

Response to the Office for Fair Trading call for information on undergraduate higher education in England from the Higher Education Funding Council for England (HEFCE)

20 December 2013

1. Publicly funded undergraduate higher education in England is subject to strong competitive forces but is not in classical economic terms a perfect market. Recruitment is constrained by limitations on price, and at present on volume. Price itself is a deferred payment that for many will never be fully made, and the government debt write-off or 'RAB charge' currently stands at 35 per cent. Behavioural economics predicts that deferred payments will have a muted effect on demand. As a largely charitable, public interest sector, activity is also constrained and regulated in other ways to ensure fair access for students, and quality of provision. Government funds undergraduate education to ensure that the country benefits from more citizens experiencing higher education with important economic, social and cultural outcomes. Throughout the world governments are seeking to expand higher education provision for these reasons, and many have done so at a greater rate than the UK.

2. Allowing for that context, we can say that regulation of the higher education (HE) sector in England is framed to create as much diversity, flexibility and competition as possible. This intention was reinforced by the White Paper discussed below. The national higher education sector has always been highly autonomous and innovative. This is achieved by encouraging innovative provision, reducing bureaucracy, a constantly refreshed variety of courses, and enabling a range of corporate forms to flourish, among other things. The fact that the UK HE sector has used this flexibility to remain diverse and successful is reflected in the high rankings it holds internationally. This diversity includes a combination of charitable and for-profit providers, although the latter is currently a small part of overall provision in the UK. While many of these for-profit providers are reputable and successful, the regulatory challenges of working with them are different, as experienced by other countries, such as the United States¹.

3. HEFCE distributes public money for higher education to universities and colleges in England, and ensures that this money is used to deliver the greatest benefit to students and the wider public. HEFCE also supports the Department for Business, Innovation and Skills (BIS) to make decisions about which organisations can access HEFCE funding or allow students to access publicly supported student grants and loans. HEFCE currently implements a student number control system for home and EU full-time undergraduate entrants on behalf of BIS, although in the Autumn Statement 2013 Government announced that this cap shall be removed from 2015-16 onwards. In the 2011 White Paper *Students at the Heart of the System*, the Government announced a

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series of reforms to HE funding which were intended to tackle three challenges: making the funding mechanism for HE more sustainable; improving the student experience; and increasing social mobility. To support these aims, HEFCE was required to take a number of steps to enable competition:

- to adjust some of the existing student number controls to aid flexibility
- to continue to improve the information available to students
- to work where possible to create a level playing field for all providers.

There is a need for a new legislative framework before HEFCE will be able to achieve the full intent of the White Paper, but we have already taken a number of steps towards realising the Government's aims. HEFCE is also the principal regulator for those higher education institutions that are exempt charities.

4. There are a wide variety of corporate forms and funding models among organisations that provide undergraduate higher education in England. When referring to these organisations as a group, a useful general term would be 'higher education providers'. The majority of providers that HEFCE deals with are described as 'publicly funded', because they receive direct recurrent public funding. These are largely either higher education institutions (HEIs) or further education colleges (FECs). Providers which do not receive this type of public funding are called alternative providers². Some or all of the students at these providers can become eligible to receive student support funding from the Student Loans Company if the course they are on is designated by BIS for student support. Any organisation may apply to use the word 'university' in their title, if they meet the relevant conditions³.

5. There are also providers which are entirely outside the government funding regime. This last group of providers receive no grants from HEFCE, and their students are not eligible for student support funding. This response does not deal with such undesignated providers, since they are not funded by Government, and so are outside HEFCE's scope of expertise.

How do providers compete between themselves?

6. Most higher education institutions charge similar for for undergraduate courses to UK and European Union (EU) students: the average fee after fee waivers is £8,246, indicating that they do not primarily compete on course price⁴. Student decision-making is discussed below, but there are many more important factors than price, such as course content, course entry requirements and location. Students have always chosen which

² The BIS description of an alternative provider, from their consultation on specific course designation is, 'any provider of higher education courses which is not in direct receipt of recurrent funding from HEFCE or from equivalent funding bodies in the Devolved Administrations; or does not receive direct recurrent public funding (for example, from a local authority, or the Secretary of State for Education); and is not a Further Education College'.

³ www.gov.uk/recognised-uk-degrees

⁴ www.offa.org.uk/press/quick-facts/

provider to attend for undergraduate study, and providers set their own entry requirements with no influence from Government.

7. HEFCE-funded providers may set their own fees for undergraduate education, as long as they are at or below set upper limits (the 'fee cap'). The fee cap can be raised from £6,000 per year to £9,000, if a provider signs an access agreement with the Office for Fair Access. There is no fee cap for alternative providers, although their students cannot access government funding for fees of more than £6,000 per year. There is also no fee cap for any provider for students from outside the EU or for postgraduate courses.

8. Currently, on the basis of guidance from Government, HEFCE provides each publicly funded institution with a number of places that they may recruit to each year, referred to as the student number control. All undergraduate provision at HEIs is considered to be part of this control, unless it is exempt⁵. This process was designed to ensure that the Government's budget for student support is not exceeded each year. Since 2012, following the changes to the fees and finance system for higher education, the Government has sought to facilitate a more dynamic system, seeking to improve student choice and enabling popular and successful universities and colleges to expand, if they wish to. HEFCE has implemented a number of policies on behalf of the Government to support this aspiration, while still seeking to protect the student support budget. They are:

- a. Exempting students applying to higher education with AAB grades or above at A-level, or certain equivalent qualifications, from controls in 2012-13. This was expanded to ABB in 2013-14. For each institution, HEFCE make an estimate of the number of places that have been filled by high grades students, and remove these places from their student number control allocation. Through this process, we seek to provide all institutions with a reasonable remaining student number control allocation which allows them to recruit similar numbers of students with qualifications/grades not exempted from the control, as in previous years. Where necessary, we provide an additional allocation to support this aim, known as 'fair-access protection'.
- b. From 2013-14, institutions were allowed to exceed their student number control allocation by up to 3 per cent of their total recruitment (or five places, whichever was the larger). For 2014-15, the Government has announced an increase of 30,000 student places; the method of distribution for these is yet to be determined.
- c. Any university or college which considers it needs more places to continue to offer fair access to all applicants can appeal against its student number control allocation. We will listen carefully to their concerns if we feel that there is any risk that fair access is not being achieved. Subject to receipt of the grant letter from BIS (we expect to receive this in January 2014), while we plan to retain this

⁵ Part-time students, distance-learning students, and 'high grade' students are not included in the student number control calculations. Students who are already in possession of equivalent qualifications and non EU students will also not receive student support.

appeal mechanism for 2014-15, it seems likely that many institutions will have a sufficient student number control limit for their needs.

9. Additionally, for 2012-13 and 2013-14, we undertook a process known as 'core and margin'. In 2012-13, student places were top-sliced from all HEFCE-funded institutions, and reallocated on a competitive basis (including giving publicly funded providers that were not funded by HEFCE an opportunity to bid for places and to enter the system). This process was repeated in 2013-14; however the level of places available were reduced from 20,000 to 5,000, and these places were made available by the Government rather than through a pro-rata reduction from institutions. The majority of places were allocated through a formulaic process on the basis of tuition fee level, quality and demand evidence. Subject to receipt of the grant letter from BIS, the Autumn Statement announcement means such processes may change in the future.

10. There is further information and detail available on our web-site⁶. HEFCE follows guidance provided by Government in our annual grant letter to give us broad parameters for setting student number controls each year⁷. Following the announcements in the Autumn Statement 2013 we are currently awaiting guidance from the grant letter we expect to receive in January 2014 to determine the way in which we should operate the student number control in 2014-15 and remove it for 2015-16, subject to possible exemptions.

11. During our consultation on student number controls in the first half of 2013, respondents raised some concerns with regard to unintended effects that the controls might have. Some examples were:

- The lack of central flagging of high grade students on the UCAS application record, which some providers felt added complexity to the process of determining whether a student is exempt from the student number control.
 - A concern that institutions might delay the confirmation of prospective students following receipt of qualification results in the summer, limiting the scope of the clearing process and contributing to a more challenging environment.
 - A concern that some providers might over-recruit to gain flexibility within the number control system, without taking due account of their capacity to maintain an adequate quality of provision.

12. A full analysis of these responses, and many others, was published on the HEFCE web-site⁸.

13. In implementing the high grades policy, HEFCE has had to make an estimate of how many students, and which qualifications, might be counted as equivalent to having

⁶ www.hefce.ac.uk/whatwedo/lt/howfund/studentgrades/

⁷ www.hefce.ac.uk/news/newsarchive/2013/news76313.html

⁸ www.hefce.ac.uk/pubs/year/2013/201320/

grades ABB or above at A-level for the purposes of this policy. While HEFCE has primarily used the current UCAS tariff as a basis for these equivalences, the list of high grade exempt qualifications has not been solely based on the tariff, and we have utilised other evidence available to us. In setting exemptions, we have also had to be mindful of the risk associated with freeing up certain populations from control, as well as our ability to effectively estimate how many students might be exempt in any given year and the consequent impact and risk for the student support budget. As mentioned above, subject to receipt of the grant letter from BIS, there will be a reduced need for high grade exemptions from a student number control in future.

14. In the light of these challenges, concerns have been raised in relation to students applying with high graded qualifications that are not covered by our exemptions list. This has included those applying with European qualifications, and with combinations of different qualification sets. We have sought to address these concerns as far as we can. Following consultation, we expanded our list of exempt qualifications to include a limited number of the most common combinations of qualifications (for example, A-level combined with BTEC subsidiary diploma). There were also concerns raised that the policy would threaten universities' and colleges' ability to meet their OFFA access agreement targets, and to make contextual offers to students from particular backgrounds if they so wished. We have also put in place a number of measures to ensure that institutions can treat all applicants fairly. This includes:

- basing student number control allocations on historic recruitment levels
- providing the most selective institutions (i.e. those who traditionally have a very high proportion of high-grade exempt students) with an increased student number control allocation set at a level which protects their ability to offer fair access to all students regardless of whether their qualifications are exempt from control or not
- providing all universities and colleges with an opportunity to appeal their student number control allocation if they feel it is not sufficient to offer fair access
- offering, where possible, universities and colleges flexibility against their student number control, providing more capacity to make offers to students with qualifications that are not exempt.

15. Government has already announced that the student number controls will apply to alternative providers' designated courses from 1 August 2014. The system of number controls for these providers will be consistent with those already in place for HEFCE-funded providers. The Autumn Statement 2013 also made announcements in relation to the student number control for alternative providers, and again we are awaiting further guidance from Government as to how the implementation of the policy in this area will be managed.

16. Recently there has been some comment around the fact that some providers are competing for places by working to improve their ratings in the National Student Survey

and other performance indicators, for example by embedding reflections on the survey results into organisations' planning cycles⁹.

17. Organisations compete differently for postgraduate and international students (those from outside the EU). There is no fee cap and no student number control in place for these students, and the prices that may be charged for them to attend institutions can vary quite dramatically¹⁰, indicating that, for this provision, competition is significantly affected by price. The existence of such provision has an impact on the domestic undergraduate experience. For example, providers can offer a wider variety of courses because international students can make specialist courses viable when there may otherwise have been insufficient domestic demand¹¹. Postgraduates can also account for a large percentage of the students at an institution, and may have a positive influence on the undergraduate learning experience.

How do providers compete between themselves when deciding which courses to offer?

18. HE institutions are autonomous organisations, and are therefore free to determine which subjects and courses to offer to students. Their portfolio of provision will respond to demand from students and from employers, and will also link to their own research strengths, and their previous experience in a particular subject area. Given the set-up costs, particularly in laboratory-based subjects, it is a significant risk for institutions to start up provision in a completely new area in response to demand.

19. Institutions need to cover the costs of delivering their provision, and the income they receive from HEFCE and the Student Loans Company for domestic students is not always sufficient to cover this. Every university will operate a different internal resource allocation model, and this will in part reflect different business models. Some will be more prepared than others to accept an element of joint funding between subjects, and between teaching activity and research activity. For the most part, institutions will see a clear link between student demand, fee income, and the viability of a particular course or subject area. A lack of demand from students that is more than just a short-term fluctuation will prompt an institution to consider whether it needs to alter or even withdraw a particular course, subject or department, though it will also take into account factors such as overseas student income, the research standing and income of the area, and their centrality to its broader activities and mission. Institutions carry out these reviews regularly.

20. HEFCE's role in relation to subject provision must respect institutional autonomy, and is necessarily limited by section 68 of the Further and Higher Education Act 1992, which states that when the Secretary of State makes grants to the Funding Councils, any terms and conditions of grant '...may not be framed by reference to particular courses of

⁹ www.heacademy.ac.uk/nss

¹⁰ www.timeshighereducation.co.uk/story.aspx?storyCode=2006262

¹¹ www.hefce.ac.uk/pubs/year/2013/201314/name.82615.en.html p.19

study or programmes of research (including the contents of such courses or programmes and the manner in which they are taught, supervised or assessed)...'. An institution's subject offer evolves constantly, and it is in tune with the national interest for them to respond dynamically to the needs of their student and employer constituencies in this way. This was a key principle identified by Sir Gareth Roberts, when he conducted the first review of strategically important and vulnerable subjects in 2005 and it remains a tenet of government policy today. Under our policy on strategically important and vulnerable subjects, we review data on undergraduate and postgraduate numbers in broad subject areas on a regular basis, and we also seek advice from partner organisations, which takes into account broader factors such as research, industry and public sector requirements. This allows us to assess risks to subjects at a national level. We intervene where there is a clear need to act to safeguard the future availability of subjects in the interest of future students and the sustenance of nationally important capability.

21. In doing so, we implement specific solutions for specific problems. Our current interventions include the provision of a funding supplement to high-cost subjects, including many science and engineering subjects, in recognition of their higher costs of delivery. We also support a national programme of demand-raising activity for modern foreign languages, where lack of demand from students is causing some institutions to consider the future viability of language provision. We have also assisted specific institutions to develop provision in subjects where there is a national imperative to grow, such as engineering, and to collaborate where this is essential for sustainability and competitiveness, such as physics and modern foreign languages.

22. HEFCE's funding model, as set out in statute, gives institutions freedom to determine the courses that they provide and can recruit students to. Should institutions collectively recruit more students onto courses that attract a higher rate of funding, then the rate of funding will reduce unless additional funding is provided by Government. This adjustment will happen at the sector level, reflecting the overall amount of funding available, and the level of activity (calculated with reference to student numbers). It is possible for one institution to receive increased funding if it recruits more students onto 'high cost' courses than the average across the sector. This should allow institutions to make decisions on provision on the basis of academic judgement as well as considering the level of funding that we are able to provide.

How do providers compete between themselves when deciding how courses should be delivered?

23. HE in the UK delivers provision through a wide variety of methods, and HEFCE has taken an active role in advocating and funding new forms of provision in the sector. This includes foundation degrees, co-funded provision; credit based provision and accelerated degrees. We also work to hasten take-up of innovations through the activities we fund our partners to undertake. The HEFCE grant letter to the Higher Education

Academy lists ‘supporting the development of diverse provision across the sector’¹², as a key objective, and we have established the Innovation and Collaboration Fund in partnership with the Leadership Foundation for Higher Education to further support innovation¹³. HEFCE also funds the Leadership Foundation’s collaborative work to encourage and embed the use of learning technologies in publicly funded providers¹⁴.

24. Due to changes in the way that HE is funded by Government, HEFCE introduced a Catalyst Fund which exists to: help HEIs and FECs manage the transition to the new finance arrangements in HE, to protect students and sustain important activities; and to support key objectives where an innovation could lead to a step-change in achievement and efficiency across HE¹⁵.

Is collaboration between providers, which could be beneficial to students, affected by concerns about breaching competition law?

25. The sector has a long tradition of collaboration. This is particularly strong in research, where projects are very frequently managed collaboratively: between universities and colleges, between providers and industry, across national boundaries, and involving a wide range of other stakeholders¹⁶. Collaboration and strong communication is also very common between universities’ operational functions, such as procurement¹⁷ or finance¹⁸. In undergraduate education, collaboration can take the form of franchise or validation arrangements, and most providers use the shared admissions service, UCAS. There are also credit transfer arrangements between providers. The UK Quality Code for higher education has a chapter on working with others which explains good practice when working collaboratively¹⁹; it discusses a wide range of different collaborative practices, and includes links to more guidance. The Quality Code is primarily concerned with ensuring that the integrity of qualifications is retained when provision is collaborative.

26. Such collaborative franchise and validation arrangements can be very complex, and involve a number of interrelated parties. Teesside University, for example, has been working with regional FECs for over 20 years. The university has a ‘Higher Education Business Partnership’ with six local colleges, who deliver franchised courses for the university, and whom the university has supported to create purpose-built HE centres. Students on these courses are given access to online learning resources and the

¹² www.hefce.ac.uk/whatwedo/lt/enh/hea/

¹³ www.hefce.ac.uk/whatwedo/lgm/landg/lfhe/

¹⁴ www.hefce.ac.uk/whatwedo/lt/enh/techlearning/

¹⁵ www.hefce.ac.uk/whatwedo/invest/funds/cf/

¹⁶ www.hefce.ac.uk/whatwedo/rsrch/howfundr/multi/, and a case studies are mentioned in the Witty Review: <https://www.gov.uk/government/consultations/universities-and-growth-the-witty-review-call-for-evidence>

¹⁷ www.hepa.ac.uk/

¹⁸ www.bufdg.ac.uk/

¹⁹ www.qaa.ac.uk/Publications/InformationAndGuidance/Documents/B10.pdf

university library. The partnership has also run a 'Passport Scheme' since the 1990s. This is an extensive outreach programme which enrolls students interested in higher level study to provide them with a step-by-step guide as they consider their options. The university also has relationships with a further eight FE providers. These are validated arrangements, which focus on quality assurance and enhancement practice to assure standards and learning opportunities for students are of the highest quality. The partnership was created to help promote progression from further education to higher education to combat the historically low levels of participation in the Tees Valley. This also enables HE courses to be delivered across a wide geographic area, making learning opportunities available to people who might not otherwise access the provision.

27. There has been recent discussion about how to enable further collaboration between individual providers without affecting healthy competition. In particular, HEIs can be cautious about working together to rationalise provision in strategic and niche subjects, notwithstanding the national benefits that such rationalisation could provide. HEFCE can support such strategic provision in a limited way (see above) but a co-ordinated rationalisation would be for providers to initiate themselves.

Is the regulatory system creating any unfair advantages for certain types of higher education providers?

28. The Regulatory Partnership Group's *Operating Framework* provides an overview of regulation within the HE sector at present. Pages 20-27 of the Framework set out the different forms that regulation in the sector takes, which range from regulations managed by Government, including HEFCE, through controls reviewed by sector-owned bodies like the Quality Assurance Agency for HE (QAA), to the many examples of effective self-regulation in the sector. HEFCE has provided the OFT with information about the controls that we exercise over different types of provider in the past.

29. As described in the Framework, HEFCE supports BIS to award university title, degree-awarding powers, designate institutions for HEFCE funding and designate institutions and courses for student support. This includes work on the HEFCE register of providers, the first version of which is due to be published in August 2014.

30. The Government's 2011 White Paper *Students at the heart of the system* set out a desire to create a level playing field in HE. There have been a number of changes recently which are in line with that objective. For example:

- a. FECs in receipt of HEFCE grant must subscribe to the QAA review process.
- b. Alternative providers seeking specific course designation must also have a successful QAA review. The specific course designation process is set out on the HEFCE web-site²⁰.

²⁰ www.hefce.ac.uk/whatwedo/reg/desig/

- c. FECs and alternative providers can now subscribe on a voluntary basis to the Office of the Independent Adjudicator.
- d. HEFCE has opened up the Catalyst Fund to applications from FECs who provide higher education courses²¹.

The full aspirations of the White Paper have not been achieved, in part because these would require legislation. In particular the requirements to: provide information to students; give access to an independent complaints resolution process; and implement widening participation strategies with investment do not apply equally to all providers. These differences are set out in the *Operating Framework*²².

Higher education institutions

31. The conditions under which HEFCE provides grants to higher education institutions have been in place since 1993 and there is a legislative requirement that we consult on them with the sector, to ensure that they remain fit for purpose. At present, conditions are set out via the mechanism of the HEFCE Financial Memorandum. This is developed and revised through consultation with higher education institutions and other key stakeholders and sector representative bodies. Assurances provided by institutions through self-regulation are strong and are regularly validated. This supports institutional autonomy and reduces externally imposed bureaucracy. Given the conditions within the Financial Memorandum, providers in receipt of HEFCE grant are therefore sufficiently well regulated to receive automatic designation of their courses for student support, without completing the specific course designation approval process. The HEFCE Financial Memorandum is being refreshed at present, and it is the subject of a consultation which has recently closed.

Further education colleges

32. The Skills Funding Agency (SFA) funds FECs and gathers assurances on the use of those funds. HEFCE has worked with the SFA to ensure that the financial assurance regime for FECs offering HE is as aligned as possible to the regime for HE providers in receipt of the HEFCE grant. HEFCE takes assurances from the SFA where possible, so that activity is not duplicated. The QAA has recently standardised its review process, so that FECs and HEIs are reviewed using the same approach.

33. Very few FECs have degree awarding powers, and these are currently restricted to foundation degrees. This means that almost all FECs delivering HE are obliged to have a franchise or validation arrangement with another provider with degree awarding powers, or to deliver Higher National Diplomas or Higher National Certificates. Legally, HEFCE is unable to fund FECs for research activity.

²¹ www.hefce.ac.uk/whatwedo/invest/funds/cf/cfpolicies/

²² RPG, Operating Framework, section 6

Alternative providers

34. Alternative providers can apply to have courses specifically designated so that eligible students can access student support, but they are not otherwise publicly funded by Government. Some alternative providers could receive funding from higher education institutions as part of a franchise or validation agreement. Some of the issues that could arise from their position in the sector were discussed in HEFCE's response to the BIS consultation on alternative providers in January 2013²³. This response set out that alternative providers:

- can subscribe to the Office of the Independent Adjudicator (OIA), but are under no compulsion to do so
- are not required to, and have no incentive to voluntarily agree, access agreements with the Office for Fair Access (OFFA), since they cannot charge fees of more than £6,000
- may become undesignated, and if so, arrangements in place to support continuing students are entirely dependent on the contract with the validating body
- are not currently monitored consistently with publicly funded providers, and in particular, there is no standard data collected setting out completion rates – this will continue to be the case under the new system of designation, as only large providers will be required to subscribe to the Higher Education Statistics Authority (HESA)
- receive no HEFCE grant, and so cannot be penalised by withholding the grant if they breach their student number controls
- May apply for designation for students domiciled in England even if the provider is based elsewhere in the UK. This could lead to a provider being regulated by more than one HE funding council, and to inconsistencies of treatment.

Franchised and validated provision

35. Providers with degree-awarding powers can register students but have the course delivered by another provider – this is commonly known as franchising. It is also possible for a provider with degree-awarding powers to validate the courses offered by another organisation, with the validated provider registering the students and receiving funding. This is commonly known as validation.

36. Franchising can aid diversity in the offer available to students in the HE sector; in many cases it allows students to study degree or foundation degree level education at a provider (normally a further education college) in closer proximity to their home or work location, and potentially through another route than traditional full-time study. For providers, subject to having the expertise and the facilities to deliver a programme in this manner, there are advantages in terms of a reduced burden in relation to the development of the programme and in many cases the regulatory burden. The franchisor will handle data returns and the distribution of funding, for example. There is a

²³ www.hefce.ac.uk/news/newsarchive/2013/news76383.html

reputational element to be considered by both providers in the relationship – franchisees will potentially benefit through being associated with a university brand; franchisors can also benefit when the reverse is true, and can also seek to benefit financially through retention of some of the fee and/or funding associated with the franchised student places.

37. The franchising model has also been popular in recent years with HEIs seeking to secure a ‘supply chain’ from colleges. An HEI may for example franchise places for foundation degrees at a college, where, upon successful completion, the student is offered the opportunity to top-up to a full honours degree by studying for a final year with the HEI.

38. The core and margin process brought a large number of FECs directly into the student funding regime. Before that point, many of these providers were operating under a franchise model. There are now an increasing number of colleges who have their own student number control allocation and designation for some courses (that will still be validated by another provider), but additionally manage other courses under a franchise or validation relationship with another provider. They are therefore simultaneously competing with and supplier to the same organisation²⁴. This creates a complex power dynamic between different providers. When the student number control is removed from 2015-16, FECs will still need to enter into a funding relationship with HEFCE, a franchise relationship with another provider, or to pass the specific course designation process in order to be eligible for their students to access the student support system.

39. There are student interest considerations in relation to franchise and validation relationships. Students need clarity about who their relationship is with. It is possible for institutions to mix students from different relationship types in the same cohort; while in such a case just one provider will be delivering the educational content, different providers may be responsible in terms of regulation and the contractual relationship with the student.

Charitable organisations

40. All HEIs (except one, which is part of a Local Authority) and FECs have charitable status, and so do a significant number of alternative providers. Under charity law, charity trustees have a responsibility to their beneficiaries, and to deliver only their charitable objectives for the public benefit. They also have a responsibility to safeguard charitable assets, and may not dispose of them for less than their value. As charities, HEIs and FECs are subject to the Charity Commission’s regulatory oversight. Most HEFCE-funded HEIs and all FECs are exempt charities, and the Charity Commission must consult their principal regulator before using any of its advisory or enforcement powers. The principal regulator of exempt-charity HEIs is HEFCE, and the regulator of FECs is the Department for Business, Innovation and Skills. All FECs and HEIs must comply with the financial reporting requirements of the FE / HE Statement of Recommended Practice (SORP) when preparing financial accounts.

²⁴ HEFCE, Higher education in England: Impact of the 2012 reforms, p.42

Is regulation contributing to effective competition or undermining it by creating unnecessary obstacles?

41. HEFCE works to minimise any administrative bureaucracy for a number of reasons, not least to minimise costs for the HE sector. Limiting bureaucracy also serves to ensure that requirements do not inhibit innovation. This is balanced by HEFCE's responsibility to ensure that an adequate and appropriate level of public accountability is maintained. We part-fund the Higher Education Better Regulation Group²⁵ and have a framework in place to achieve these aims. This work has decreased the burden on providers in the past, as evidenced by PA Consulting's reports on *Accountability in Higher Education*, which have demonstrated that the costs of compliance with the HE accountability regime decreased by over 40 per cent over the previous decade²⁶. The final report suggested that this was largely a result of a shift from a regulatory regime based on audit and inspection to one that places more reliance on assurances gained from institutions' own self-regulation activities. This was illustrated in changes to HEFCE's accountability framework, and the QAA's move towards institutional audits and away from subject reviews. The same report also noted that research-related requirements, from Research Councils and HEFCE, account for a large share of the total accountability costs in the HE sector.

42. HEFCE also simplifies funding mechanisms wherever possible. For instance, our capital investment is largely determined by formula²⁷, but accountability is still strong with specific performance conditions set out in the Capital Investment Framework. HEFCE also reviews the data requirements placed on providers. This year the HE Data and Information Improvement Provision (HEDIIP) Board, of which HEFCE is a member, is looking at all data collected in the HE sector. This is to enhance the arrangements for the collection, sharing and dissemination of data and information about the system²⁸.

What is the best way to balance the 'orderly exit' of failing providers in a way that protects students, while allowing for the possibility of exit?

43. As OFT has noted in the past, the exit of providers of public services can have very real social costs²⁹. This is further complicated in the case of organisations like the larger HEIs, which provide a wide range of public interest activities and are vital to many aspects of local economies and communities. Although HEIs may experience failures, it is essential that they do so in an orderly way that protects their students and the assets that have been developed through investment of public funds.

²⁵ www.hebetterregulation.ac.uk

²⁶ www.hefce.ac.uk/pubs/rereports/year/2009/positiveaccountability/

²⁷ www.hefce.ac.uk/whatwedo/invest/funds/capital/

²⁸ www.hediip.ac.uk/

²⁹ www.of.gov.uk/shared_of/business_leaflets/general/of1214.pdf

44. The OFT has also noted that for providers in the further education (FE) sector, mergers and takeovers can provide supply-side flexibility where simple provider exits would have too high a social cost³⁰. There are also mergers and takeovers in the HE sector, and the flexibility this provides is further aided by franchising, validation arrangements, specialisation and shifts in provision. All HEIs continually review the provision of specific courses or departments within their organisations. This can often lead to the closure of certain areas of activity, and this is managed in a way that protects existing students and ensures that they can finish their course of study.

45. HEFCE has a duty to monitor the financial sustainability of HEIs that it funds, and the National Audit Office (NAO) published a report on its progress in that area in 2011³¹. One of the report's conclusions was that in the past, HEFCE had been effective in preventing the disorderly failure of HEIs, and this was primarily achieved by working together with HEIs' governing bodies. HEFCE cannot take control of failing institutions, however, and the NAO's report indicates that in the new funding environment, without more legislative ability to intervene, HEFCE may not have sufficient influence to prevent disorderly failure in future.

Can students access relevant and accurate information about courses and universities?

46. Student choice is influenced by a number of factors. Information about the quality of provision and price of a course are aspects of undergraduate education that are often compared, but research indicates that factors like course content and geographical location are sometimes more important in informing students' decisions³².

47. HEFCE and the other funding councils play an important part in the provision of information about HE in the UK, and have worked to ensure that the information that students have said that they need is provided to them. The Funding Councils also work to ensure that the information provided is as robust and comparable as possible. Other information is provided from a number of sources in the sector, including providers own web-sites, independent sites and UCAS.

Provision of information

48. Provision of information about learning and teaching:
- informs student choice about HE, throughout the student lifecycle (before they apply, during their course, and after they qualify)
 - enhances quality – by identifying areas for improvement, facilitating responsiveness to students' needs and enabling change to be measured
 - increases transparency and accountability.

³⁰ As above, Choice and Competition in Public Services

³¹ www.nao.org.uk/report/regulating-financial-sustainability-in-higher-education/

³² HEFCE, Higher education in England: Impact of the 2012 reforms, p.25-27

The information which HEFCE collates makes up a small part of the information available to students to support these three areas. In particular, research in 2010 indicated that the primary sources of information that students used in making choices were UCAS data and institutions' own web-sites³³. This study predated the redevelopment of the Unistats web-site.

49. The same 2010 study also indicated that there was a great deal of variability in the advice and guidance that students in schools receive, and this theme has been repeated in other reports. The changes to advice and guidance in schools that were driven by the Education Bill 2010 were implemented in 2012, so their impact on undergraduate choices is still being worked through.

50. There is an increasing range of other web-sites and information sources targeted at HE student decision-making (for example, *Which University*³⁴). National HE organisations such as Universities UK and the QAA also provide information to support student decision-making (primarily by helping students understand the HE system and the types of information they should be investigating).

51. At institutional level, the quality of data provided is supported by the UK HE Quality Code, details of which can be found on the QAA web-site³⁵. This includes requirements that information provided is fit for purpose, accessible and trustworthy. At a sector level, our overall approach to the provision of information is overseen by a UK-wide steering group chaired by Professor Janet Beer (HE Provision of Information Steering Group – HEPISG³⁶). The data sets that HEFCE provides and funds and their collection through partners like HESA are under constant review.

52. Provision of information is a particularly complex issue in HE, primarily because of the diversity of provision. Many providers are also awarding bodies; students can choose to study across the UK, where there are different funding and regulatory regimes; courses change regularly; and HE programmes can be delivered through a wide variety of teaching methods, locations, and types of qualification. All of this poses challenges for providing timely, comprehensive, comparable and robust information to students and their advisers.

53. There is evidence that student decision-making is not a simple process easily susceptible to influence by performance information, and in fact that too much information can impact on the quality of choices by leading to 'short cut' decision-making strategies; and that other influences – including upbringing and environment, values, subconscious thinking and social influences (including peers and family) are potentially much more

³³ www.hefce.ac.uk/pubs/rereports/year/2010/hpublicinfouserneeds/

³⁴ <http://university.which.co.uk/>

³⁵ www.qaa.ac.uk/assuringstandardsandquality/quality-code/Pages/default.aspx

³⁶ www.hefce.ac.uk/whatwedo/it/publicinfo/

influential on HE choices than published data³⁷. Research by the Sutton Trust has found that course and content are the most important factors influencing the decisions of prospective students. Distance from home and availability of term time work are also important factors³⁸.

54. Key information that HEFCE makes available for students includes:
- a. Unistats³⁹: a UK-wide course level information, including the Key Information Set (17 pieces of data which students stated in research that they found most useful). This includes fees, accommodation, proportion of learning and teaching activity and data taken from the Destination of Leavers from HE census survey). Data can be updated by institutions on a weekly basis.
 - b. The National Student Survey (a UK-wide annual census survey capturing student satisfaction scores of final year students (3 years honours equivalent only).

HEFCE also provides guidance on wider information that institutions should make available, and this is linked to the UK Quality Code (see above). This includes institutional corporate plans, employability statements, programme level descriptions, external examiner reports, and student module evaluations. Some of these data are aimed at current students so that they can make continuing decisions about their course of study. HEFCE are also working with the British Universities Finance Directors Group (BUFDG) to improve accessibility of financial information, and encourage the use of charters so that students understand what to expect on their course, and what is expected of them.

The UK-wide review of the provision of information about HE

55. With the other UK HE funding bodies, HEFCE is currently reviewing its activity around providing information about HE to students and their advisors. This review began earlier this year and is expected to conclude in 2015.

56. There are six strands of work, which are set out on the Provision of Information review page of the HEFCE web-site⁴⁰. They include projects around understanding decision-making behaviour and work to improve salary and employment information. The review is UK-wide and also covers postgraduate information.

Quality assurance

57. HEFCE has a statutory duty to 'secure that provision is made for assessing the quality of education provided in institutions for whose activities we provide, or are considering providing, financial support'⁴¹. The HEFCE funding and assurance regime has a role in providing confidence to stakeholders on the sustainability and quality of

³⁷ www.heacademy.ac.uk/assets/documents/research/Student_Choice.pdf

³⁸ HEFCE, Higher education in England: Impact of the 2012 reforms, pages 25-27

³⁹ www.unistats.ac.uk

⁴⁰ www.hefce.ac.uk/whatwedo/lt/publicinfo/review/

⁴¹ Further and Higher Education Act 1992, www.legislation.gov.uk/ukpga/1992/13/section/70

providers, in particular to students, but also to capital markets and to overseas stakeholders. That is why the HEFCE Financial Memorandum includes a condition that providers have to subscribe to the QAA.

Are there appropriate channels for students to complain and is there access to redress if things go wrong?

58. HEFCE is not empowered to look at individual student complaints. We are, however, interested in any issue affecting groups of students, and we work with other higher education organisations and institutions to monitor and react to these issues as necessary. The HEFCE web-site includes a statement which sets out HEFCE's role in relation to the collective student interest⁴². We demonstrate and advocate good practice, working in partnership and through evidence to try to influence the way that issues may be dealt with. This activity includes funding the Student Engagement Partnership work, which aims to promote and improve the involvement of students in their education and the governance of their institution in partnership with their provider and student union⁴³. Providers' adherence to maximum fee limits for students is also a condition of HEFCE funding.

59. At an individual level, the majority of student complaints should be escalated through the provider's own complaint process in the first instance. The students union may also be able to help. If no resolution can be found via that route, then for many providers, the OIA can be involved⁴⁴. The OIA will not intervene in complaints relating to admissions or academic judgement. The OIA's 2012 annual report sets out how well this process works, and explains the current work to develop a good practice framework for complaints and appeals⁴⁵.

60. At present only universities are obliged to subscribe to the OIA. FECs and alternative providers can sign up, but few have taken this opportunity. This means that students on HE courses at FECs or at alternative providers do not always have the same access to redress as those at universities or university colleges.

61. Where problems are systemic, and providers are reviewed by the QAA, students can raise complaints with them. Issues which the QAA can resolve will relate to general academic standards or quality-related policies.

⁴² www.hefce.ac.uk/about/howweoperate/si/

⁴³ www.hefce.ac.uk/news/newsarchive/2013/news82620.html

⁴⁴ <https://oiahe.org.uk/making-a-complaint-to-the-oia/can-the-oia-look-at-my-complaint-complaints-wizard.aspx>

⁴⁵ <http://oiahe.org.uk/media/88650/oia-annual-report-2012.pdf>

62. Complaints relating to a recipient of HEFCE grant demonstrating financial impropriety may be made to HEFCE⁴⁶, but this action is very rarely appropriate for complaints relating to students.

63. Students also have some recourse against those providers that are charities if they are acting in breach of their charitable objectives. Complaints can be raised with the Charity Commission for registered charities and with HEFCE for higher education institutions which are also exempt charities. Details of the exempt charities for which HEFCE is the principal regulator are set out in the Memorandum of Understanding between HEFCE and the Charity Commission⁴⁷.

64. Student complaints are an issue that the Regulatory Partnership Group has recently put on its agenda for further consideration. The note of the last meeting recorded that proposals to develop an operating framework for student complaints are under discussion⁴⁸. HEFCE has been considering our role in student protection and complaints, particularly whether, in the landscape of higher fees, students' investment in higher education is protected from institutional or other failure outside their control, and this is the subject of active discussion at present.

⁴⁶ www.hefce.ac.uk/whatwedo/reg/assurance/publicinterestdisclosures/

⁴⁷ www.hefce.ac.uk/whatwedo/reg/charityreg/hefceasprincipalregulator/

⁴⁸ www.hefce.ac.uk/about/intro/wip/rpg/