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The Report of the Higher Education Commission, **Regulating Higher Education**, (9 October 2013) repays careful reading. The co-chairs, Lord Norton and Professor Roger King, have done a useful job in setting out a way forward that could further safeguard students and protect sector reputation at a time of heightened marketisation and risk. This is a public service.

In essence, the Report addresses weaknesses in the oversight of higher education after the Coalition Government failed to use legislation to implement much of its 2011 White Paper, [Students at the Heart of the System](#).

Norton and King do not fall for common place assumption that regulation is only a burden, and they are careful to set out what is its utility. Nor do they ignore, as many in the higher education sector have done, the dark night of self-regulatory failure and collapse of public trust all around us. No doubt higher education has characteristics which make it distinctive and different. But whatever the value of university autonomy and self-regulation in higher education (or anywhere) it must be balanced by informed, proportionate, independent external regulation. Public trust, a summation of perceptions of honesty, competence and accountability, requires nothing less.

Following the suggestion of Sir Alan Langlands, the first and inspired leader of the [Regulatory Partnership Group](#), set up in 2011 to advise government and national agencies on policy and practicalities arising from the sector's funding and regulatory arrangements, Norton and King have used the space created by the absence of legislative change to think creatively about what is needed. It is better to plan ahead than scrabble around in the midst of scandal and crisis as the print media is now doing in the wake of the Leveson Inquiry.

A lot of the report is incremental rather than contentious. Building on the early work of the Regulatory Partnership Group (the [Office of the Independent Adjudicator](#) is a member), the Commission Report states that there needs to be further progress towards joined-up, proportionate, risk-based, regulation. A lead regulator should endeavour to oversee the alignment of the corporate objectives of regulatory partners. There needs to be an equitable playing field, relying on legislative authority, for all, including alternative providers. This would involve both the [Quality Assurance Agency](#) and the OIA, and lead to certification as a provider of higher education. The term 'equitable' properly acknowledges that while the principles and aims of regulation are the same, the entities being regulated differ.

Additionally, and in common with the recommendations of the IPPR study covering much the same areas earlier this year, the sector student ombudsman, the OIA, should retain its independence, and continue to be part of the regulatory framework. I would go further and make OIA a statutory body. The small addendum of 'concerns' (unspecified) over the nominations process of OIA independent Board members is gossip, not history. It is drowned by the unambiguous endorsement of OIA independence by Lord Justice Longmore in the Court of Appeal in the case of Sandhar.

No one knows when they accept a place at university how it will turn out. For the small minority for whom things go wrong there need to be clear and fair processes in place at the university and recourse to an independent complaints service in the (still relatively unlikely) event that the university cannot resolve the problem. Further, dissemination of the OIA's experience from handling 10,000 cases so far is useful material to support better university practice..

The Commission becomes a bit more radical with the proposal that the lead regulator should coordinate a protection or insurance scheme to prepare for the possibility of institutional failure in the sector, but here, as Jim Dickinson pointed out in **Wonkhe** (<http://www.wonkhe.com/2013/10/15/regulation-for-all-apart-from-students/>), the absence of student membership from the Commission impaired the development of its thinking.

Thanks to the evidence-based approach of Norton and King, we have come on a long way from the evidence-light, unsubtle, regulatory 'thinking' of Lord Browne's [Independent Review of Higher Education Funding and Student Finance](#) and its proposals for a super-quango. But there is still much to debate and some danger along the way.

Norton and King have looked to Australia for an example of risk-based regulation in practice and sound a note of caution about how overly prescriptive indicators can scupper good intentions. By contrast they seem to place heavy reliance on the [Legal Services Board](#) as a model for the lead regulator, and use it as a case study in the Report.

But there are important reservations. The Legal Services Board oversees front-line regulators in legal services across a number of professions and its structure is confusing to professions and the public alike (I write as a non-executive director of the Bar Standards Board), notwithstanding the excellence of its staff.

Lack of clarity or trust between regulatory partners in any reconfiguration of higher education arrangements could end up with pressure for the heavy-handed, monolithic structure (something like the Legal Services Authority that Sir David Clementi considered for legal services) we avoided in 2010. That is why it is so important to clarify the Commission's raison d'être for incorporating the [Office for Fair Access](#) (OFFA) inside the new lead regulator rather than leaving it as a stand-alone, regulatory partner as its director, Les Ebdon, would prefer. In my view, and in this case, alignment of corporate objectives is more important than merger. There is also a question mark over the need for another new body, the 'Office for Competition and Institutional Diversity' within the lead regulator.

Rigorous debate about all these issues should now follow. One challenge is to compare the Higher Education Commission's regulatory ideas set out in June 2013 by the Institute for Public Policy Research in a study covering similar ground. Debate of this kind is necessary so that after the elections of 2015, a new government (any government) does not bounce us into un-thought-through legislative proposals whose merit might be less relevant than the logic of 'Elective Dictatorship'.

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