed to ensure that **relevant awards** are **credible**;
- d. subject to paragraph B4.3, in respect of each **higher education course**, **academic regulations** are designed to ensure the effective assessment of technical proficiency in the English language in a manner which appropriately reflects the level and content of the applicable **higher education course**; and
- e. **relevant awards** granted to students are **credible** at the point of being granted and when compared to those granted previously.

### Condition B5 (ongoing condition)

The provider must ensure that, in respect of any **relevant awards** granted to students who complete a **higher education course** provided by, or on behalf of, the provider (whether or not the provider is the awarding body):

- a. any standards set appropriately reflect any applicable **sector-recognised standards**; and
- b. awards are only granted to students whose knowledge and skills appropriately reflect any applicable **sector-recognised standards**.

### Condition B6 (ongoing condition)

The provider must participate in the [Teaching Excellence Framework](#) (TEF).

### Condition B7 (initial condition)

The provider must:

1. have credible plans that would enable the provider, if registered, to comply with conditions B1, B2 and B4 from the date of registration; and have the capacity and resources necessary to deliver, in practice, those plans.

### Condition B8 (initial condition)

The provider must demonstrate, in a credible manner, that any standards to be set and/or applied in respect of any relevant awards granted to students who complete a higher education course provided by, or on behalf of, the provider (if registered), whether or not the provider is the awarding body, are consistent with any applicable sector-recognised standards.

## **Annex E: Office for Students C3 and C4 Conditions**

### **Condition C3 (initial and ongoing condition)**

The provider must:

1. Have in force and publish a student protection plan which has been approved by the OfS as appropriate for its assessment of the regulatory risk presented by the provider and for the risk to continuation of study of all of its students.
2. Take all reasonable steps to implement the provisions of the plan if the events set out in the plan take place.  
Inform the OfS of events, except for the closure of an individual course, that require the implementation of the provisions of the plan.

### **Condition C4 (general ongoing condition only)**

1. The provider must comply with any Student Protection Direction in circumstances where the OfS reasonably considers that there is a material risk that the provider will, or will be required by the operation of law to, fully or substantially cease the provision of higher education in England ('Market Exit Risk').
2. A Student Protection Direction may be varied or revoked (wholly or in part) by express provision in a subsequent Student Protection Direction issued by the OfS in accordance with this condition of registration, and the OfS may otherwise revoke a Student Protection Direction by issuing a notice in writing to the provider.
3. A Student Protection Direction (or, as the case may be, part of a Student Protection Direction) will cease to have effect in accordance with the following provisions:
  - a. in circumstances where a Student Protection Direction is varied or revoked (wholly or in part) by a subsequent Student Protection Direction, on and from the time and date that the subsequent Student Protection Direction takes effect; or
  - b. in circumstances where a Student Protection Direction is revoked by a notice in writing, on and from the time and date specified in that notice in writing.
4. Where a Student Protection Direction ceases to have effect at any time (for any reason), that cessation does not in any way affect the ability of the OfS to investigate and/or take any form of regulatory or enforcement action in respect of any non-compliance with that Student Protection Direction (whether or not the non-compliance remains ongoing in nature) which took place during the period that the Student Protection Direction was in effect.
5. For the purposes of this condition:  
'Student Protection Direction' means, irrespective of whether or not an approved student protection plan exists, a direction requiring a provider to:
  - a. produce a special type of plan setting out Student Protection Measures for approval by the OfS and thereafter implementation by the provider (both in timescales specified in writing by the OfS) ('Market Exit Plan');
  - b. instead or in addition to a), put in place and/or implement any Student Protection Measures which are specified in writing by the OfS (in timescales specified in writing by the OfS); and

## Annexes

- c. do (or refrain from doing) such other consequential, ancillary or incidental actions, as the OfS considers is reasonably necessary, for ensuring that a Market Exit Plan or Student Protection Measures are put in place and/or implemented in an effective and expedient manner (including, but not limited to, compliance with general ongoing condition of registration C3, publishing information, deploying human resources, and consulting a registered insolvency practitioner on the feasibility of the Market Exit Plan (all in timescales specified in writing by the OfS)).

‘Student Protection Measures’ means measures (including supporting arrangements and procedures) which the OfS reasonably considers are proportionate in the context of Market Exit Risk and fall within the scope of the following descriptions:

- a. Teach out: ensuring students are able to complete their intended course of study and achieve a qualification that could reasonably have been expected, or complete their current academic year or term and receive an exit award or credit to recognise their academic achievement at the provider;
- b. Student transfer: ensuring students are able to transfer to another higher education provider to continue and complete their studies, including providing students with appropriate support to understand their options and make an informed choice, and to ensure that administrative arrangements are in place to facilitate such transfers; Exit awards and unit certification: providing students with a formal record of their achievement at a provider;
- c. Exit awards and unit certification: providing students with a formal record of their achievement at a provider;
- d. Information, advice and guidance for students: ensuring all students receive effective information, advice, guidance and support in relation to any Market Exit Risk;
- e. Complaints: ensuring that robust arrangements are in place for handling and responding to complaints from students;
- f. Refunds and compensation:
  - i. offering students refunds of tuition fees and other costs (for example accommodation costs and other living costs) incurred by students for whom continuation of study has been disrupted as a result of any Market Exit Risk;
  - ii. offering students compensation to cover any financial costs incurred by students as a result of any Market Exit Risk;
- g. Archiving arrangements: ensuring that arrangements are in place to enable students to access evidence of their academic achievements in the future, including arrangements with third parties to store records if necessary.

This condition does not apply to Further Education Bodies (as defined in section 4 of the Technical and Further Education Act 2017).

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