

Russell Group response to Office for Students regulatory framework consultation

1. Summary

- We welcome the principles on which the regulatory framework is based, namely risk-based, proportionate regulation in the interest of students. The UK has a world-leading HE system and the Office for Students (OfS) has a key role to play in its future success for the benefit of students, communities and all UK citizens. The OfS should:
 - recognise the way in which institutional autonomy underpins the ability of providers to deliver for students across the four fundamental objectives on access, quality and standards, consumer law and value for money
 - ensure its own processes and governance are transparent and accountable, providing greater clarity on the way it will make decisions and use advice from others to secure the confidence of students and providers
 - decide which initial and ongoing conditions to apply to each provider based on its risk assessment rather than applying all conditions automatically, in line with the commitment in the Act to take a risk-based and proportionate approach
 - continue with and strengthen genuine sector involvement in the design and implementation of regulation for the benefit of students in helping to improve their experiences and outcomes
 - introduce mechanisms for effective cooperation between the OfS, UKRI and other regulatory bodies (such as the CMA) to avoid duplicating regulatory effort and to ensure effective oversight of the health and sustainability of the sector.
- We support the intention to maintain high baseline requirements on quality. The current sector-ownership model has brought significant benefits and should be retained. Institutional autonomy on degree classification is important to ensure providers can continue to innovate, and to support a diverse sector. Participation in TEF should not be mandatory before the recommendations of the independent review are implemented and a formal mechanism to ensure co-design is built into its further development.
- Russell Group universities are committed to facilitating social mobility and widening participation. It is welcome that institutions themselves will continue to set access and participation targets, but greater clarity is needed about when the regulator would intervene. Data on access and participation should be interpreted in context to avoid misleading potential applicants and penalising providers unnecessarily.
- Appropriate safeguards must be put in place to protect students regardless of the type of provider. We are concerned student protection plans may be of limited use given they will not apply to registered basic providers where risks are likely to be higher. Clearer and robust thresholds are also needed for access to probationary degree awarding powers.
- We recognise the importance of transparency in how providers use their funds. However, requiring provision of a granular breakdown on fee income spending is not a simple exercise and could risk undermining the ability of institutions to apply their funds efficiently across their core activities from which students benefit.
- Deploying teaching grant funding strategically to support STEM subjects is critical in enabling institutions to continue provision in this area which supports the future prosperity of the UK. We would not wish to see it used as a regulatory tool in future.

2. Context

- 2.1 We welcome the opportunity to respond to the consultation on the regulatory framework for the Office for Students (OfS). The assurance that views are sought on any and all statements made in the consultation document and on the proposed approach as a whole is helpful. We recognise that the timeframe for implementation is tight and hope there will be further opportunities to influence the way in which the OfS works in future. We are happy to follow up on any of the analysis presented in this paper in more detail, and will be responding separately to the consultations on registration fees and simplifying market entry.
- 2.2 The creation of the OfS presents an opportunity to develop a new risk-based regulatory framework, which meets the needs of students in the broadest sense. The principles on which the regulatory framework is based are the right ones. We particularly welcome the regulator's focus on improving access and participation for students from all backgrounds, as well as protecting students' interests to make sure they receive a high-quality experience. In protecting the interests of students, emphasis should be placed on their role as partners in their own education and consideration given to how the regulatory framework can facilitate the maintenance of trusted and rich relationships between students and providers.
- 2.3 Higher Education is a national success story for the UK. Universities are one of this country's major assets, teaching over two million students per year, with an international reputation for quality and student satisfaction. Russell Group universities deliver significant economic, social and cultural value to the UK and their local communities across the full range of their activities. They:
- are injecting nearly £87 billion into the national economy every year through their teaching, research and export activities, and providing a total of 261,000 jobs – more than the entire population of cities like Aberdeen and Plymouth.
 - engaging with and opening themselves up to their local communities, and acting as vital sources of local leadership, supporting social cohesion, enhancing prosperity and facilitating social mobility.
- 2.4 Maintaining a sustainable and globally competitive higher education (HE) sector with excellent staff, world-class research, links to businesses and local communities, and international partnerships, is critical in ensuring students receive a high-quality education and a rewarding experience. This needs to be understood and factored into core OfS approaches, recognising the value of interconnections between teaching, learning, research and innovation as these do not happen in isolation. The UK has a world-leading and highly regarded HE system and the OfS has a key role to play in its future success for the benefit of students, communities and all UK citizens.

3. Overarching priorities

- 3.1 **Quality education, student choice, institutional diversity, competition, collaboration and international competitiveness are all built on the foundations of institutional autonomy.¹** We welcome recognition of this in the Higher Education and Research Act 2017.

¹ International research considering the performance of universities in the US and Europe reveals a direct and positive correlation between autonomy and competition with output. This means that universities produce more outputs when they have the freedom to operate autonomously and face strong competition for people and funding. *Higher aspirations: an agenda for reforming European universities* Bruegel Blueprint Series, vol. V; Aghion, P., Dewatripont, M., Hoxby, C., Mas-Colell, A., and Sapir, A. (2008)

Maintaining autonomy will be critical to enabling the OfS to deliver for students across its four fundamental objectives on access, quality, consumer law and value for money.

- 3.2 An overly interventionist approach which seeks to micro-manage budgets and activities would stifle the ability of institutions to respond to changing priorities and introduce new innovative approaches to teaching, learning and other activities, and would stymy their ability to take a holistic approach to investing in quality across their mission. To avoid this, a fifth objective on institutional autonomy should be created to underpin the delivery of positive outcomes for students across the four existing objectives.
- 3.3 **The consultation focuses on what the OfS can do, rather than how it will do it.** We would like to see greater clarity regarding the way in which the regulator will make decisions (including how it will work with the designated quality body (DQB) and with providers themselves) to ensure its processes are transparent and proportionate, maintaining institutional autonomy and working in the interests of students. Given the absence of fixed thresholds it remains unclear under what circumstances the regulator would intervene, even where a provider is judged to be relatively low risk, meaning the OfS will have significant discretion leading to a potentially unpredictable regulatory environment. In order to plan for the future, providers need a much clearer idea of the risk appetite of the regulator.
- 3.4 **Mechanisms should be introduced to ensure that the processes and governance of the regulator itself are transparent and accountable.** More detail is required concerning the way in which the OfS will use expert advice from the DQB and UKRI, how decisions will be made and the individuals responsible for this, and how consistency will be maintained. This would help to ensure that providers and students have confidence in the decisions of the regulator.
- 3.5 Whilst the consultation document states that the regulator will focus on assessing outcomes, the indicative behaviours on which compliance with the baseline conditions will be judged focus on processes, meaning the approach taken appears contradictory in places. Qualitative and quantitative information should be used to make sure decisions are taken in an informed way, based on an understanding of the context. Some examples of non-compliance contained within the consultation document are a cause for concern in suggesting that interventions could be made at course-level and based on sole indicators, such as employment outcomes, despite assurances that performance against indicators would never lead to regulatory action on its own.²
- 3.6 Regulatory processes should include an additional step after an issue has been identified but before sanctions become necessary where the OfS works with providers to give them sufficient time to take action and so avoid a formal regulatory intervention.
- 3.7 **There is a risk that an increased regulatory burden could lead to less resource being available for other activities from which students will benefit.** It is difficult to see how regulatory burden will be reduced for low risk providers, giving effect to the commitment in the Act for the OfS to take a risk-based approach to regulation. For example:
- A wide range of new requirements will be placed on all “Approved” providers whilst Registered basic providers will be subject to minimal oversight, undermining the intention to create a “level playing field”.
 - The expectation that reporting be “in as near real time as possible” is likely to place considerable demands on institutions for gains which are not specified.

² For example, paragraph 301 suggests the OfS will monitor employment outcomes at course-level and intervene solely on the basis of this metric requiring courses to be redesigned and introducing sanctions such as student numbers controls where progress is not made quickly enough.

- The use of random annual sampling on top of monitoring processes risks leading to unnecessary duplication.
 - The proposals on registration fees mean larger “Approved” providers (and their students through the fees they pay) will cross-subsidise smaller providers and those in the registered basic category, irrespective of the risk they pose to students.
- 3.8 We are particularly concerned that the initial registration process is likely to place a considerable burden on institutions who will be subject to both the old and new regimes during the transition period.
- 3.9 The starting point taken by the regulator appears to be that the full range of initial and ongoing conditions should apply to all providers. Instead, the regulator should make a judgement about which conditions to apply based on its risk assessment of each individual provider (as committed to in the Act – clause 7(1)). It should also provide specific examples of how the regulatory burden will be lightened for low risk providers – and indeed, we would be very happy to help the OfS by testing these examples with our members to establish whether and how they will work in practice.
- 3.10 Given the regulator is not intending to maintain a detailed understanding of institutional context in-house in the way that HEFCE did, **it is imperative that providers are enabled to play an active role in the development of regulation**. Continuing and strengthening active and genuine sector involvement in the design and implementation of regulation would enable the regulator to draw on academic and institutional expertise leading to intelligent regulation which will be of benefit to students in helping to improve their experiences and outcomes. Such an approach would also offer a valuable opportunity for the regulator to engage students in shaping the regulatory approach as providers offer a direct channel of communication to their students. A commitment should also be made for all new requirements to be individually consulted upon.
- 3.11 **Close working between the OfS and UKRI – as well as with other sector regulators – will be critical to ensuring oversight of the financial sustainability and overall health of the HE sector** as well as avoiding unnecessary duplication. Formal mechanisms should be introduced to ensure cooperation between the OfS and UKRI and between the OfS and other regulatory bodies with responsibility for HE to ensure a joined-up approach. Consideration also needs to be given to the way in which research students will be supported considering they appear to sit between the OfS and UKRI.
- 3.12 The consultation outlines a role for the regulator to undertake horizon scanning activity identifying future threats, challenges and opportunities. Providers should have a role in informing and directing this activity based on their experience, and a key focus should be on identifying ways in which the health of UK HE can be maintained.
- 3.13 **Assurance is needed that the regulator will operate in an efficient manner and provide value for money for students, providers and taxpayers**. An automatic annual efficiency factor should be introduced to reflect the cost reductions that could be achieved through merging HEFCE and OFFA and as a result of the discontinuation of some elements of HEFCE’s work. Maximum annual increases in registration fees should also reflect the broader funding environment for providers. Providers and students should have a formal opportunity to comment on the value for money which the regulator is delivering, and the OfS regulator should also use its annual report to consider how to reduce the cost and burden of regulation.

4. Access and participation (objective 1)

4.1 Russell Group universities are committed to facilitating social mobility and widening participation. Our universities are:

- investing significantly in widening access, nearly doubling funding over the last five years for outreach activities, scholarships and bursaries aimed at the most disadvantaged.³
- engaging in a wide range of activities designed to encourage successful applications from students from disadvantaged and under-represented backgrounds: from mentoring, summer schools and campus visits, to sponsoring schools and providing CPD for teachers
- making a positive impact on around 8,000 schools across the UK collectively every year, reaching many hundreds of thousands of students through all these activities

4.2 We welcome the focus on improving both access and participation for students from all backgrounds as our universities take a whole institution approach covering the student lifecycle in its entirety from working with schools to support attainment and aspiration raising, through to the transition to university, support to succeed during study, and progression to employment or further study. Our universities work hard to make sure a combination of academic, pastoral and financial support helps disadvantaged students to flourish once at university. We know this combination of support is effective: of all young entrants to Russell Group universities from low participation areas, just 4.6% do not continue their course after one year, compared to 9.5% of students from the same backgrounds at other English HEIs.

Access and participation plans

4.3 Assurance that the OfS will not set access and participation targets for institutions is welcome. Effective approaches to widening participation and student success must take account of institutional context including location and demography of the student cohort.⁴ Therefore, whilst we are committed to building the evidence base on what works on this issue, responsibility for decision-making on specific approaches to widening participation and student success should continue to reside with individual institutions. **Greater clarity is needed regarding the circumstances in which the regulator would intervene if “real progress on access and participation” is not made.**

4.4 The focus on outcomes in assessing institutions’ performance on access should be broadly defined to recognise the range of benefits which access schemes can have in improving life chances for those from backgrounds under-represented in higher education. Our universities are working together to track student outcomes, for example, where young people take part in an outreach activity at one provider and subsequently progress to another.⁵ However, difficulties remain in tracking individual students through various administrative data sets to generate evidence on outcomes. In addition, institutions face difficulties in proving the impact

³ In 2017/18 the 20 Russell Group universities in England alone will be investing £254 million in scholarships, fee waivers, bursaries and outreach activities aimed at the most disadvantaged – with additional investments being made across Scotland, Wales and Northern Ireland.

⁴ HEFCE-commissioned research on international approaches to widening participation finds that national policy will only be effective where there is “enough flexibility to respect the diversity of institutions”, and focusing too closely on the need to demonstrate impact within a relatively short timescale can be detrimental to “longer-term aspiration building and attainment raising”.

⁵ For example, a number of our universities are collaborating through the Higher Education Access Tracker (HEAT) to track engagement in activities and build evidence of future student achievement to prove the value of outreach.

of outreach interventions in some areas, for example, predicted grades may not always be accurate making it difficult to assess the impact of work on pupil attainment.

- 4.5 The intention of the OfS to provide advice to providers on good practice is helpful. The role OFFA has taken in highlighting and disseminating good practice and encouraging robust evaluation is something the OfS should continue, working with the Evidence and Impact Exchange which is currently under development. The role of the regulator should be to identify and facilitate the dissemination of effective practice, drawing on experience both within the UK and more widely, to encourage innovative approaches to widening participation and student success which will help to drive social mobility. It would also be helpful for the OfS to support efforts to enable easier access to data for monitoring, evaluation and research (for example, the National Pupil Database and in-cycle UCAS data) to help track student outcomes in a timely manner.
- 4.6 We would like to see greater flexibility in the new access and participation plans to recognise that target-setting is not always an appropriate approach to recognising the value of outreach initiatives, particularly long-term, early interventions and collaborative working between universities to deliver outreach work. For example, targets which demand a consistent increase in the intake of students disincentivise collaborative working as universities are forced to compete from a small pool of suitably qualified applicants from these groups. **The regulatory framework should aim to incentivise work which is valuable but where returns take longer to deliver, or are not easily attributable.** This could include developing formal recognition for institutional contributions to improvements in widening participation sector-wide.

Transparency condition

- 4.7 Whilst we recognise the importance of making available data relating to admissions and student success by gender, ethnicity and background, such data should be presented in context to ensure it is not open to misinterpretation by potential applicants and their advisers. A number of Russell Group universities already publish very detailed admissions data which is supported by a wealth of data and analysis from UCAS including the equalities dataset, which focuses on offer-making and acceptances by different student groups and controls for prior attainment and course choice.
- 4.8 **Considering the data in context is particularly important given the use it will be put to in student information tools**, and potentially to assess compliance with Condition B2 (as described in paragraph 81 of the guidance document). This also applies to the assessment of compliance with condition B3 which includes considering differential outcomes for students with different characteristics. It will be important to consider such evidence in the context of factors which may influence outcomes for particular groups.⁶

5. Quality and standards (objective 2)

- 5.1 **We support the intention to maintain high baseline requirements on quality.** Russell Group universities are committed to offering excellent teaching and learning support and have in place robust systems and processes to assure the quality of teaching and the quality of the wider student experience. They are constantly seeking ways to innovate and improve their offer and welcome ideas as to how best to achieve this.

⁶ For example, most analyses of degree classification awarded will focus on what has come to be termed a 'good degree' i.e. a 1st or 2:1 degree. Using just these two classifications will tend to under-represent the outcomes for many BME qualifiers, who have successfully completed a degree in Medicine or Dentistry, but will not be awarded a conventionally classified degree.

- 5.2 The current sector-ownership model of quality assurance has brought significant benefits, enhancing the quality of provision, addressing student priorities and interests through direct engagement with students, and supporting the global reputation of UK HE – with benefits for students, taxpayers and providers alike. The most effective way to engage students on matters of quality assurance and standards is through a co-regulatory model with providers. Providers offer a direct channel of communication to their students, many of whom are already engaged on matters concerning quality through a whole host of networks within their university. **This approach should be preserved within the new regulatory framework in line with the commitments made by Ministers during the passage of the Act.⁷**
- 5.3 We welcome the intention to take a risk-based and proportionate approach to the assessment of quality and standards. The use of existing information on quality and standards to assess providers during the transition period is welcome in reducing regulatory burden, particularly given the recent introduction of the Annual Provider Review process which will not continue under the new framework. Evidence of a good track-record on quality for existing providers should be utilised wherever possible.

The role of the Designated Quality Body (DQB)

- 5.4 Delegation of responsibility for the assessment of quality and standards to a designated body will be essential to avoid a situation where the OfS undertakes a combined role of regulator, funder and quality assurer, something which is critical in retaining a system of independent review and assessment. QAA is the most appropriate body for assuring quality and standards, and we support its designation as the body responsible for performing assessment functions for English HE. Once designated, mechanisms should be put in place to ensure QAA remains completely independent of the OfS, and that it provides value for money for providers.
- 5.5 **We would welcome greater clarity about the precise role of the DQB in informing the decision-making of the regulator, particularly following initial registration.** Ensuring the expert independent assessments of the DQB feed directly into the initial and ongoing assessment of quality and standards will be critical in supporting effective and evidence-based policy-making. Details should also be published regarding the way in which the new Quality Committee will work with the OfS and the DQB to provide advice on the exercise of the quality and standards functions.

The review of the Quality Code

- 5.6 Whilst we recognise the need to ensure that the Quality Code is fit for purpose in the context of the new regulatory landscape in England, it would be concerning if the review of the Code were being driven primarily by regulatory reforms in England without reference to the rest of the UK. **We would urge the OfS to commit to a consistent UK-wide approach to quality and standards, and to retain the Code as a key part of the quality review system in England.** The Quality Code is maintained on behalf of, and applies to, all UK institutions and therefore must encompass the needs of a diverse sector and the different contexts of the nations within the UK. We have responded separately to the consultation on the Code.

Degree classification

- 5.7 **We welcome the commitment in the Act that registration conditions can only relate to “sector recognised standards” with the intention to preserve institutional autonomy**

⁷ “The co-regulatory approach in relation to quality and standards which has proved so successful in higher education over past decades is being enshrined in the Bill, most notably in the role of the designated quality body.” [Letter from Viscount Younger](#) (21 December 2016)

on degree classification. This is important to ensure that institutions can continue to innovate, and to support a diverse sector which meets the diverse needs of students. Whilst we recognise the intention to ensure degree classification standards are robust, defining and agreeing sector recognised standards for all classifications of degrees could in fact have a detrimental impact on quality with the outcome that a low bar would be set. This could accentuate rather than remedy the perceived issue of grade inflation. Institutions must retain the autonomy to decide on degree classification standards using established mechanisms of engagement with employer and professional bodies, external examiners and benchmarking.

- 5.8 In publishing and assessing data on trends in degree classification over time, the regulator should be careful to distinguish between “grade inflation” and other factors that genuinely affect degree attainment including prior attainment, subject mix, student characteristics, improvements in teaching practice and student engagement, and so on. The extensive range of factors which influence degree outcomes means this will be a complex picture. It is of concern therefore that within the TEF methodology the burden of proof to demonstrate that grade inflation has not taken place will reside with the provider, with assessors being advised to accept arguments only where there is clear and robust evidence to support them.
- 5.9 We recognise there are some strengths in grade point average (GPA) systems, and some universities are planning moves in this direction, but use of GPA should be for universities to decide for themselves – and would not in itself address instances of grade inflation.

6. Consumer rights (objective 3)

- 6.1 The protection and promotion of students' interests is of paramount importance to the work of the regulator. In protecting the interests of students, consideration should be given to the role of students as partners in their own education, working together with their institution to achieve successful outcomes and contribute to the broader public mission of the institution.
- 6.2 It is crucial that students' rights are protected whilst on their courses and in the event of course or institutional failure, but the regulatory framework should not take a narrow transactional view of the relationship between students and providers as this risks diminishing the quality of provision and student experience. Rather, **the regulatory framework should facilitate the continuation of a close, trusting relationship between these partners.**

Student protection plans

- 6.3 **Protection plans should not be used as instruments to enable poor-quality or transient providers to enter the market.** There must be a high bar to entry otherwise large numbers of students are likely to suffer. It is a concern that registered basic providers, who are likely to pose the highest risk of failure, are not required to produce these plans, and we are concerned therefore that they are likely to be of limited use, and students at such providers will not be adequately protected.
- 6.4 Given that the requirement to have a student protection plan will be an initial registration condition, greater clarity is required for providers in agreeing plans without having access to the OfS risk assessment which will be undertaken as part of the registration process. Existing providers should therefore be enabled to make their own assessment of the risk of course and institutional exit.
- 6.5 **The OfS guidance on this issue should be principles-based and illustrative rather than prescriptive.** The template provided in the consultation document should be optional and tailored to individual providers. Requirements around student protection plans should also

reflect the existing good practice guidance on this issue.⁸ Greater clarity around the “underlying evidence” which will be required would also be useful (see paragraph 200 in the guidance document). For example, will it be expected that institutions enter into agreements with others to undertake teaching in the event of course or provider closure, and if so, what mechanisms might be used to arrange this?

- 6.6 Student protection plans are unlikely to be adequate to protect research students given the level of specialisation required to undertake a doctorate. This should inform decisions on the awarding of research degree awarding powers, particularly where a provider does not have a track-record of provision in the UK.

Student contracts

- 6.7 We recognise the need to provide applicants and students with certainty regarding important issues such as the cost of their course, the support available to them, and the type of provision they can expect. Following the 2015 CMA advice all universities are working to ensure that contracts with students are fair and transparent. If necessary, students can also complain through the independent adjudicator for higher education and, ultimately the courts.
- 6.8 Russell Group universities have taken this further and introduced Student Charters, developed in partnership with students’ unions, which set out in detail the roles, responsibilities and expectations for students of their university and vice versa. Such Charters make clear commitments to students across a wide range of areas including: transparency on costs; availability of support services and resources; and expectations on quality and standards, equality of opportunity, student engagement, and so on. They also set out the responsibilities of students to contribute to the ongoing development of a vibrant student community.⁹ Recognising the importance of student engagement and the joint responsibility between institutions and students in achieving successful outcomes is vital.
- 6.9 The consultation document states that the OfS will seek to ensure providers are complying with consumer law (in the form of the CMA guidance). The consultation document states that the OfS will not take an enforcement role, but will still assess compliance with consumer law through consideration of the “indicative behaviour” of providers. **There is therefore a risk that providers will be subject to “double-regulation” in this area, an outcome which would be inefficient and burdensome for providers.** It is unclear how the OfS will make decisions on compliance, and how duplication with the remit of the CMA will be avoided.
- 6.10 The document also suggests the regulator will consult on the use of sector-wide models for student contracts in future. Russell Group universities are research-intensive institutions, and as a result are at the forefront of new learning and discovery. Teaching and learning can evolve by the time students reach the final year compared to the prospectus they may have accessed five or more years earlier. **There is a risk that in setting out in detail what providers’ contracts with students should cover, flexibility to respond to students’ needs and to introduce new innovative forms of teaching will be limited.** This would not serve the student interest and would place a significant burden on institutions.

⁸ See: <http://www.hefce.ac.uk/reg/sp/>

⁹ Examples include the Newcastle University Student Charter and the University of Birmingham Student Charter: <http://www.ncl.ac.uk/students/progress/assets/documents/StudentCharter2016-17Final.pdf>
<https://www.birmingham.ac.uk/undergraduate/birmingham/student-charter.aspx>

- 6.11 Instead, it may be better for the regulator to draw on and highlight best practice in complying with the CMA advice and in introducing comprehensive Student Charters (as outlined above).

Public interest principles

- 6.12 Retaining institutional autonomy on governance is central to the ability of universities to determine their own strategic direction and remain competitive globally, and the public interest governance principles should support this. **The interpretation of “public interest” should recognise the contribution universities make to the UK’s economy, society, culture and international reputation, and the need to maintain this in the long-term.**
- 6.13 Universities which have charitable status are already required to provide strong reassurance that they are working for the public interest, regardless of the composition of their governing bodies. This is an area where the regulator should operate in a risk-based way, focusing efforts on any providers which are not also charities.
- 6.14 Russell Group universities take their responsibility to secure freedom of speech very seriously and comply with the existing legislation in this area. The extension of this duty to all registered providers is welcome. It is unclear what role the OfS may take, however, in assessing providers’ compliance with their own Codes of Practice on freedom of speech and what expertise it may draw upon to do this. Such a role is not underpinned by legislation and risks undermining institutional autonomy in this area.¹⁰

7. Value for money (objective 4)

- 7.1 Russell Group universities deliver great value to students. They support them to develop the personal and professional skills that are integral to graduate-level jobs, meaning they are better able to realise their ambitions and to contribute fully to our society and economy. The research-intensive learning environment at our universities means students are taught to think critically, analyse and solve complex problems, and bring ideas and teams together – all skills which enable graduates to adapt in a rapidly changing labour market.¹¹

Value-for-money statements

- 7.2 We recognise the importance of transparency in how providers use their funds. Indeed, a number of our universities make available on their websites and in their publicly available financial documents breakdowns of income and expenditure and information about efficiency.¹² **Requiring provision of a granular breakdown showing how fee income is applied is not a simple exercise however, and could risk undermining the ability of institutions to apply their funds in an efficient manner across their core activities from which students benefit.** This could diminish the overall student experience. The OfS should consult separately with providers and students regarding requirements on value-for-money statements to avoid unintended consequences.

¹⁰ Viscount Younger reaffirmed the need for institutional autonomy over how to interpret the duty on freedom of speech during the passage of the Act: “We need to allow institutions to make their own decisions, balancing the requirements of the duty against other responsibilities and enabling them to assess each individual case according to the situation.” (13 March 2017)

¹¹ For more information, see our briefing on the benefits of the research-intensive learning environment at our universities here: <http://www.russellgroup.ac.uk/media/5515/research-intensive-learning-briefing-may-2017-revised.pdf>

¹² For example: <https://www.kcl.ac.uk/aboutkings/financial-information/index.aspx>

- 7.3 The usefulness for students of a granular breakdown of how fees are applied is also questionable. Expenditure will fluctuate from year to year as teaching infrastructure and resources need to be replaced, for example, and comparison between institutions will be complex given that expenditure will also vary depending on the subject mix of the institution. In addition, such an approach will also highlight the highly variable spend on access (over £1k per annum per student at Russell Group universities vs. as low as £400 at some other institutions). This could receive significant push-back from students, as there is no direct link between the individual student's contribution and their own education.
- 7.4 More broadly, providing a granular breakdown of expenditure may lead students to question why their fees are being used for services which they themselves have not accessed (for example, sporting or support services). This could lead to pressure on these areas and implications for those most in need of support.
- 7.5 Paragraph 150 of document B states that providers will be expected to ensure that the use to which they put funds received from the Student Loans Company "is consistent with the purposes for which those funds were given" and suggests that the fee charged must "directly relate to the student's course of study". **We recognise the importance of ensuring that student support funding is used responsibly to prevent fraudulent activity, and would welcome assurance that this would not introduce a wider requirement to evidence that fees are applied to activities which relate only to a students' course.**
- 7.6 The definition of institutional autonomy in the Act refers to "the freedom within the law to conduct day to day management in an effective and competent way". This should include the freedom to make decisions around governance, and the management and allocation of resources autonomously for the benefit of students, taxpayers and the wider society.
- 7.7 The proposed regulatory framework does not appear to consider the broader economic, social and cultural value which universities deliver to the UK and their local communities across the full range of their activities. The regulatory environment should facilitate and support the continued delivery of high quality education, research and innovation in a diverse HE sector. The needs of students cannot reasonably be separated from the needs of institutions – without a sustainable HE sector with high quality staff, excellent research, links to businesses and local communities, international partnerships, students and staff, etc. the quality of the education students receive will be diminished.

Efficiency studies

- 7.8 The consultation document states that where the regulator has concerns it will carry out an efficiency study to scrutinise whether a provider is providing value for money to both its students and the taxpayer. It is unclear what the difference between a value for money statement and an efficiency study will be, and why both are needed. More information is required about how such a study would be triggered and carried out, and what purpose it would serve.
- 7.9 **Rather than duplicating processes around ensuring value for money at individual providers, it may be more helpful for efficiency studies to be used to assess the financial sustainability of UK HE.** This will be of paramount importance given the way in which responsibility for teaching and research will be split between the OfS and UKRI respectively making it more challenging to maintain an overview of the health of the sector.

Senior pay

- 7.10 Our universities are committed to ensuring that remuneration is fair, appropriate and justifiable and that there is a high degree of transparency with regard to remuneration

processes. We are working with the CUC and look forward to the publication of the new Fair Remuneration Code in the new year.

- 7.11 Universities already publish in their annual financial statements information on the number of staff members earning a basic salary of over £100,000 per annum. However, the detailed requirements on providers to publish in annual financial statements information on individual role descriptions, benefits packages, performance, decision processes and justifications (as set out in paragraph 165 of document B) are disproportionate and risk undermining the ability of institutions to compete in an international market for academic and professional services talent. Around three-quarters of those paid over £150,000 are on academic contracts (including clinical academics where the pay scales are set by the NHS). It would be counter-productive to UK higher education and research to make the reward arrangements of top-performing academics and managers known to competitors.
- 7.12 Rather than requiring data to be published at an individual level over £150k, the OfS could require providers to recognise the new CUC Code on a “comply or explain” basis as a condition of registration. We welcome the Minister’s recent announcement on expectations regarding transparency on pay and commit to the following:
- ensuring procedures for developing senior staff remuneration are fully transparent
 - ensuring Vice Chancellors are not members of the remuneration committee, and that committee members are independent
 - publishing a clear and accurate pay ratio i.e. top (vice chancellor or equivalent) to median of all staff
 - providing full disclosure of all senior staff benefits

8. Sector-level regulation

Teaching Excellence and Student Outcomes Framework (TEF)

- 8.1 We share the Government’s desire to strengthen the UK’s world-class higher education system and to provide more information to students and potential applicants to aid their decision-making. We look forward to engaging with the independent review of TEF expected to take place in 2018. This will provide an opportunity to assess the way in which the exercise is working and whether it is delivering on the objectives set out by the Government, to provide useful information to potential students to inform their decision-making, and to improve teaching quality across UK HE providers.
- 8.2 In further developing TEF it will be important to consider the core purpose of the exercise. It is unclear, for example, why participation in the TEF should be made mandatory in future given the focus of the regulator on ensuring that baseline requirements are met, rather than encouraging improvement above the baseline. **TEF should not be made mandatory before completion of the independent review and implementation of its recommendations.**
- 8.3 If the primary purpose of the exercise is to aid applicant decision-making, further work is needed to ensure TEF is delivering this. Recent evidence suggests students do not understand the current methodology meaning they may be misled about what TEF ratings mean¹³. We are concerned that the expansion of TEF into subject-level granularity may be of limited usefulness to students and applicants given the trade-off between the need for

¹³ Research commissioned by a consortium of students’ unions found no evidence that students understood that TEF ratings are based on benchmarking, not absolute performance. They assumed it was valid to compare one Gold institution with another. See: <http://wonkhe.com/wp-content/uploads/2017/11/tef-pr-research-report.pdf>

meaningful information as close to course-level as possible, and the flaws in the methodology which would undermine the validity of the results at a granular level.

- 8.4 **To ensure that TEF is developed in a robust manner, genuine co-design with HE providers is required in the way that the RAE/REF was developed through a number of cycles over an extended period.** Building buy-in from the academic community will be key to this. A formal mechanism to ensure co-design is built into the further development of the TEF would be helpful; for example, the creation of a sector standing committee with responsibility for the development of TEF.
- 8.5 In addition, opposition from student groups to the TEF has led to disengagement with the National Student Survey, which will have knock-on consequences for universities who interrogate the results to inform improvements in curriculum, teaching and learning quality, learning resources, and academic support. It will be important that the OfS addresses this in the future development of TEF and ensures that no institutions are negatively impacted by the boycott in the publication of their results.
- 8.6 The regulator should be careful in using TEF results to inform judgements for broader monitoring and risk assessment. We would suggest that the regulator avoids placing undue weight on TEF results as a means for assessing compliance with baseline requirements and that TEF should not be linked to any other policy areas within its remit.

Teaching grant

- 8.7 **We welcome the intention to continue deploying teaching grant funding strategically to support provision in STEM subjects** like medicine, engineering and the sciences which are expensive to teach, and to support access and success for disadvantaged students. It is right that teaching grant fund should continue to be used to support these priorities and we would not wish to see it used as a regulatory tool in future.
- 8.8 Continued support for STEM is crucial to the future prosperity of the UK as the provision of these skills leads to significant economic growth, improvements in quality of life and greater innovation. Our universities train the vast majority of the UK's doctors and dentists and a high number of scientists, mathematicians and engineers. They invest significant resource in ensuring students on STEM courses are prepared for the workplace helping to ensure the UK has the talent pool to meet the future needs of employers.

Removing barriers to entry

- 8.9 We welcome increased competition. However, **appropriate safeguards must be put in place to protect students regardless of the type of provider they are studying at.** This means maintaining a robust baseline of quality. Opening up the market too quickly, without adequate controls in place, may result in gaps in oversight. This could store up significant problems for the future meaning students may receive a sub-standard experience, may not receive qualifications which hold their value over time, and may even be at risk of not being able to finish their studies.
- 8.10 Greater clarity is required about the criteria which providers must meet before being granted New Degree Awarding Powers (NDAPs) and a high degree of scrutiny should be exercised through the monitoring process to enable early intervention by OfS before a provider fails. More detail regarding our views on simplifying access to the market can be found in our response to the separate consultation on this issue.
- 8.11 **With regard to the potential to authorise the regulator to act as a validator and award its own degrees, we are concerned that this would represent a conflict of interest.**

There is insufficient evidence that such an approach is required, particularly given the intention to enable new providers to attain New DAPs without a track-record of provision. We would therefore suggest that authorisation for the regulator to act as a validator should be withheld.

Student information

- 8.12 We welcome the recognition in the consultation document that there is not an information deficit, but rather that applicants are overwhelmed with information which is difficult to navigate and process. The regulator could usefully consider how to work with providers and others to enable prospective students to make best use of the information available to them, particularly where meaningful advice and guidance earlier on is lacking.
- 8.13 It would also be useful to consider the extent to which the register will be used as a student information tool as well as a reference point for providers themselves. If the intention is for the register to be useful for students and applicants, it will need to be signposted prominently and will need to “decode” any regulatory language used.
- 8.14 **It will be particularly important to ensure that students understand the meaning behind the different categories of registration** given that students studying at “Approved” providers will benefit from significant protection whereas those at registered basic providers will not be protected from poor quality provision or course/provider exit at all. Simply being registered with the OfS should not be seen as a “kitemark” of any kind; rather, the register and other representations to students should make clear the level of protection a student can expect based on the category of provider.

9. Relationship with other regulators and bodies

- 9.1 Excellent teaching and research are fundamentally linked within universities. The mechanisms which will underpin how the OfS and UKRI work together will therefore need to be considered carefully to prevent a split occurring between teaching and research, which would damage the UK’s ability to compete globally and diminish the offer for students. The reference in the consultation to the OfS working with UKRI to “ensure that the reciprocal risk around the sustainability of providers which contribute to the vibrancy of the research base is monitored and mitigated appropriately” is therefore welcome.
- 9.2 However, whilst the consultation makes clear that the OfS will work together with UKRI and others to share information and identify regulatory risks, **it is unclear how oversight of the financial sustainability and overall health of the HE sector will be maintained in the absence of a single overarching organisation or how duplication will be avoided between regulators.** We therefore recommend that:
 - Formal mechanisms should be agreed to ensure cooperation between the OfS and UKRI, and other regulatory bodies with responsibility for HE. Engagement with individual HEIs will also be needed to gain an informed whole institutional view of funding and sustainability and thus an informed picture of the whole sector.
 - To avoid regulatory duplication or clash, the OfS should produce a regulatory and data map on an annual basis detailing how its work fits with other agencies and outlining the costs and burden to institutions across the piece. Transparency is important regarding cooperation between the OfS and other agencies to underpin confidence in the sector.

- All new proposals could also be subject to an “environmental impact” analysis (i.e. burden vs. benefit) which would identify any clash or overlap with existing regulation or data recording, justify additional costs and ensure that requirements are proportionate.
 - In line with Government commitments to business regulation, the OfS should seek to follow the same ‘one in, two out’ rule when new regulations are considered.
- 9.3 In addition, it is also unclear why registration as an Approved fee cap provider is required for an institution to have “access to all types of research funding from the Science & Research budget – including Quality Related research funding from Research England”. This is inappropriate as it creates a stage gate within the student-focused regulatory body for access to public research funding delivered through other government agencies and departments. This appears to be a significant overreach for the OfS and is not underpinned by legislation. All registered providers should - if they meet requirements to do so set by UKRI - be able to access research funds.
- 9.4 **The OfS should also ensure the implications of any regulatory changes in England are fully considered in the context of arrangements in the devolved administrations.** Whilst some divergence may be inevitable (or even preferable), the regulator should recognise the extent to which the HE systems in the four nations remain interdependent, not least regarding the need to protect the reputation of UK HE overall.
- 9.5 The Act does include provisions around joint working with the Higher Education Funding Council for Wales, the Scottish Funding Council and the Department for the Economy in Northern Ireland to ensure that functions are delivered efficiently. This should be applied broadly to ensure there is a close working relationship between appropriate HE agencies across the four nations as now.

10. Data requirements

- 10.1 The data reporting burden on “Approved” providers is likely to increase significantly, although a commitment is made that “this will be in service of a long-term reduction in regulatory burden” which is welcome. **It will be important this reduction is delivered in practice.**
- 10.2 We support the designation of HESA as the designated data body (DDB) and welcome the intention that the DDB will seek to minimise burden upon providers. As outlined above, the expectation that reporting be “in as near real time as possible” is likely to place considerable demands on institutions, and risks understating the challenges associated with such an approach. There is likely to be a trade-off between immediacy and quality as data needs to be verified, and numbers will change through academic cycles. Many datasets still require a significant lead-time, and putting new systems in place to facilitate more immediate reporting will also take time. With this in mind, **the OfS should seek data that is fit for purpose which would rarely, if ever, require the highly demanding threshold of real time.**
- 10.3 In addition, we would welcome greater clarity concerning how the regulator will balance the use of data with qualitative and contextual information in order to take informed decisions. Focusing simply on performance against lead indicators without understanding the context surrounding a provider’s performance would be problematic. Given the significant lead-time required for many of the lead indicators, it is unclear how the regulator will be enabled to identify future risks relying on these alone.