

## Business, Innovation and Skills Committee Inquiry: Assessing quality in Higher Education

Written evidence submitted by the Office of the Independent Adjudicator for Higher Education (OIA).

### Summary

1. The Office of the Independent Adjudicator for Higher Education (OIA) has a perspective on the assessment of quality in higher education from its role in reviewing higher education student complaints and as part of the regulatory framework.
2. The HEFCE consultation on the future of quality assurance took place in the absence of proposals to revise the legislative framework. This may exacerbate distance between HEFCE's current mandates and its developing role.
3. We identify a number of issues that require careful consideration: independence, capacity, the proposed probationary period, and proposals on rapid intervention.
4. The creation of a Teaching Excellence Framework will not be straightforward and requires an iterative process of development.

### Introduction

5. The OIA reviews complaints from higher education students in England and Wales. It is a 'classic ombudsman' scheme that students (either as individuals or as groups) can approach after they have exhausted internal procedures at their higher education provider.
6. The OIA is the designated operator of the student complaints' scheme under the Higher Education Act 2004. The Consumer Rights Act 2015 extended membership of the OIA Scheme to include all providers offering HE courses designated for student support funding, and all providers with degree awarding powers. The changes came into effect in relation to complaints arising after 1 September 2015.



7. To date the OIA has reviewed approximately 15,000 complaints. This is a tiny proportion in relation to complaints resolved at university level or in relation to the number of enrolled students at higher education institutions. While the 2004 Act places matters relating to academic judgment outside the scope of the Scheme, the majority of complaints to the OIA have related to questions of process and academic *outcomes* and are specific to the circumstances of the student (for example, whether marking and moderation procedures were correctly followed; how extenuating circumstances were taken into account; how suspected plagiarism was investigated or, if detected, penalised).
8. The OIA is not a regulator and has no coercive power over universities or other providers. It cannot, for example, require a provider to change the degree outcome of a student. Where it concludes that a complaint is Justified or Partly Justified, the OIA makes recommendations. For example it might recommend that a case is looked at again where procedures are judged unfair or at variance with the provider's own regulations. It can also make recommendations that a provider should change its regulations or procedures. The OIA's authority as a sector-specific, independent ombudsman service means that providers almost always accept its recommendations. Where the provider fails to comply, the sanction is the publication of details of that failure. This sanction is important and rarely invoked.
9. The OIA is however, part of the regulatory framework for higher education in England and Wales. It is independent of Government, the funding councils, higher education providers and students.
10. Our interest in quality assurance is threefold:
  - By providing an independent scheme for the review of complaints we play a key role in ensuring that students can seek an external view if things go wrong.
  - Complaints can, in some cases, suggest an underlying issue at the higher education provider.
  - Our experience helps identify and disseminate what we consider to be good practice.

**What issues with quality assurance in Higher Education was the Higher Education Funding Council for England's (HEFCE) Quality Assurance review seeking to address?**

11. The terms of reference of the review were a matter for HEFCE and the other funding councils. Since publication of the 2011 White Paper, ***Students at the heart of the system***, successive enquiries and reports have pointed to the need to align the out-dated legal regulatory framework with the developing mandates of the individual regulators. This has not happened, and the consultation's proposals may further exacerbate the distance between HEFCE's developing role and its current mandate in legislation based on its role as a funding council. The consultation referred to 'co-regulation' and set out proposals for allocating to providers and to external examiners functions currently carried out by QAA. Co-regulation in its wider sense, and in the context of focusing scrutiny where the risk is greatest, relies on a full co-operative approach between organisations whose respective responsibilities are clearly defined in legislation, differentiated, and joined-up where there is overlap. This may indeed countenance a 'lead' regulator but it also requires revision of the legislative framework, trust between regulators and regulated and structured space for discussion and debate, as originally envisioned for the Regulatory Partnership Group.
12. In this context, it is instructive to note that the 'Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG)', characterised as authoritative in the HEFCE consultation document (para 37), recommends that 'Agencies should have an established legal basis and should be formally recognised as quality assurance agencies by competent public authorities' (Annex to the Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG), part 3, para 3.2, p.23). Currently, QAA has no established legal basis.

**Will the proposed changes to the quality assurance process in universities, as outlined by HEFCE in its consultation, improve quality in Higher Education?**

13. The OIA responded to the written consultation and took part in one of the discussion forums. Our view is that, notwithstanding the element of disproportionality in the way in which QAA currently carries out Quality Reviews in some cases, the alternatives set out by HEFCE - greater use of governing bodies, the external examiner system, and revised algorithms for degree outcomes - place considerable emphasis on self-regulation and require increased capacity which may not, in practice, be readily available.

14. We have identified below a number of issues that require careful consideration:

- **Independence.** This means identifying the most effective way to ensure that any review system includes an appropriate balance of independent scrutiny, co-regulation and self-regulation. It is not clear to the OIA how the independence of quality review from funding can be safeguarded in a system in which verification is the responsibility of the funding body. For example if performance is affected by cuts in funding it may be difficult for the funding body that made or administered those cuts to take an objective view. This remains a concern, notwithstanding the diminution of generic block grants and the move to greater funding through tuition fees.
- **Capacity.** We noted in our response to the HEFCE consultation that at least three of the vehicles for ‘meaningful external scrutiny’ – the external examining system, the calibration of degree standards, and governing bodies of institutions – require very significant development, re-structuring and investment, if they are to be able to contribute to quality assessment. It is, in any event, unclear whether or not governing bodies are the appropriate mechanism on which to place such responsibility, whether this is consistent with their existing duties and whether it may compromise clear lines of accountability currently existing within providers.
- **Probationary period.** The repercussions for students of a ‘probationary period’, which could result in new providers being allowed to ‘come and go’ rapidly, need very careful consideration. While the funding might be removed, there will still be a cohort of students in the system. It is not straightforward to ensure that the experience of such students remains satisfactory during any ‘teach out’ period and opportunities for credit transfer between providers remain limited.
- **Rapid intervention.** A ‘strengthened mechanism’ would need to be constructed with great care. The proposed jump from a review of a complaint suggesting a possible systemic issue with the provider, to a commissioned review of that provider, may be appropriate in cases that are obviously serious, but may not always be proportionate or effective. There is a danger also that it may miss or delay resolution of issues that can be quickly resolved without the need for a root and branch review of the provider’s quality assurance arrangements.

### **What should be the objectives of a Teaching Excellence Framework (“TEF”)?**

- a. How should a TEF benefit students? Academics? Universities?**
- b. What are the institutional behaviours a TEF should drive? How can a system be designed to avoid unintended consequences?**
- c. How should the effectiveness of the TEF be judged?**

15. A framework that is agreed, well-understood and that constitutes a legitimate benchmark can play a part in managing student expectations. It can also potentially alter perceptions that teaching is less valued than research.

16. However, constructing a framework will not be straightforward. There needs to be due consideration to enabling the different parties that need to be involved to work together collaboratively. The drivers of the TEF need to be clearly articulated. There are many risks here, for example:

- If standards are set too low then they will not measure genuine excellence.
- An overly narrow view of ‘excellence’ risks losing diversity of provision. By creating an excellence ‘bar’ we may lose sight of the inherent value of a ‘good’ education and the diversity currently on offer in the sector may be lost.
- There may, at least in the short term, be a reluctance to innovate for fear of offending the framework.
- It will be important to build consensus about the criteria for ‘excellence’ and how these will be assessed.
- The scale of the task in developing and building capacity for those involved should not be underestimated.

### **How should the proposed TEF and new quality assurance regime fit together?**

17. Should the TEF be introduced, the two should be linked as part of an overall, proportionate regulatory framework, underpinned by legislation. This is to ensure consistency and clarity for providers, students and regulatory partners.

### **What do you think will be the main challenges in implementing a TEF?**

18. We list below several challenges:

- Resourcing a new, unfamiliar system, which will require investment of time and money.
- Communicating the purpose and methodology of the TEF so that students understand what the measures mean.



- Managing the consequences of 'good' and 'bad' outcomes, so that students whose courses may be altered or withdrawn as a result of TEF scores are given adequate provision to continue their studies.
- Ensuring that focus on the TEF as a potential criterion on which providers can raise fees does not distract attention from other stated/agreed objectives.

**How should the proposed connection between fee level and teaching quality be managed?**

**a. What should be the relationship between the TEF and fee level?**

**b. What are the benefits or risks of this approach to setting fees?**

15. The OIA has no comments on this.

Office of the Independent Adjudicator for Higher Education  
30 October 2015