May 2014/09

Core funding/operations

Outcomes of consultation

This report is for information

This document provides an analysis of the responses to the consultation between 16 September and 6 December 2013, and how those responses have been taken into account in the final version of the memorandum of assurance and accountability.

Analysis of responses to consultation on HEFCE's financial memorandum with institutions

HIGHER EDUCATION FUNDING COUNCIL FOR ENGLAND

Analysis of responses to consultation on HEFCE's financial memorandum with institutions

To	Heads of HEFCE-funded higher education institutions Heads of HEFCE-funded further education colleges Key stakeholders with an interest or involvement in the regulation of higher education
Of interest to those responsible for	Vice-chancellors and principals, Governing bodies, Senior management, Finance, Audit, Providers of capital, Student representatives, Other beneficiaries of regulatory assurance
Reference	2014/**09**
Publication date	May 2014
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Executive summary

Purpose

1. This document provides both a quantitative and qualitative analysis of the responses we received on the 'Financial memorandum: Conditions of grant payments to institutions: Consultation on arrangements for 2014-15 onwards' (HEFCE 2013/21). It also sets out how we have taken those responses into account in finalising the memorandum which is now entitled 'Memorandum of assurance and accountability'.

Key points

2. There were 98 responses to, and a large measure of support for, the proposals set out in the consultation document. In a number of cases that support was qualified, and a range of comments provided.

3. The extent of the support from respondents reflects the value of the dialogue and engagement we had with a range of bodies in drafting the consultation document.

4. We have set out an analysis of the responses under each of the consultation questions, along with how those responses have informed the final document and the decisions made.

5. The main changes and decisions taken in light of the consultation are as follows.

   a. The name of the document will be the Memorandum of assurance and accountability, as this more clearly reflects its contents.

   b. The future arrangements in terms of financial commitments will be as follows.

      i. There will be one threshold, with higher education institutions required to notify HEFCE of any intention to exceed that threshold, and to secure our agreement to a higher threshold.

ii. The threshold will be a multiple of earnings before interest, taxation, depreciation and amortisation, and will include all financial commitments with no distinction based on timescales for repayment.

iii. Financial commitments will be those on the balance sheet, recognising that these will increase from 2015-16 with the adoption of Financial Reporting Standard 102. All such financial commitments will be included, whatever their length or repayment terms.

iv. HEFCE will assess whether the proposed level of financial commitment increases the risk to the public or the collective student interest; if so, the institution will be required to take action to reduce that risk.

v. The information requested through the annual accountability returns will include details of all financial commitments, whether accounted for on or off the balance sheet.

c. We have taken account of the concerns about how entries to the register of higher education providers would be made, specifically that there would be prior discussions with institutions.

d. The requirement to subscribe to Jisc for the three years from 1 August 2014 to 31 July 2017 is confirmed.

e. The Audit Code of Practice is largely as set out in the consultation, but we have included a number of comments to improve clarity.

f. The definition of the second trigger for repayment of Exchequer interest will be based on the total of HEFCE grant and Student Loans Company payments.

g. The number and subject of the annexes to the memorandum of assurance and accountability will remain as set out in the consultation document. We have included most of the suggested textual changes.

Action required

6. This document is for information only.

Overall response

7. We received a total of 98 responses to 'Financial memorandum: conditions of grant payments to institutions: Consultation on arrangements for 2014-15 onwards' (HEFCE 2013/21). Of these, 79 were from higher education institutions (HEIs), 10 were from representative or other sector bodies, and 9 were from other organisations, including banks and accountancy firms. There were no responses from further education colleges.

8. Not all respondents answered all the consultation questions, and not all respondents provided comments. A handful of respondents did not use the online consultation tool, but provided a written response instead. Consequently their responses are not included in the numerical analysis for each of the questions below. Their views have however been included in the analysis of the comments received for each of the questions. Given the small number of such responses, we do not think this materially affects the numerical analysis of responses.

9. We also held two consultation events during the consultation period, one in Manchester and one in London. There were 46 delegates at the event In Manchester and 106 in London. These both produced extensive discussion on key issues and provided additional input to the consultation.

10. The totality of responses we received reflects a significant level of engagement with the higher education sector, and we believe that they represent views across the sector.

11. We sought responses on a total of 12 issues. In some cases we requested responses chosen from a scale from 'strongly agree' to 'strongly disagree', as well as asking for comments on all questions. In the case of future arrangements regarding financial commitments, we did not propose specific arrangements, but suggested some alternatives for consideration by HEIs and by the banks providing finance to the sector. We wished to hear all their views in considering the future arrangements.

12. The majority of responses to questions seeking a response on the scale were either 'strongly agree' or 'agree'. The exception was Question 7, on issues to be identified in the register of higher education providers. Here the views were spread evenly across the range of possible responses. In a number of instances, positive responses were qualified by comments on the issue.

13. Each of the issues raised in the consultation is addressed below. Where appropriate this includes a numerical analysis of the responses on the 'strongly agree' - 'strongly disagree' scale alongside an analysis of the comments.

Question 1: Do you agree that the draft financial memorandum fully takes account of the regulatory landscape that currently exists with no new primary legislation?

14. There were 88 responses to this question. Six strongly agreed and 66 agreed with the proposal (82 per cent in total). Twelve (14 per cent) neither agreed nor disagreed, and four (4 per cent) disagreed with the proposal.

15. While there is broad agreement, there were a large number of comments. These highlighted concerns across the sector over the lack of new primary legislation to provide a uniform set of accountability requirements across all providers. This was seen as being at odds with the principle of a 'level playing field'. Similarly there were comments that the use of

administrative means to address regulatory gaps was a piecemeal approach that risked increasing the burden on providers.

16. There were also concerns that difficulties at alternative providers could adversely impact the reputation of the higher education sector as a whole.

17. A number of respondents commented that the changes to automatic designation for student support proposed by the Department for Business, Innovation and Skills would add to the regulatory burden. These concerns have been addressed by the agreement on institutional designation.

18. It was accepted that most of the changes proposed by HEFCE were minimal, reflecting our limited room for manoeuvre within the current regulatory landscape.

What changes have we made as a result of these comments?

19. No changes are considered necessary in the light of these comments.

Question 2: Does the draft financial memorandum adequately place the collective student interest alongside the public interest?

20. There were 87 responses to this question. Two strongly agreed and 62 agreed with the proposal (73 per cent in total). Seventeen (20 per cent) neither agreed nor disagreed; five disagreed and one strongly disagreed with the proposal (7 per cent in total).

21. We were reminded that, in addressing the collective student interest, HEFCE should be mindful not to infringe on institutions' relationships with their students.

22. Many responses recognised that the protection of the public interest and of the collective student interest go hand in hand, and that the actions that HEFCE might take to protect the former would also protect the latter. However, some respondents questioned whether there were potential conflicts between the public and the collective student interests, such as the need for institutions to reduce costs potentially limiting the services provided to students; or the wish of students to limit the investment they make perhaps affecting their institutions' financial sustainability.

23. The consultation refers to prospective and current students. Another group that might be impacted is alumni, the value of whose qualifications could be diminished by difficulties at their former institution.

24. There were also comments that HEFCE's reach through the financial memorandum could only address the collective student interest at those institutions it funds. The collective student interest at alternative providers would need to be addressed through other means, again reinforcing the need for a single regulatory framework.

25. A number of concerns were raised here about the register of higher education providers: these are addressed under Question 7 below.

What changes have we made as a result of these comments?

26. We have reviewed the text of the financial memorandum to make it clear that the collective student interest may cover alumni where relevant. In most cases, though, the actions that HEFCE takes to protect the public interest also protects the collective interest of past, present and future students.

Question 3: Do you agree that the current distinction between short-term and long-term borrowing is no longer appropriate, and should discontinue within future arrangements?

27. Of the 90 responses to this question, 24 strongly agreed and 55 agreed with the proposal (87 per cent in total). Five (6 per cent) neither agreed nor disagreed, five disagreed and one strongly disagreed (7 per cent in total).

28. There was strong support for the idea that the current distinction between short-term and long-term borrowing needed to change and evolve, the better to reflect how HEIs raise finance. The range of financial instruments has broadened to include rolling facilities and revolving credit. In addition, some respondents felt that periods of five years, which fall within the current timescales for long-term borrowing, should be considered 'short-term'.

29. It was recognised by some respondents that it would be difficult to develop a single metric covering the full spectrum of borrowings and timescales. Short- and long-term borrowings create different risks and are impacted by different kinds of events. HEIs suggested that lenders would also consider measures covering both in covenants.

30. The views from lenders were that the current distinction between short-term and long-term borrowing is not necessary. They consider that HEIs should be capable of repaying debt of any term, short or long. Some medium- to long-term debt may not require repayments in the short term, while overdraft facilities can be withdrawn at short notice. So what is important is the totality of borrowing and the capacity to repay when due.

31. Another view was that the real distinction should be between liquidity and sustainability, which should be evaluated and monitored separately. This distinction has merit as it highlights the different risks to be addressed. It also recognises that HEIs' financial strategies should explicitly address both short-term liquidity and long-term financial sustainability. These are legitimate areas of interest to HEFCE in our role to monitor the financial sustainability of HEIs.

What changes have we made as a result of these comments?

32. The distinction between short-term and long-term borrowing will cease. Financial commitments will be considered in total, irrespective of when repayment is due. This is set out as part of the future arrangements under Question 4 below.

Question 4: We have set out alternative approaches to how the risks to public and the collective student interest around financial commitments are addressed by HEFCE. We would welcome comments on and preferences for each of these.

33. This was the major issue raised as part of the consultation. We did not make a specific proposal, but set out some potential approaches as we wished to hear the views of HEIs and lenders.

34. We recognise that the primary responsibility for assessing the risks and affordability of financial commitments rests with HEIs' governing bodies. That said, given the continued levels of public funding for higher education and the significantly increased financial commitments taken on by students, it is clearly in the public and collective student interest for HEFCE to continue to monitor the financial sustainability of HEIs.

35. In this capacity, HEFCE will assess the impact of increased financial commitments on an HEI's future financial sustainability. The key issues will be the affordability of such financial commitments and the ability to repay them when they fall due. It is essential that whatever is agreed preserves the confidence of lenders in the financial sustainability of HEIs and in the regulatory regime that HEFCE operates.

36. We set out two alternative approaches: to continue to require prior approval before increasing financial commitments based on a threshold; or to gather enhanced information through the annual accountability returns (mainly the financial forecasts), to assess the risks to individual HEIs' financial sustainability through their levels of actual or planned financial commitments.

37. The responses produced no overall consensus on the alternatives. Perhaps inevitably, responses were influenced by HEIs' own financial positions and financing requirements. There was very little support for using either of the two threshold criteria linked to a percentage of income. Roughly equal numbers of responses were in favour of using earnings before interest, taxation, depreciation and amortisation (EBITDA) and of using enhanced information. However, nearly half of the responses had no specific preference.

38. Some respondents thought that both approaches had merit, so it might be possible to combine them or use elements of both.

39. The responses reflect not only the breadth of views across a very diverse sector, but also the finely balanced cases for and against each possible option.

40. Lenders have commented that the reason for the sector's favourable margin in terms of borrowing costs, compared with commercial rates, is not because of HEFCE's review process prior to HEIs taking on new borrowing, but because it is seen as a safe market with no historical borrowing defaults. This is supported by confidence in the whole of the regulatory environment and by the existence of HEFCE. Lenders would reconsider their view of risk within the sector, and re-price borrowing, if an institution were to fail or significantly default on its loans.

41. That said, lenders prefer the current approach in that it adds a layer of regulatory oversight to the process before an institution enters a borrowing transaction. There is a risk that, without this prior review process, the confidence of lenders and investors would be diminished, adversely affecting risk assessments and credit profiles.

42. Lenders operate their own assessments of borrowing requests. Cash flow and debt serviceability are key areas.

Alternative threshold approach

43. A number of responses supported retaining a threshold, but argued that no one measure would address all the risks set out in paragraph 35 of HEFCE 2013/21. They also commented that a threshold would not recognise the differences between institutions in terms of financial strength, activity and risk. There were also concerns that changes to financial reporting (specifically to the introduction of a new Statement of Recommended Practice and of International Financial Reporting Standard (FRS) 102) would create volatility in surpluses, and might impact adversely on the number of requests for approval. Taking an average over a number of years might reduce, but not eliminate, this concern.

44. All the suggested threshold measures had different balances of strengths and weaknesses. A number of respondents, including lenders, suggested that any threshold measure should be forward-looking as well as drawing on actual levels. However, here was a clear preference – should a threshold approach be the outcome – for EBITDA as the measure to use.

45. The consultation set out three possible thresholds, the responses to each of which are considered below.

Borrowing as a percentage of income

46. There was very limited support for the use of this threshold measure. It had the advantages of being simple to measure, being easily calculable from HEIs' financial statements, allowing comparison between institutions and being used by institutions as a Key Performance Indicator.

47. Concerns were expressed by a number of institutions that a measure such as income might be volatile from one year to another, and more importantly that would not be a good measure of the affordability of borrowing or the ability to make repayments when due. It did not take account of an institution's cost base, nor the cash balances or short-term deposits held by institutions.

Net debt as a percentage of income

48. This was seen as a better measure, as it took account of cash balances. However, it had the same disadvantages in that it did not take account of an institution's cost base or its ability to repay borrowings. In addition, cash balances might already be committed to supporting investment plans, so the use of such a measure could be misleading in terms of an institution's ability to meet repayments.

A multiple of EBITDA

49. Where there was preference for a threshold approach, a multiple of EBITDA had by far the most support. This was largely because it was seen as a proxy for operating cash flow, and therefore a better indicator of an institution's ability to service its borrowings. It was also seen as the most likely to help HEFCE monitor the risks set out in paragraph 35 of the consultation document.

50. This approach also aligns with the development of the institutional sustainability assessments and report (ASSUR) for adoption by HEIs' governing bodies. Should EBITDA be used as a threshold, there is support for the definition of average EBITDA developed by the British Universities Finance Directors Group for the ASSUR return.

51. However, this approach would not take account of the extent to which operating cash flows were already committed to funding capital expenditure programmes or servicing existing debt.

52. There were concerns about the volatility across the year, meaning that some form of averaging would be helpful. The impact of the accounting changes arising from the new Statement of Recommended Practice and FRS 102 was seen as a factor in this volatility.

53. The modelling provided by HEFCE was based on historical data. A number of respondents suggested that, for this measure to be used as a threshold, it should take account of future levels.

Hard or soft threshold

54. The current requirements in the financial memorandum are for HEIs to seek prior consent from HEFCE to increase their short- or long-term borrowing above set thresholds (or other thresholds as previously agreed with HEFCE).

55. A number of responses suggested that future thresholds could act as a trigger for a conversation with HEFCE, rather than as a level above which prior approval would be required. This was on the basis that we would already have extensive information about HEIs' future plans and finances, and that alerting us to changes to this information would be sufficient for HEFCE to re-assess risks.

56. This is, however, dependent on HEIs alerting HEFCE in this way prior to any increase in financial commitments.

Enhanced information approach

57. There was a similar level of support for this approach as for the use of a threshold based on EBITDA. Enhancing the information provided to HEFCE through annual accountability returns was seen as reinforcing the responsibility of governing bodies for decisions over borrowing and other financial commitments and for financial sustainability. This would be in keeping with two of the principles underpinning the financial memorandum consultation, namely institutional autonomy and minimising burden. However, this approach might not align with other principles, such as the public interest and the collective student interest.

58. A number of respondents considered that additional information about financial commitments, provided annually as part of the accountability returns, should be sufficient for HEFCE to assess the risks to financial sustainability. A variation on this was that HEIs could be required to alert HEFCE to in-year changes ahead of the next annual accountability return, so that we could re-assess institutions' financial sustainability.

59. Respondents also considered that providing enhanced information would increase financial transparency. Institutions would be required to give fair warning of their financial commitments requirements to HEFCE through the financial forecasts, with some supplementary information such as policies on treasury and debt management and details of short-term working capital needs. Another view was that the suggested threshold measures could be included in the financial forecast information provided to HEFCE.

60. Including additional information as part of the financial forecasts would require the approval of governors, reinforcing their primary responsibility for financial sustainability.

61. However, it is clear that not all HEIs provide the same level of information in their forecasts. Some have stated that they only include new financial commitments when these are actually agreed, while others will include what is planned. Such variations would make it more difficult to be sure that all the necessary information was available to assess risks, in the absence of a threshold level that would trigger an assessment.

62. There was a view that the enhanced information approach was a less bad option than having a threshold. Some respondents commented that no one measure on its own was suitable and that there would need to be a combination of measures to address the risks set out in paragraph 35 of the consultation document, but that this would make a threshold approach more burdensome.

63. Other respondents saw providing enhanced information as an increase in the burden of accountability and therefore unacceptable.

What changes have we made as a result of these comments?

64. In considering what arrangements to include, the views of banks carry weight, particularly as there is no clear consensus among HEIs. Similarly, it is important that we can operate consistently across all HEIs and be confident that we are receiving the appropriate levels of information to inform our assessments of risk. The future arrangements to assess the risks arising from financial commitments will therefore be as follows.

a. There will be one threshold, with HEIs required to notify HEFCE of any intention to exceed that threshold and to secure our agreement to a higher threshold.

b. The threshold will be a multiple of EBITDA, and will include all financial commitments with no distinction based on timescales for repayment.

c. Financial commitments will be those on the balance sheet, recognising that these will increase from 2015-16 with the adoption of FRS 102. All such financial commitments will be included whatever their length or repayment terms.

d. HEFCE will assess whether the proposed level of financial commitment increases the risk to the public or the collective student interest; if so, the HEI will be required to take action to reduce that risk.

e. The information requested through the annual accountability returns will include details of all financial commitments, whether accounted for on or off the balance sheet.

65. We are working with the British Universities Finance Directors Group on the precise details of these arrangements, including what multiple of EBITDA should be used [1], definitions where these are needed and the process for assessing requests to increase financial commitments above the threshold. These discussions will also address how best to notify HEFCE about increases in off-balance-sheet finance between accountability returns. The final details of the arrangements will then be set out in the main text and in Annex C of the memorandum of assurance and accountability from August 2014.

66. We will need to assess which HEIs are below and above the new threshold, and reset starting thresholds at 1 August 2014. We expect, however, that the resulting thresholds for HEIs will be broadly in line with the current annualised servicing cost levels. We will need to review the thresholds for all HEIs again after FRS 102 comes into effect in 2015-16.

67. We need to be clear about the respective roles of institutions' governing bodies and HEFCE in this area. As stated in paragraph 34 above, HEIs' governing bodies decide whether to take on financial commitments. HEFCE's role is to assess whether the proposed level of financial commitment risks the short-term liquidity or long-term financial sustainability of the HEI, and therefore increases HEFCE's assessment of risk at the HEI.

[1] The definition of EBITDA will be based on an average of six years, to take account of volatility between years, and will include both actual and forecast levels.

Question 5: Do you agree that future arrangements should be on total financial commitments? If so, what should they be based on, and why?

68. There were 88 responses to this question. Sixteen strongly agreed and 47 agreed with the proposal (72 per cent in total). Sixteen (18 per cent) neither agreed nor disagreed, seven disagreed and two strongly disagreed with the proposal (10 per cent in total).

69. There was a large measure of agreement with the proposal, with respondents recognising that the current requirements for approval did not take account of the totality of off-balance-sheet transactions.

70. It was accepted that financial commitments should feature in the information provided to HEFCE as part of the financial forecasts, and that future financial plans should be included in discussions with HEFCE.

71. There were concerns, however, from many respondents over how best to define ‘financial commitments’. A number of respondents commented that any definition would need to be clear and understandable, and applied consistently across all institutions.

72. A number of definitions were suggested, including:

- long-term borrowings on the balance sheet
- loans and leases on the balance sheet
- loans, plus finance and operating leases, plus contracted financial commitments
- all transactions where the risk and reward of having an asset rests with the HEI
- commitments that would be included on balance sheets after the introduction of FRS 102.

73. The present arrangement is that increases in borrowings by HEIs above a particular threshold require approval by HEFCE. The definition of borrowing, in this case, is borrowing which is accounted for on HEIs’ balance sheets. This provides a clear definition linked to accounting standards. While this is an advantage, it does not capture the totality of HEIs’ financial commitments. There is also a risk that HEIs may look to off-balance-sheet arrangements in preference to seeking an increase in approved levels of financial commitments from HEFCE, which may not be good value.

74. The introduction of FRS 102 will require more financial transactions to be accounted for on an HEI’s balance sheet. This will include leases and some transactions that are currently off the balance sheet.

75. A number of respondents disagreed with the proposal on the basis that financial commitments were difficult to define consistently; that it would not recognise institutions’ different risk profiles; or that it should relate to affordability.

76. The view from lenders is that the definition should include all debt and financial instruments that have the same effect as debt, and importantly that off-balance-sheet commitments should be considered.

77. It would be possible to include additional information on financial commitments within the financial forecast information provided to HEFCE each year.

What changes have we made as a result of these comments?

78. While there was a large measure of support for the proposal that future arrangements should be based on financial commitments, there was no consensus as to how to define these commitments. As we need a consistent approach across all HEIs, we will continue to include those financial commitments that are on the balance sheet. We recognise that these commitments will increase from 2015-16 following the introduction of FRS 102. This is taken into account in the future arrangements set out under Question 4 above.

Question 6: Are there alternatives we have not considered? If so please describe these and how they would manage the risks set out at paragraph 35 [of the consultation document]?

79. We set out two broad approaches in the consultation. Less than half of respondents provided comments under this question. Some suggestions were either broadly maintaining the current arrangements, or were variations on what we had set out in the consultation.

80. There were suggestions that we do nothing until FRS 102 is introduced. An alternative was that we should continue with the current Annualised Servicing Cost approach for long-term borrowing but assume an amortisation period for loans of 20 years.

81. A number of respondents suggested that multiple measures would be preferable to the use of a single measure as a threshold criterion.

82. Another suggestion was that cash flow available for debt service (CFADS), a measure commonly used by banks, could form an alternative threshold approach.

83. One respondent commented that all three alternative measures suggested as threshold criteria were essentially short-term and not suitable for assessing financial sustainability.

84. A number of responses stated that an increase in financial commitments was not a material adverse event and should not be reported as such. Increases were – in the main – to support investment and should be seen as positive.

What changes have we made as a result of these comments?

85. The comments we received did not provide any alternatives to the approaches we set out in the consultation, but were variations of the options we had set out. The future approach is set out under Question 4 above.

86. We have amended the text of the memorandum of assurance and accountability so that increases in financial commitments are not regarded as material adverse events.

Question 7: Do you agree with the proposal to identify issues for prospective and current students in the register of higher education providers (paragraphs 20 and 81 of the draft financial memorandum)?

87. There were 87 responses to this question. Three strongly agreed and 25 agreed with the proposal (32 per cent in total). Thirty (34 per cent) neither agreed nor disagreed, 21 disagreed and eight strongly disagreed with the proposal (33 per cent in total).

88. There was no consensus on this issue and views were spread across the full range of possible responses.

89. While the register had previously been referred to in the Operating Framework there was little information about what it would contain or how it would be operated[2]. The consultation document stated that there would be discussions with sector bodies to set out the criteria for assessing when concerns would lead to a flag in the register.

90. A number of respondents welcomed the idea of such a register, but there were many concerns about unintended consequences which might arise from including information in the register without a proper process for determining what was to be disclosed and without prior engagement and dialogue with the institutions affected. There were a number of concerns expressed that disclosure without such a thorough process could make a difficult situation worse, or irrecoverable.

91. Some respondents emphasised the need to protect the interests of former students (alumni) as well as prospective and current students. There could be an adverse effect on the value of their degrees, impacting on their employment prospects.

92. Such concerns are understandable in the absence of more detailed information. They will be addressed through the forthcoming work on the register. A phased approach to developing the register would be welcomed.

What changes have we made as a result of these comments?

93. We recognise the concerns raised and have added some text to the memorandum of assurance and accountability to make it clear there will be a process of dialogue and engagement before we decide to include a flag in the register, and that we expect such a flag to be necessary only in exceptional circumstances.

94. All the comments received have been shared with colleagues in HEFCE working on the register.

Question 8: Do you agree with the intention to require HEIs to subscribe to Jisc?

95. There were 85 responses to this question. Six strongly agreed and 54 agreed with the proposal (71 per cent in total). Seventeen (20 per cent) neither agreed nor disagreed, six disagreed and two strongly disagreed with the proposal (9 per cent in total).

96. Most respondents agreed with the proposal and saw this as a practical arrangement for a three-year transition period. Their agreement was qualified by concerns that Jisc (formerly the Joint Information Systems Committee) will need to address. A minority of respondents did not support the proposal, some of whom questioned whether a mandatory subscription would be anti-competitive or against the principle of institutional autonomy.

97. There was widespread appreciation of the value that the Joint Academic Network (JANET) delivers across the sector, but a number of comments questioning the value delivered by other Jisc services. There was therefore more willingness to support the proposal in relation to JANET than to the totality of Jisc's activities.

[2] See 'Operating Framework for Higher Education' at www.hefce.ac.uk/about/intro/wip/rpg/of/

98. There was a very strong view from most respondents that the requirement to subscribe to Jisc should be for three years only (August 2014 to July 2017), and should not be extended. A number of respondents wished to engage with Jisc regarding how subscription rates were calculated. Others commented that there should be greater institutional engagement in Jisc's future governance arrangements, and greater accountability by Jisc to its customers.

99. A number of responses suggested that Jisc should engage with institutions now, to discuss future services and funding, rather than leave this closer to the end of the three years. This provides an opportunity for Jisc to demonstrate the value it can provide and to secure the continued support of its customers.

What changes have we made as a result of these comments?

100. The requirement to subscribe to Jisc for the three years from 1 August 2014 to 31 July 2017 is confirmed and included in the memorandum of assurance and accountability.

101. All the comments received have been shared with Jisc.

Question 9: Do you agree that the revised Audit Code of Practice at Annex A to the draft financial memorandum is sufficient to set out HEFCE's requirements? If not, what changes would you suggest?

102. There were 89 responses to this question. Thirteen strongly agreed and 64 agreed with the proposal (87 per cent in total). Ten (9 per cent) neither agreed nor disagreed and two (2 per cent) disagreed with the proposal.

103. A large number of respondents welcomed the streamlining of the Audit Code of Practice, the move to base this on principles, and the increased linking to good practice provided by professional and other bodies. Some respondents pointed out that the Committee of University Chairs' (CUC's) guidance about audit committees was in need of updating. Others suggested there should be a reference to the Chartered Institution of Internal Auditors standards.

104. A number of responses commented that the responsibilities of audit committees needed to be amended to make it clear that responsibility for the effectiveness of arrangements for risk management, control and governance rests with management. The role of audit committees is to assess the adequacy and effectiveness of such arrangements.

105. There were also responses that suggested that the Audit Code of Practice should be explicit that audit committees should satisfy themselves about the effectiveness of their auditors.

106. A number of respondents also commented that previous requirements for internal auditors to assess the adequacy of the arrangements to prevent and detect irregularities, fraud and corruption had been lost and should be included.

107. Other suggestions were that the Audit Code of Practice could clarify that internal audit should cover all of an HEI's activities, and that the internal audit annual report should be addressed to the accountable officer as well as the governing body. There were also suggestions that the description of the role of governing bodies could be included in the main body of the financial memorandum.

108. Another suggestion was that there were a number of places where the distinction between 'should' and 'must' should be applied more rigorously.

109. Responses from auditors pointed out that the normal practice in the private sector was for the rotation of external audit partners every 10 years.

What changes have we made as a result of these comments?

110. There was a large measure of support for the revised Audit Code of Practice. There were a number of helpful comments on the text with suggested changes. We have reviewed all of these and included most of them in the final memorandum of assurance and accountability.

Question 10: Do you agree with the proposed change to the second trigger for the repayment of Exchequer interest from HEFCE income to the total of HEFCE and SLC income?

111. There were 87 responses to this question. Nine strongly agreed and 67 agreed with the proposal (87 per cent in total). Six (7 per cent) neither agreed nor disagreed, six disagreed and five strongly disagreed with the proposal (13 per cent in total).

112. There was recognition that the second trigger for the repayment of Exchequer interest needed to change. Many respondents recognised that the proposed change to include Student Loans Company (SLC) income in addition to HEFCE income was a pragmatic solution.

113. However, a small number of comments suggested that SLC income should not be included, as it is not yet clear whether these should be considered public funds. A small number of other respondents considered that the focus should be on assets and not on income.

114. Some respondents questioned whether including SLC income was in fact a like-for-like replacement, and suggested that that the trigger could instead include Home and European Union undergraduate tuition fee income as well as HEFCE income. There were also some comments that the data sources for the revised trigger needed to be clarified, and that these should not increase the burden on HEIs.

115. Concerns were raised by specialist institutions receiving significant levels of exceptional funding, that any changes to this funding in the future due to policy changes might trigger such repayment. Similar concerns were raised by an institution with a high level of teacher training activity.

What changes have we made as a result of these comments?

116. There was a large measure of support for the proposal, which is now included in Annex D to the memorandum of assurance and accountability. We have however amended the text to make it clear that payments from the SLC are not strictly income. The second trigger for repayment of Exchequer interest therefore will be based on the total of HEFCE grant and SLC payments.

Question 11: Do you agree with the proposed changes to the annexes to the financial memorandum? If not, please set out what you would wish to see instead, and why?

117. There were 86 responses to this question. Six strongly agreed and 69 agreed with the proposal (87 per cent in total). Seven (8 per cent) neither agreed nor disagreed and four (5 per cent) disagreed with the proposal.

118. A large number of responses agreed with the proposed removal of a number of the current annexes. There were a number of requests for clear signposting as to where this information could now be found on HEFCE's web-site. We intend to provide this.

119. A small number of respondents wished to retain the two annexes that listed the mandatory requirements of the financial memorandum and the Audit Code of Practice, and that summarised the responsibilities of members of governing bodies. We have considered these suggestions. The memorandum of assurance and accountability is not a long document and should be read by governors and others in its entirety. The responsibilities of members of governing bodies are set out in the CUC Governance Code of Practice and General Principles (currently under revision) and need not be reproduced in the memorandum of assurance and accountability.

120. One respondent questioned whether Annex E on exempt charities should include a reference to reserves policy. Another respondent raised concerns over the specific requirements in this annex to report known or alleged links with proscribed organisations or terrorism. Reserves policies are covered through other charities requirements; the second issue has been considered before and no changes are thought necessary.

What changes have we made as a result of these comments?

121. Given the responses on this issue, the number and subject of the annexes will remain as set out in the consultation document. We have considered all the suggested minor textual changes, and included most of these in the memorandum of assurance and accountability.

122. In addition we will ensure that the information included in the annexes that are being removed is available on the HEFCE web-site or through other routes.

Question 12: Do you have any other comments on the proposed revised financial memorandum that have not been covered in the preceding questions?

123. There were a limited number of comments that did not relate to the previous questions.

124. A number of respondents pointed out that the reductions in grant funding, and the fact that the current draft of the financial memorandum includes more than just conditions of grant, called into question the name of the document. The memorandum now includes references to assurance and accountability. Suggestions for possible names included 'Memorandum of Assurance and Accountability' and 'Financial and Governance Memorandum'.

125. A few respondents suggested that HEFCE should set out what data sources, in addition to statutory ones, would be used. We are conscious of the burden that can be created through requests for data, so always assess whether such requests are necessary and justifiable. On occasion, validating data against other sources may lead to discussions with institutions to clarify data accuracy. The responses have been shared with HEFCE colleagues, to consider in terms of future data collection.

126. A small number of responses also commented that references to financial sanctions were increasingly hollow and unhelpful. The focus instead should be on working with sector on compliance issues.

127. There was a comment that the heading of ‘material adverse events’ was unhelpful, and that a more neutral phrase was needed.

128. One response questioned why there was a section on equality and diversity.

129. There were a number of other suggestions for minor changes to specific text.

What changes have we made as a result of these comments?

130. We have taken note of the comments about the name of the document and have changed this to ‘Memorandum of assurance and accountability’, to reflect its contents more closely.

131. The comments on additional data sources have been shared with Analytical Services colleagues within HEFCE.

132. We have also amended the memorandum of assurance and accountability to clarify what is required with respect to adverse events and other events that should be brought to HEFCE’s attention. We have also added an explicit requirement to inform HEFCE about issues of impropriety as a material adverse event.

133. Other minor changes to text that we have made for clarity do not increase any requirements on institutions.

134. We have also clarified that HEIs are required to comply with European Union state aid law in their own uses of HEFCE funding, and the action that HEFCE may take if there is a suspected breach.

List of abbreviations

ASSUR	Institutional sustainability assessment and report
CFADS	Cash flow available for debt service
CUC	Committee of University Chairs
EBITDA	Earnings before interest, taxation, depreciation and amortisation
FRS	Financial reporting standards
HEFCE	Higher Education Funding Council for England
HEIs	Higher education institutions
JANET	Joint academic network
Jisc	Formerly the Joint Information Systems Committee
SLC	Student Loans Company