



## Department for Business, Innovation & Skills

### **Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice - Consultation**

You can reply to this consultation online at:

<https://bisgovuk.citizenspace.com/he/fulfilling-our-potential>

A copy of this response form is available at:

<https://www.gov.uk/government/consultations/higher-education-teaching-excellence-social-mobility-and-student-choice>

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 15/01/2016

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Please tick the box that best describes you as a respondent to this consultation.

	Alternative higher education provider (with designated courses)
	Alternative higher education provider (no designated courses)
	Awarding organisation
	Business/Employer
	Central government
	Charity or social enterprise
	Further Education College
	Higher Education Institution
	Individual (Please describe any particular relevant interest; parent, student, teaching staff etc.)
	Legal representative
	Local Government
	Professional Body
	Representative Body
	Research Council
	Trade union or staff association
*	Other (please describe). Independent students' ombudsman

## Public sector equality duty

### Question 1:

**a) What are your views on the potential equality impacts of the proposals and other plans in this consultation?**

**b) Are there any equality impacts that we have not considered?**

Yes

No

Not sure

**Please provide any further relevant evidence.**

### Teaching Excellence Framework (TEF) (Part A: Chapters 1-3)

**Question 2: How can information from the TEF be used to better inform student and employer decision making? Please quantify these benefits as far as you can.**

In principle any framework which provides information in an accessible format to enable students and employers to make sensible comparisons between higher education providers is likely to be a useful resource.

There will however be challenges to be overcome in managing student expectations and in balancing the overall reputation of a provider and the experiences of individual students. It is unlikely to be possible to draw a straight correlation between a favourable rating in the TEF and the experience of the individual student, especially since the rating will (at least initially) be at an institutional level. There will inevitably be a time lag between the TEF assessment and the start of students' studies.

**Question 3: Do you agree that the ambition for TEF should be that it is open to all HE providers, all disciplines, all modes of delivery and all levels?**

Yes

No

Not sure

**Please give reasons for your answers.**

In principle this ambition is consistent with the important objective of creating a level playing field for all providers.

The OIA has recent experience of gathering data and information on providers joining the Scheme following legislative change to the Higher Education Act and it has been challenging even to identify relevant providers and courses. However, we are aware of and are supporting ongoing work to ensure the information on HEFCE's register of HE providers is complete and up to date.

The contextual information supporting the TEF will be of crucial importance to ensure that smaller providers, and non-selective providers, are not disadvantaged.

The OIA sees complaints and academic appeals from a small proportion of students, with figures at discipline or course level within any one provider too small

to be statistically significant. In addition the OIA has only recently started to accept complaints from HE students at FE colleges, alternative providers, and SCITTS. Our ability to contribute statistical evidence to this debate is therefore limited.

**Question 4: Where relevant, should an approved Access Agreement be a pre-requisite for a TEF award? What other mechanism might be used for different types of providers?**

**Question 5: Do you agree with the proposals on:**

**a) what would constitute a 'successful' QA review**

Yes       No       Not sure

**b) the incentives that should be open to alternative providers for the first year of the TEF**

Yes       No       Not sure

**c) the proposal to move to differentiated levels of TEF from year two?**

Yes       No       Not sure

**Please give reasons for your answer.**

Given the tight timeframe, the use of QAA review in year one appears a pragmatic approach. This also has the advantage of retaining the QAA review process, which has served the sector well, as an agreed mechanism at least while the proposed alternatives are fully evaluated. 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 in the funding bodies' review of quality assessment - 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.

Part (b) of this question is based on the assumption that the ability to raise income will be the primary incentive for participation in the TEF. It may be that a provider's reputation proves to be an equal or even greater incentive, especially for those providers who do not currently charge the maximum fee amount. On the basis of debate about the Green Paper reported to date it is clear that many providers are expressing profound concerns about linking the TEF to the ability to raise fees.

**Question 6: Do you agree with the proposed approach to TEF assessments on**

**Timing?**

Yes       No       Not sure

**Assessment panels?**

Yes       No       Not sure

**and process?**

Yes       No       Not sure

**Please give reasons for your answer.**

Overall the proposed timing of the TEF raises challenges in:

- Resourcing a new and 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 (if this link remains) does not distract attention from other stated/agreed objectives.
- Making sure that the assessment is conducted sufficiently regularly to make it of value to students, without making the process unduly burdensome for providers.

We agree that assessments should be conducted independently of Government.

**Question 7: How can we minimise any administrative burdens on institutions? Please provide any evidence relating to the potential administrative costs and benefits to institutions of the proposals set out in this document.**

It will be helpful to give some attention to continuing and building on data sharing so that providers do not need to submit the same information to different bodies for different purposes.

**Question 8: Do you agree with the proposed approach to differentiation and award as TEF develops over time?**

Yes       No       Not sure

**Please give reasons for your answer.**

**Question 9: Do you agree with the proposed approach to incentives for the different types of provider?**

Yes       No       Not sure

**Please give reasons for your answer.**

**Question 10: Do you agree with the focus on teaching quality, learning environment, student outcomes and learning gain?**

Yes       No       Not sure

**Please give reasons for your answer.**

We welcome the focus on teaching quality and the learning environment. These address the student experience during students' time in higher education.

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

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.
- The presentation of the contextual information will need to be given appropriate weight so that the focus is not simply on a provider's performance against the standardised metrics.

**Question 11: Do you agree with the proposed approach to the evidence used to make TEF assessments - common metrics derived from the national databases supported by evidence from the provider?**

Yes       No       Not sure

**Please give reasons for your answer.**

We agree with the broad principle that data should be complemented by evidence and contextual information from the provider (but see 10, above). Metrics alone, with no qualitative input, will be inadequate proxies for quality.

We agree with the statement in Chapter 3, paragraphs 15 and 17 (reflecting the CMA guidance), that students should have clear information about the composition of their course. This should include accurate information about who in generic terms will deliver teaching (e.g. Professors or postgraduate students), about module choice and availability, about any specialist facilities and about any associated professional accreditation.

## **Social mobility and widening participation (Part A: Chapter 4)**

**Question 12:**

**a) Do you agree with the proposals to further improve access and success for students from disadvantaged backgrounds and black and minority ethnic (BME) backgrounds?**

Yes       No       Not sure

**Please give reasons for your answer.**

**b) Do you agree that the Office for Students should have the power to set targets where providers are failing to make progress?**

Yes       No       Not sure

**Please give reasons for your answer.**

**c) What other groups or measures should the Government consider?**

**Question 13:**

**a) What potential benefits for decision and policy making in relation to improving access might arise from additional data being available?**

**b) What additional administrative burdens might this place on organisations? If additional costs are expected to be associated with this, please quantify them.**

### **Opening up the sector to new providers (Part B: Chapter 1)**

**Question 14: Do you agree with the proposed single route into the higher education sector?**

Yes       No       Not sure

**Please give reasons for your answer, including information quantifying how the potential cost of entry would change as a result of these proposals.**



**Question 15:**

**a) Do you agree with the proposed risk-based approach to eligibility for degree awarding powers (DAPs) and university title?**

Yes       No       Not sure

**Please give reasons for your answer.**

The OIA supports the principle and practice of a risk-based approach. This has been an ambition for the sector and has been pursued through the work of the Regulatory Partnership Group.

The practical implications of the far reaching changes proposed will need to be worked through. If, as seems likely, these lead to rapid entry and more frequent departures from the higher education 'market', safeguards will need to be in place to protect students both from course/provider failure, and from aggressive marketing to attract students to apply as first time entrants or to transfer to new providers.

**b) What are your views on the options identified for validation of courses delivered by providers who do not hold DAPs?**

It is important that students know how to raise concerns about their course, and to whom. Therefore, delivering providers and their validating partners need to have clear arrangements setting out each partner's responsibilities. The OIA's expectation is that delivering partners retain responsibility for complaints about the service they provide, which may include complaints about teaching, whilst validating partners retain responsibility for the quality and standards of the qualification.

Any body tasked with validating a course delivered by a provider needs to ensure that it is in a position to comply with standards of good practice set out in the QAA Quality Code, and to shoulder the responsibility the Code, and the OIA's expectations, place on validating partners.

Most validating partners are themselves members of the OIA (because they have DAPS). Students can then complain to the OIA about either or both partners (in relation to each partner's responsibilities). It is less straightforward when the

validating partner is not a member of the OIA – the student may then have to negotiate more than one external complaints procedure. The establishment of new validating bodies, including possibly the Office for Students itself, would have implications for the OIA’s ability to review complaints where more than one body is involved.

The relationship between the Office for Students and the OIA, as the independent reviewer of student complaints, will need to be carefully defined. If, as a validating body, the Office for Students itself is granted DAPS, under current legislation it would become a member of the OIA.

**Question 16: Do you agree with the proposed immediate actions intended to speed up entry?**

Yes       No       Not sure

**Please give reasons for your answer.**

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.

**Provider exit and student protection (Part B: Chapter 2)**

**Question 17: Do you agree with the proposal to introduce a requirement for all providers to have contingency arrangements to support students in the event that their course cannot be completed?**

Yes       No       Not sure

**Please give reasons for your answer, including evidence on the costs and benefits associated with having a contingency plan in place? Please quantify these costs where possible.**

It will be important to ensure that students continue to have recourse to adequate complaints and appeals processes in the run up to and the period following their provider departing the market.

One important factor of any contingency arrangements should be ensuring that students continue to have access to the OIA in relation to issues arising during their

studies. Under the OIA's Rules, providers continue to be "member HE providers" for a period of 12 months after ceasing to be qualifying institutions under the legislation. That important safeguard is currently only of use if the provider is still in existence. The contingency arrangements should cover students who make a justified complaint to the OIA so that any remedy it recommends can be honoured.

The OIA will need access to up-to-date information about providers entering and exiting the sector in order to ensure that it is able to maintain an accurate database of members. This is essential information for students who wish to make a complaint about a provider.

Information about a provider's record of complying with the OIA's recommendations may, in some circumstances, inform the Office for Students' assessment of whether that provider should exit the sector, if for example there is a persistent and ongoing concern. Consideration should be given as to how this information can most effectively be shared.

## Simplifying the higher education architecture (Part C)

### Question 18:

**a) Do you agree with the proposed changes to the higher education architecture?**

Yes                       No                       Not sure

**Please give reasons for your answer.**

The OIA welcomes the confirmation of the position set out in the 2011 White Paper that it should remain a stand-alone body.

The description of the OIA as one of nine 'Government and sector owned bodies' is misleading. The OIA is the ombudsman service for students in higher education. Its all-important independence has been recognised by the courts. It receives no Government funding and the statement in Part C, chapter 1, paragraph 5, that the OIA is part of a £40 million cost to tax payers, is inaccurate.

The OIA is funded by member subscriptions based on student numbers. There is also a small case element paid where the number of complaints received by the OIA from students at the provider exceeds the threshold set for providers of the same size. The governance of the OIA requires the Board to protect the operational independence of the Independent Adjudicator, and for a majority of the Board, including the Chair, to be independent, recruited from outside the higher education sector. The minority Nominated Directors (6 out of 15) are nominated by Company Members, including the NUS.

Adjudications of the OIA are subject to Judicial Review.

The status of the OIA as an independent, stand-alone body is very widely accepted and a matter of public interest.

The proposed creation of the Office for Students is an important development. It takes forward the ambitions of the 2011 White Paper by putting student experiences at the heart of higher education regulation. A new entity with a clearly defined remit in legislation (setting out its powers, governance and accountability and how it interacts with other regulators) will help resolve uncertainty in the sector about who does what. Central oversight of providers coming into and leaving the higher education sector is helpful.

We would be concerned if the independence of the Director of Fair Access were diluted in any way.

We recognise the concerns expressed by others, that the creation of both the Office for Students and Research UK, proposed in Paul Nurse's review, presents challenges in oversight of the highly inter-related activities of teaching and research.

**b) To what extent should the Office for Students (OfS) have the power to contract out its functions to separate bodies?**

Fully       Partially       Not at all

**c) If you agree, which functions should the OfS be able to contract out?**

We would be concerned if this led to instability in the delivery of key functions including quality assessment. We see a continuing role for a quality assurance body such as the QAA remaining separate from the Office for Students so that there is no perception that quality assessment decisions might be influenced by funding restraints.

**d) What are your views on the proposed options for allocating Teaching Grant?**

**Option 1: BIS Ministers set strategic priorities and BIS officials determine formula.**

Agree       Disagree       Not sure

**Option 2: BIS Minister sets strategic priorities and allocation responsibilities divested to OfS**

Agree       Disagree       Not sure

**Please give reasons for your answer,**

**Question 19: Do you agree with the proposal for a single, transparent and light touch regulatory framework for every higher education provider?**

Yes       No       Not sure

**Please give reasons for your answer, including how the proposed framework would change the burden on providers. Please quantify the benefits and/or costs where possible.**

We support the principle of a level playing field.

The remit of the OIA has been widened through recent legislation. However, we believe all higher education students should have equal access to the OIA whether or not their provider is designated for student support funding at a particular time. It may therefore be appropriate that providers entering the gateway should be required to join the OIA Scheme. This would ensure that all students had equal access to the OIA whether or not they were in receipt of public funding.

We agree that regulation should be risk based and light touch. It remains unclear how an adequate framework can be achieved without legislation

**Question 20: What steps could be taken to increase the transparency of student unions and strengthen unions' accountability to their student members?**

Students' unions play a unique and invaluable role in the institutions in which they have a presence. The OIA sees at first hand the contribution they make in working with institutions to improve processes, including complaints handling and student support, and in supporting individual students. We would be concerned at unintended consequences of changes that reduced their ability to work constructively in resolving complaints and supporting the development of institutional processes.

We have some concerns about the idea that students' unions should be treated in the same way as trade unions. Students are not employees and SUs are not primarily involved in negotiating terms and conditions. They have clear accountability to HE providers under the 1994 Education Act and as registered charities have accountability to the Charity Commission. We see the NUS'

proposals to further increase transparency and accountability, for example, by developing the Quality Students' Unions framework, as a positive step.

**Question 21:**

**a) Do you agree with the proposed duties and powers of the Office for Students?**

Yes       No       Not sure

**Please give reasons for your answer.**

The precise remit of the Office for Students is for Ministers to decide in evidence-based fashion after wide-ranging consultation. As above we support the central concept of a lead, regulatory body that takes the student interest as a starting point, with a remit enshrined in legislation.

**b) Do you agree with the proposed subscription funding model?**

Yes       No       Not sure

**Please give reasons for your answer.**

A subscription model works effectively for the OIA. We would be happy to share our experience as proposals develop. The model depends on reliable data about student numbers, provided by HESA where available, by HEIFES for FE in England, and by self-reporting. Any change to the function of HESA may affect the sustainability of the model.

**Question 22:**

**a) Do you agree with the proposed powers for OfS and the Secretary of State to manage risk?**

Yes       No       Not sure

**Please give reasons for your answer.**

- b) **What safeguards for providers should be considered to limit the use of such powers?**

**Question 23: Do you agree with the proposed deregulatory measures?**

- Yes       No       Not sure

**Please give reasons for your answer, including how the proposals would change the burden on providers. Please quantify the benefits and/or costs where possible.**

### Reducing complexity and bureaucracy in research funding (Part D)

**Question 24: In light of the proposed changes to the institutional framework for higher education, and the forthcoming Nurse Review, what are your views on the future design of the institutional research landscape?**

**Question 25:**

- a) **What safeguards would you want to see in place in the event that dual funding was operated within a single organisation?**

- b) **Would you favour a degree of hypothecation to ensure that dual funding streams, along with their distinctive characteristics, could not be changed by that organisation?**

- Yes       No       Not sure

**Please give reasons for your answer**

**Question 26: What are the benefits of the REF to a) your institution and b) to the wider sector? How can we ensure they are preserved?**

**Question 27: How would you suggest the burden of REF exercises is reduced?**

**Question 28: How could the data infrastructure underpinning research information management be improved?**

**Do you have any other comments that might aid the consultation process as a whole?**

**Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.**

The OIA welcomes the proposed steps towards a level playing field for providers and students.

The OIA's interest in these issues is as a regulatory partner and as the operator of the student complaints scheme. The OIA is a 'classic' independent ombudsman service of last resort. We receive complaints only after a provider's processes have been exhausted and the complainant remains dissatisfied, and see around 2,000 cases a year. Complaints we review are therefore indicative of a much larger number, many of which are resolved at local level.

Complaints about teaching



Our current complaint categories include but do not single out complaints about teaching. The 2004 Act prevents the OIA from looking at matters of academic judgment. The teaching-related complaints we receive can be about a wide range of issues, for example, the promised facilities are not available, the behaviour of a teacher towards a student causes concern, no one is available to teach a course, or a teacher is persistently late or has poor attendance. As numbers are small it is important to be cautious about drawing wider conclusions about the quality of teaching.

By far the majority of the complaints we receive are about academic outcomes, whether the provider has complied with its own regulations, and whether these regulations are reasonable in all the circumstances. This includes how work has been assessed, how the provider has taken into account mitigating circumstances such as illness or family problems, and whether work has been fairly penalised for late submission or academic misconduct.

We receive about 2,000 complaints a year, from a student population of over two million. So the proportion is very small and that means we need to be careful when drawing conclusions from the OIA's data sets.

#### The quality of teaching

It is not easy to define quality teaching. From the OIA's perspective, this is in part about ensuring that an institution delivers what it has offered, and in part about meeting student expectations of what a well-taught and well-structured degree will equip them to do.

It is also about expectations about who will teach them. We receive complaints from students who – on the basis of course advertising - expect to be taught by established academics but in reality are taught by postgraduate students – who may be very good, but are not the promised 'leading Professor' in the field.

Teaching is broader than what happens in the lab, tutorial room or lecture theatre. For example, if a student is being supervised in writing a dissertation or conducting a research project, that includes a large element of teaching.

#### Effective complaints handling

Effective complaints handling is an integral part of a good student experience, and is potentially a proxy for teaching quality given that a proportion of complaints relate to teaching.

We see the Good Practice Framework as essential to providers' provision for their students, and therefore it would be a useful part of any benchmarking exercise.

The CMA guidance already requires providers to include a clear and accessible complaints policy that takes account of the OIA's Good Practice Framework.

Legislation enacted in 2015 (the Consumer Rights Act) has gone a long way towards giving all higher education students access to the OIA scheme. This includes students studying with SCITT providers. The position of such small and

specialist providers needs to be considered when proposing reforms to the HE regulatory framework and the introduction of the TEF.

Thank you for your views on this consultation.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

**BIS/15/623/RF**