



Independent Higher Education response to ‘Office for Students: Registration fees for HE Providers’ Consultation

14 March 2017

1. Do you broadly agree with the proposed set of principles to underpin the registration fee funding model?

Broadly agree

We agree that the registration fee should be proportionate, but we are also cautious that any proposed model designed to anticipate the cost of regulating a provider might place too much emphasis on risk simply because a provider is ‘new’. We would welcome a principle that the registration fee would not automatically charge more for ‘new’ providers but adopt a genuinely risk-based approach. This approach would be based on assurances linked to registration levels such as strong student protection plans and a strong history of validation including continuation clauses for students should a course close. We would however welcome more clarity on what is meant by “associated assurances” and encourage the government to work with the sector to identify assurances which can reduce both risk and the cost of regulating a provider.

We also agree with the principle that fees must be based on data that can be verified, but think that more work needs to be carried out to ensure that the data systems can accommodate all those providers who wish to enter the system at Approved or Approved (fee-cap). We remain concerned that the current systems for verifying data including student numbers are too restrictive to accommodate the range of providers which will need to register as ‘Approved’, in particular for a Tier 4 licence. The emphasis on verified data will also mean that there can be no bands based on student numbers for ‘Registered – Basic’ as these providers are not required to submit student data.

Finally, we welcome the proposal for more accountability in the charging model of designated bodies in respect of the functions they are designated to undertake. In particular we agree strongly with the consultation proposal that OfS should not duplicate fees charged by sector bodies for the same activity and feel this should be included as a principle. We feel however that OfS should go a step further and collect a single fee from providers which would include work by the designated bodies. This would not only streamline the current system but ensure the principles of the OfS fee model are also upheld in the designated bodies. This will ensure that both the OfS fee and the fees of designated bodies are predictable and proportionate for all levels and sizes of providers.

2. Do you support the principle of varying the registration fee by category of registration (currently: Basic/Approved/Approved (fee cap))?

Yes

We support the principle that OfS registration fees should be varied based on the category of registration that a provider opts for in the new system of regulation. However, we believe that more differentiation within the registration categories should be considered. ‘Approved’ and ‘Approved (fee-cap)’ levels of

registration include different requirements for educational oversight to those for designation for student finance and public funding, for example, which place a different burden on the OfS within as well as between these categories. We think there should be different costs for the varying levels of regulation within each registration category.

The differentiation within the *Approved* category might be achieved most easily by adding an additional charge specifically for Designation to the registration fee. This cost would therefore be removed from the registration fees for the *Approved* and *Approved (fee-cap)* categories and would be presented as an additional fee instead. A similar fee structure could be used for *Approved (fee-cap)* for those interested in public funding, but this may need to be an ongoing fee due to the higher level of accountability required for public funding. The fee for '*Approved*' should also take into consideration both the absence of public funding and the limit of student loans to £6000 (before TEF inflationary increases) which in most cases restricts the ability of providers to charge higher fees. Most providers in the *Approved* category will not have alternative funding sources to student fees.

We believe that the OfS registration fee for '*Registered-Basic*' providers should be low or carry no cost, to encourage all providers in the sector to register. We strongly believe it is in the best interest of the sector to have all higher education providers who meet the criteria on the register. As we have suggested before there are no benefits to registration beyond recognition although we believe this will change with time. With the initial outlay of costs providers would be more encouraged to register if registration carried no cost.

To offset potential costs to the OfS, we believe that *Registered-Basic* providers should incur greater fees for ongoing registration conditions or activities related to non-compliance, as less regulatory activity will have been priced into their initial fees and the cost to the OfS of such activity may be higher due to the limited data and assurances provided at the point of registration. It is likely, and desirable, that as the system evolves there will be more incentives for providers to maintain their registration which will justify the payment of these additional costs.

3. Do you support the proposal to measure the size of a provider by HE student numbers?

Yes

We agree in principle with the proposal of measuring the size of a provider by HE student numbers, but welcome further consultation with the sector on which students are counted within this. Many independent providers teach students across a range of courses and levels which are not currently considered higher education for the purposes of regulation, although most are taught at that level. These include short professional courses, transition courses which lead to higher education awards, and creative courses designed for community learners, to name a few. We expect there will be many providers not currently regulated by the Department for Education who have students not currently included in the definitions provided by the Higher Education Statistics Agency (HESA). This will need to be explored before bands can be set.

Our members also feel strongly that students on courses not regulated by OfS should not be included within the bands, however wish to have further discussion on which students should be counted by HESA. There is a clear case for the collection of student data in some areas where it is currently not collected. It is vital that student numbers be established through verified data however it is clear that there is still a considerable amount of work to do to ensure that the most appropriate students are counted within the bands.

4. Do you support using a system of bands to group providers by size?

Yes

An appropriate system of bands to group providers by size could ensure that students are not disadvantaged by attending a smaller institution where a disproportionate fee would take funds from their student experience. None of our members receive public funding so must take account of the cost of regulation and other important sector bodies when setting student fees.

We strongly recommend designing bands to take account of available data on student numbers in potential providers to be included in the registered system at *Approved* or *Approved (fee-cap)* rather than the bands commonly used in the sector which are based on the traditional university model. For instance, data published by IFF Research for the then Department for Business, Innovation and Skills in 2016 suggested that both a band of fewer than 100 students and a band of fewer than 250 would be warranted as much as 70% of the independent higher education sector had student numbers in this region. Following HESA releases in 2016 and 2017, more up-to-date information can be obtained on those providers likely to enter the *Approved* and *Approved (fee-cap)* levels of registration as we can establish rates of growth.

To ensure that providers are not discouraged from accepting students beyond the top end of their band we propose that in addition to the band there be a marginal cost per individual student between bands. This would avoid the risk of a cliff-edge increase deterring providers from recruiting qualified and deserving students onto courses. This model is currently used by UCAS and encourages recruitment, especially in smaller providers.

5. Do you think that, where additional specific ongoing registration conditions are placed on particular providers, these conditions should be taken into account when calculating their registration fee?

Not sure

We are still unsure if specific ongoing registration conditions will be placed on new providers, such as the student numbers controls introduced for designated alternative providers in 2014 which are still in place today and deter growth in popular provision. In line with the principle that costs should not discourage high quality new entrants we strongly advise against any costs being specifically imposed on new providers which might deter market entry and growth.

Where the decision to place additional specific ongoing registration conditions on a provider has been taken after registration and based on a specific, identified risk, the context of the provider should be considered when determining whether they should pay additional fees. Only where a provider poses an ongoing higher level of risk should specific registration conditions placed upon them incur a greater cost. These costs should be related to the action plan drawn up by the Office for Students and should be proportionate to student numbers so as not to take additional funds from the student experience.

6. Are there other variables that you think should be taken into account in the calculation of a provider's registration fee?

Yes

There are several variables which should be considered in the calculation of a registration fee, which are as follows:

- Where providers have high numbers of students from widening participation backgrounds and with protected characteristics, as identified by the Equality Act, which may require additional funding to support their success, providers without public funding should have access to funding which would

offset the impact OfS fees would have on the availability of funding for these students. We make further comments in this area under questions 7 and 9.

- As mentioned previously, fees should be based on the activities the provider undertakes within each registration category. For example, providers within *Approved (fee cap)* should have a reduced fee if they are not granted public funding which has associated accountability measures required by government.
- We remain concerned that the *Approved (fee cap)* category of registration could disadvantage single-subject independent providers who do not seek public funding. Where there is no ability to offset the cost of courses with fees from other students taking courses which are less costly to deliver, the costs of regulation can inhibit growth and have an impact on long-term stability where courses cost above £9000 to deliver, as is the case in many STEM subjects. We think that the cost of delivery should be a variable considered in OfS fees for the *Approved (fee cap)* category where the subject would normally receive public funding.
- Providers who are dormant (no registered students) but wish to retain their registration for a short period of time should pay no fee. This might occur if a provider is between validators or if it suspends teaching activity to move facilities, for example.
- Mandatory training related to regulation should be included in all levels of OfS registration fees, including training provided by designated bodies.

7. You are invited to provide any additional evidence on the potential impact of registration fees, including any impacts under the Public Sector Equality Duty (PSED).

We believe that care needs to be taken in terms of how OfS fees impact on students from widening participation backgrounds, mature students, BME students, student parents and student carers. Many of these students have one or more protected characteristics under the Equality Act. As highlighted in HESA's second experimental data release on independent providers, 56% of students in the 2015/16 cohort identified as being from BME backgrounds compared to only 24% in publicly funded HE providers. 39% of students were over 30 compared with only 6% in publicly funded providers. Therefore, any specific impacts on these groups of students are likely to be disproportionately present in these providers.

At independent providers, the cost of external regulation and quality assurance is passed directly onto the students, as many operate as not for profit or very low profit institutions without any additional sources of income – they must cover the cost of regulation entirely with student fees. Those currently considered to be 'Alternative Providers' are expected under the new system mostly to opt for the *Approved* category, whereby their students will continue to access only £6000 in loans towards their tuition. Many APs have a strong widening participation focus so are careful not to set their fees above or far above £6000, remaining consistently below the £9000 level charged by universities and therefore finding little margin available to support an increase in the cost of regulation. A typical independent provider today charging £6000 in fees could see £1000 go to VAT and £850-1000 to their validating body, leaving just £4000 for actual operating costs, including the student experience as well as regulation and engagement with sector bodies. Many of their students from widening participation backgrounds also require additional investment to support their learning and to ensure they get the most from their degrees.

We propose therefore that where OfS fees might lead to an increase in the cost of a degree for a student from a widening participation background, or risk eroding the margin available to fund their support and student experience, government funding should be directed to OfS specifically to reduce or remove the financial burden of OfS registration.

8. Based on your experience of the HE sector and/or previous interactions with HEFCE and OFFA, please provide examples relevant to your organisation or the wider sector of the types of activity that you think should be covered by ‘other fees’.

There are several types of activities which we believe should be covered by ‘other fees’ These are as follows:

- The cost for gateways including DAPs
- Concerns procedures – the cost of these should be included in ‘other fees’ where procedures are being applied on an ongoing basis or where an action plan results from an investigation.
- Bespoke work by OfS staff for specific providers which request additional support should incur other fees.

There are some activities we think should be specifically excluded from incurring other fees:

- ‘Other fees’ should not include any mandatory training or training specific to changing policy or regulation.
- If surveys such as NSS and DLHE are to form part of the regulation, the associated costs should be included in and not additional to the main OfS fee.

9. You are invited to provide any additional evidence on the potential impact of other fees, including any impacts under the Public Sector Equality Duty (PSED).

Any additional associated costs should be considered carefully for independent providers with high numbers of students with protected characteristics, especially where publicly funded providers have in the past been given large grants to develop and maintain support for these students. These additional funds have ensured that these students have been supported and not disproportionately impacted by changes to higher education regulation in the past. In the interests of establishing a level playing field this history would be considered when thinking through how to ensure there is no disproportionate impact on these students in the forthcoming regulation system.

We believe that it is likely that providers with high numbers of students from widening participation backgrounds, many of whom will have protected characteristics, will face challenges with the data chosen for regulation. This will be even more the case where the provider has not been engaged in aspects of regulation through bodies such as HESA in the past. Additional costs associated with resolving this data challenge should not be a burden to students, who ultimately have to bear the cost of regulation in independent providers without additional public funding streams.

Additionally, and bearing in mind the need to comply with CMA guidelines, ‘other fees’ imposed on providers with little notice, including those due to specific ongoing conditions of registration, should not be charged in such a way as to force the provider to increase their fees for current students. There will also be a significant impact on retention where students are charged additional sudden fees and this is more likely to impact on students with protected characteristics.

10. Do you broadly agree with the proposed principles that would help inform judgements around where the government might contribute funding to the OfS?

Broadly agree

We agree with the principles set out, particularly in relation to the government contributing funding where the OfS will perform other functions which will contribute towards activities that have wider economic and societal benefits. We particularly agree with the proposal that the government should contribute funding to cover the costs of the Prevent Duty, which can be burdensome at smaller providers with fewer resources. We believe that the government should also contribute funding to ensure that the cost of OfS regulation does not adversely impact students from widening participation backgrounds at providers without public funding. As the cost of regulation must be passed to the student in independent providers, safeguards should be place to protect the funding from fees intended to go to supporting the student. Where surplus income is generated for OfS, it should not return to the consolidated fund, but go towards supporting students from widening participation backgrounds at risk of dropping out through the extension of funds like ‘Student Opportunities’ to providers without public funding but which are designated for student finance.

11. a) Are there any activities / types of activity / types of provider / provider circumstances that you feel should be exempt from the registration fee?

We believe that there are several scenarios, particularly within the independent sector, where providers should be exempt from fees. These are as follows:

- Providers which aim specifically to support students with low or no qualifications through programmes designed for transition. Some of these are only able to do so through partnerships for funding from the SFA, which is the body for funding below degree level. This additional layer of regulation is very difficult to navigate for independent providers and adds considerable costs where the fee incomes from students are very low. Providers with students on these courses should be able to have this activity exempt from additional cost from the OfS, however we would encourage DfE to look to bring together the regulation for transition courses of this type and reduce the duplication of regulation at institutional level.
- UK providers who deliver short-term study programmes (both credit-bearing and not) on behalf of an overseas provider do currently require a Tier 4 licence and would therefore need to register in the *Approved* category. However, their students do not fit into the existing metrics due to the length of their study and the unsuitability of student satisfaction and destination surveys. These providers should be subject to a much lower fee which reflects the close educational oversight of their overseas partner providers. As the students typically contract with their home institution and not the UK provider, OIA subscription is also unlikely to be relevant.
- Dormant providers, with no registered students, should be able to remain registered for a period of time but with no fee. This may be the case as a provider transitions from one validator to another or moves premises.
- Students who are on short courses and professional courses which do not meet the criteria for submission to HESA should not be included in student numbers for the purposes of the OfS fee.

b) Are there any activities / types of activity / types of provider / provider circumstances that you feel should be partially subsidised by government?

We believe there are several circumstances which fit into this category. These are as follows:

- Activity where OfS assumes monitoring for a policy which is in the public interest beyond education such as Prevent, or activities which encourage civil engagement such as proposals currently in Parliament concerning higher education institutions’ participation in voter registration, should be subsidised by government.

- We believe that the government should contribute funding to the OfS to offset the registration fees where providers exceed a certain threshold proportion of their students coming from Widening Participation backgrounds. This should be based on widening participation data which includes both HEI and Alternative Provider submissions to HESA.
- Additional funding should be provided to support students with disabilities similar to the funding which has been provided for many years to publicly funded institutions which they have used to meet their duties under equality legislation. Independent providers have only had access to funding for individual students and therefore face a far greater challenge in preparing for the changes to DSA.
- Providers which are regulated for both the Skills Funding Agency and the Office for Students should have their fees subsidised by government to offset the additional costs of separate yet overlapping regulation until the government is able to reduce this burden.