

**Office for
Students**



Consultation on OfS strategy 2022-25

**Analysis of responses to consultation
and decisions**

Reference OfS 2022.17

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The Office for Students is the independent regulator for higher education in England. We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers.

Our four regulatory objectives

All students, from all backgrounds, and with the ability and desire to undertake higher education:

- are supported to access, succeed in, and progress from, higher education
- receive a high quality academic experience, and their interests are protected while they study or in the event of provider, campus or course closure
- are able to progress into employment or further study, and their qualifications hold their value over time
- receive value for money.

Introduction

What we were consulting on

1. Our consultation sought views from stakeholders on two proposals:
 - Proposal 1: OfS strategy for 2022 to 2025
 - Proposal 2: Minor addition to regulatory framework.
2. The main proposal set out in this consultation was a strategy for 2022 to 2025. This is a plan of action that will guide our activities as a regulator over the next three years. It will make sure we are targeted, sequence our work effectively, and are able to achieve our aims and make best use of the resources we have available.
3. The proposed strategy first restated our mission statement and four regulatory objectives. Secondly, it then set out the OfS's regulatory approach. This is a statement of how we intend to perform our functions in the next strategic period. We identified two areas of focus: quality and standards and equality of opportunity. These are inextricably linked, as progress in one area is dependent on and supported by progress in the other. As we seek to make progress in these two areas, we will do so in a way that is consistent with both the regulatory approach set out in this strategy and our regulatory framework. We also identified a number of goals to support our areas of focus. These represent the specific outcomes we want to achieve in the next strategic period. In seeking to achieve these goals, we will use a range of regulatory tools, including but not limited to: setting minimum regulatory requirements (and enforcing these to ensure registered higher education providers comply with them), information tools such as the publication of data, and funding.
4. We consulted on our strategy for 2022 to 2025 because we want to take account of stakeholders' views in its development and to ensure the process is fair and transparent.
5. The second proposal concerned a minor amendment to the regulatory framework. We proposed to add the text below to Part I of the regulatory framework, to the section titled 'Overview of the regulatory approach', between paragraphs 15 and 16.

'For more information about our priorities in a particular strategic period, please consult our current strategy, which can be found at www.officeforstudents.org.uk/about/our-strategy/.'
6. We proposed to add this text to the regulatory framework to clarify the relationship between the regulatory framework and our strategy documents. Further to s.75(8) of the Higher Education and Research Act 2017 (HERA), we sought consultees' views on this proposed change to the regulatory framework.

The consultation

7. The consultation was published on the OfS website on 11 November 2021 and the deadline for responses was noon on 6 January 2022. Stakeholders were invited to share their views on the consultation by submitting written responses to an online survey containing five questions.

8. The questions were:
- Q1. Proposal 1: Do you have any comments to make on the OfS's proposed strategy for 2022 to 2025 or the priorities set out within it?
 - Q2. Proposal 1: Do you have any comments about any unintended consequences of the proposed strategy or the priorities set out within it, for example for particular types of provider, particular types of student, or for individuals on the basis of their protected characteristics?
 - Q3. Proposal 2: Do you have any comments to make on the proposed addition to the regulatory framework?
 - Q4. Are there aspects of proposals 1 and/or 2 you found unclear? If so, please specify which, and tell us why.
 - Q5. Do you have any other comments?
9. We received 103 responses to the consultation: 96 via the online survey tool and seven by email. Three responses were submitted after the deadline but we considered all responses that we received.
10. The responses came mainly from providers (55, including one outside England) and sector representative bodies (12, including eight from organisations representing groups of providers). We received four submissions from students' unions at individual providers. There were 12 anonymous responses.

Analysis of responses

11. We undertook a qualitative analysis of the feedback that we received. In this document we identify and discuss the most significant issues raised by respondents.
12. The OfS strategy will guide our activities as a regulator over the next three years. Our proposed strategy therefore necessarily covers almost everything the OfS will seek to do in this period. However, the detail of many of the policies and approaches implied by the strategy will, at the appropriate time, be subject to further engagement with stakeholders and, if appropriate, consultation.
13. For this consultation, we received many comments on issues of policy detail that were not in the proposed strategy and that we were not consulting on. We have not included all such comments in our summary below. However, in making our final decision on the content of the strategy, we have had regard to all of the feedback that we received.

Final decisions

OfS strategy 2022-2025

14. We have decided to revise the text of the proposed strategy in the following ways. Some of these wording changes explain more clearly activity that we had already planned under the proposed strategy. Some amendments reflect decisions about changes to our planned activity over the next three years.

- a. Some respondents argued that our regulatory approach seemed too focused on undergraduate degree courses and neglected postgraduate students or those on Level 4 and 5 courses, degree apprenticeships and Higher Technical Qualifications (HTQs). We have amended the first bullet point under paragraph 6 (page 5) to read: 'Undergraduates, postgraduates or those studying at other levels of higher education'.
- b. Some respondents felt that the tone and language in the strategy indicated a lack of trust in the sector that could damage its reputation. We have revised the strategy to make clear that 'Much of the provision in the English higher education sector is exemplary; our focus as a regulator will be on addressing cases that fall short' in paragraph 11 (page 5).
- c. Some respondents felt that the strategy lacked partnership, collaboration, communication, and engagement with providers. We have added to paragraph 21 (page 7) the wording 'Similarly, we will continue to engage with the providers we regulate to understand their views and perspectives'.
- d. Some respondents asked for more detail about how we will work with other organisations, particular those with a responsibility for, or involvement in, quality assessment of registered providers. We have added to paragraph 22 (page 7) the wording 'We will also focus on our engagement and collaboration with those organisations where we share regulatory interests, including: The Institute for Apprenticeships and Technical Education (IfATE) and Ofsted on the regulation of degree apprenticeships and higher technical qualifications; relevant professional, statutory and regulatory bodies (PSRBs) for certain types of courses; the Education and Skills Funding Agency (ESFA) on regulation of further education colleges'.
- e. Some respondents found the way the strategy introduces 'enabling regulation' as a third area of focus to be confusing. We have amended paragraph 28 (page 8) to read 'In addition to these two areas of focus, a third area – enabling regulation...'
- f. Some respondents recommended expanding the scope of the goal on preventing harassment and sexual misconduct to cover all forms of discrimination or hate crime based on the protected characteristics in the Equality Act 2010. Our existing statement of expectations on preventing and addressing harassment and sexual misconduct sets out our definition of harassment, using wording from the Equality Act 2010. We have added a footnote to this goal (page 9) that makes this clear: 'Our definitions of harassment and sexual misconduct are given in our statement of expectations for preventing and addressing harassment and sexual misconduct affecting students in higher education. See www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/prevent-and-address-harassment-and-sexual-misconduct/statement-of-expectations/'.
- g. Some respondents suggested that the strategy could say more on how we plan to engage with students over the next few years. We have added the wording 'We will maintain our student panel and enhance its contribution to our work. We will engage with students and students' unions, enabling their views to shape the future of higher education' to paragraph 21 (page 7) and 'We will support staff to engage with students effectively and embed their views across our strategic activities' to paragraph 32 (page 10).

- h. Some of the comments we received about regulatory sandboxes assumed that these would include additional funding, whereas this is not necessarily the case. We have amended the wording of paragraph e under the goal on quality (page 11), paragraph c under the goal on assessment and awards (page 12), and paragraph c under the goal on student choice (page 14) to read ‘We will consider using small-scale regulatory ‘sandboxes’ for providers...’
 - i. It is clear from the responses we received that there is not a common understanding of what is meant by ‘free speech within the law’. We have added a paragraph d under the goal on free speech (page 12) to read ‘We will engage with students to help them to understand what free speech within the law means in the context of their higher education experience’.
 - j. Some respondents felt that our approach to regulating validation arrangements might make providers less likely to work in partnership with others, with a negative impact on the diversity of provision. Others suggested that many of the innovative opportunities for students that we wish to promote further are delivered under such partnerships. We have added wording to paragraph e under the goal on student choice (page 14) to read ‘We will also consider whether we should intervene in the validation system to increase the availability of high quality courses across England’.
 - k. Some of the responses we received to the consultation, and further engagement we had with providers during the consultation period, leads us to believe that some providers have created internal bureaucracy that is not required for our regulatory purposes. We have added wording to paragraph d under the goal on regulatory burden (page 16) to read ‘We will also challenge providers to take purposeful steps to dismantle internal bureaucracy that has accreted over time and is not needed to comply with our regulatory requirements’.
15. We have also made some minor amendments in places to the proposed strategy to aid clarity.
16. Our revised strategy will take effect from 1 April 2022. It will guide our decisions and give providers and stakeholders clarity about our direction.

Addition to the regulatory framework

17. As originally proposed, we have decided to add the following text to Part I of the regulatory framework, to the section titled ‘Overview of the regulatory approach’, between paragraphs 15 and 16, with effect from 1 April 2022:

‘For more information about our priorities in a particular strategic period, please consult our current strategy, which can be found at www.officeforstudents.org.uk/about/our-strategy/.’

Further information

18. In reaching our final decision about these matters, the OfS has had regard to its general duties as set out in section 2 of HERA. The OfS strategy 2022-25 is relevant to all the OfS’s activity over the next three years, and we therefore consider all general duties to be relevant.

19. We also had regard to:

- the Regulators' Code
- guidance issued by the Secretary of State
- the public sector equality duty.

20. Alongside this document, we are publishing:

- the final OfS strategy document
- an addition to the regulatory framework.

Proposal 1: OfS strategy for 2022 to 2025

21. In this section we have summarised the responses we received in relation to proposal 1 in the consultation: the OfS strategy 2022 to 2025. We first discuss some overarching themes that emerged through comments on various parts of the proposed strategy. We then move on to discuss comments received about specific parts of the proposed strategy, taking each part in turn.

Overarching themes

Timing of strategy and uncertainty about future changes

22. Some respondents questioned the timing of the strategy, given several imminent changes. Respondents discussed the need to appoint a new OfS chief executive, revisions to access and participation plans, and government reforms to the higher education system.
23. There were also concerns that there is a lack of reference in the strategy to uncertain aspects of the external environment – particularly the ongoing effects of the coronavirus pandemic – that may disrupt the sector.
24. The consultation on the strategy closed before we launched our separate consultations on a new approach to regulating student outcomes, on the Teaching Excellence Framework, and on constructing student outcome and experience indicators for use in OfS regulation.¹ The consultation on the strategy also closed before we published our response and final decisions regarding our previous consultation on revised quality and standards conditions.² Many respondents wanted more clarity about these proposals and our decisions. They felt unable to comment fully on the strategy without knowing more detail of the regulatory system that will be in place.
25. Some respondents suggested that the strategy was vague or based on limited evidence. Others felt that the lack of success measures made the long-term direction of the strategy unclear.

OfS response

We recognise that the strategy will likely cover a period of significant change for the sector. However, we are committed to putting our new strategy in place for 2022. Continuing under our existing strategy – designed for a newly established organisation operating in a very different environment – would risk our activity lacking direction, coordination and focus.

We acknowledge the points made about being unable to comment on the strategy without more detail about changes to the regulatory system. These changes are subject to separate consultation processes.

¹ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/.

² See www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions-outcomes/.

We believe our approach to performing our functions and delivering the strategy is sufficiently adaptable to cope with most changes in the external environment. The strategy does mention our work to align with forthcoming government reforms (such as the Lifelong Loan Entitlement) and to address the effects of the pandemic.

We have also decided on broad areas of focus for the strategy that are very unlikely to change. The goals under these areas are focused on addressing more specific issues, but are sufficiently open to allow flexibility in the way we deliver them.

Now that our strategy is finalised, we will develop and then publish key performance measures that will assess our progress against our goals. We will also publish annual business plans that will provide more detail on how we intend to implement the strategy each year. The strategy notes that it is subject to change and that we will adapt as the external environment continues to shift.

As noted in the consultation document, we have considered a broad range of evidence in developing the strategy. Some of this evidence comes from our experiences as a regulator – assessing the risks posed to students and taxpayers by practices at individual providers. As noted in the strategy, our work will continue to be informed by evidence and evaluation.

Student engagement

26. Several respondents suggested that the strategy could say more on how we plan to engage with students over the next few years. They felt that this was necessary to ensure that we consider the student voice in our work. It was noted that only two goals explicitly reference the role of student engagement in understanding and addressing issues. Some responses recommended that the OfS student engagement strategy should be incorporated into the overall strategy.
27. Some submissions asked us to engage with a more diverse range of students. Suggestions included: student unions that are not affiliated with the NUS; students who are not involved with their student unions; students at different types of providers; and prospective students who are still at school.
28. Some respondents also felt that the student voice did not appear to have influenced the development of the strategy. They suggested that the priorities within the strategy did not seem to align with those of students.

OfS response

We acknowledge the comments about the importance of involving students in our work. Our ambition is to take the perspectives of past, present and future students into account in all our work, regardless of their background, identity, or what and where they study. We engage with students who are not involved with students' unions, students at providers with no formal student representative structure, and prospective students.

We have revised the strategy to refer more extensively to our plans for student engagement. We have committed to continuing with our student panel, and to engaging further with students and students' unions to ensure their perspectives and experiences inform our work to deliver the strategy.

Our student engagement strategy will be revised and published soon. While it will be a separate document, giving prominence to this important aspect of our work, it will align with the new OfS strategy.

Students' voices made a fundamental contribution to the proposals for our new strategy. The OfS student panel were consulted during the development of the proposed strategy. We also reviewed published research that examined questions on what students want and need from English higher education. Several students' unions submitted responses to the consultation and their views have been considered in our decisions. This reflects our commitment to involve students in our policy development as outlined in our student engagement strategy.

Equality considerations when regulating student outcomes

29. As noted above, the strategy consultation closed before we published our decisions about revised quality and standards conditions and before we published our proposals for a new approach to regulating student outcomes.
30. When commenting on the elements of our strategy that relate to our regulation of quality and standards (particularly the regulation of student outcomes), many respondents gave views on potential impacts on equality of opportunity for different groups of students.
31. The most common concern was that a 'one-size-fits-all' approach to measuring performance on quality, such as the use of absolute metrics without consideration of local context, might have a negative impact on social mobility and underrepresented groups in higher education. Respondents suggested that an unintended consequence of our approach would be to disincentive providers from admitting students whose characteristics or backgrounds might suggest they are less likely to succeed.
32. There were also concerns about a focus on graduate employment outcomes and how this might impact on particular providers or types of provision. Several respondents suggested that providers with graduates that progress to low-paid but socially or culturally valuable employment might be disadvantaged. This point was also made in relation to providers with graduates that are affected by regional economic disparities. Some felt that outcomes of higher education, particularly for creative arts courses, should be viewed in terms of personal development, life satisfaction, and social responsibility – and not simply earnings.

OfS response

We are consulting separately on our proposed approach to student outcomes.³ Through this consultation we set out a way of regulating that would set minimum expectations for all students and would enable us to act where any group of students is being left behind. At the same time, we will continue to take steps through our regulation of access and participation to reduce the gaps in equality of opportunity between students from underrepresented groups and other students, before, during and beyond their time in higher education.

We are also proposing that our regulation of minimum requirements for student outcomes includes an assessment of the context in which those outcomes were delivered.

We have proposed to use as one of our student outcome measures the proportion of students progressing to managerial or professional employment, or further study. We are not proposing to set numerical thresholds for graduate salary-based indicators. Our view is that an assessment of student employment outcomes is not only an integral part of our consideration of quality, but that it also relates to value for money for both the student and the taxpayer.

We are consulting separately on our proposed approach to the TEF, including how we propose to consider student outcomes within this exercise. We intend for the TEF to support equality of opportunity for students during and beyond their time in higher education. The TEF should reinforce our regulation of access and participation and incentivise providers to deliver excellence above the baseline requirements for all their groups of students, including underrepresented groups.

We will give due regard to the responses we receive to our consultations on regulating student outcomes and the TEF. The strategy does not entail an approach that would be in conflict with our proposed approaches.

Work with other organisations

33. Commenting on various elements of the strategy, some respondents asked for more detail about how we will work with other organisations. This point was made with particular reference to the other bodies with a responsibility for, or involvement in, quality assessment of registered providers. Respondents were of the view that effective relationships with these bodies are required to avoid duplication and to minimise regulatory burden for providers.
34. Several respondents stated that the strategy did not provide details of how we will work with our designated quality body. Some also asked for more information about how we plan to work with higher education organisations in other parts of the UK.

³ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

OfS response

We recognise that effective relationships between the OfS, our designated bodies, other regulatory organisations, and our counterparts in the devolved nations are important.

The proposed strategy did include a paragraph describing the importance of engaging with our many stakeholders. We have revised this text to reflect that we will work with other organisations, particular those that are involved in assessing the quality of higher education providers.

Our work with the designated quality body is closely linked to our approach to regulating quality and standards. We previously consulted on proposals for quality and standards conditions.⁴ These proposals set out how we intend to commission or seek advice from the designated quality body. We have now published our decision to adopt these proposals, subject to the amendments set out in the response publication.⁵

Our relationship with the sector

35. Some respondents felt that the strategy lacked partnership, collaboration and co-creation with providers. They wanted better recognition of the shared aims between the sector and the OfS.
36. Some respondents suggested that the tone and language in the strategy comes across as punitive and felt this indicated a demoralising lack of trust in the sector. There were also concerns about the proposed increase in investigation and enforcement activity. Several responses advised that this approach could inadvertently damage the reputation of higher education in England, with consequences for international student recruitment.
37. There were calls for better engagement with providers and representative bodies, with clearer communications and guidance. Several respondents wanted more time to engage and respond to our consultations, or asked for tailored forms of communication for particular types of provider.

OfS response

Our focus as a regulator is on protecting the interests of students and taxpayers. This necessarily means targeting issues where these interests are being harmed. This includes investigation and enforcement activity where our requirements are not being met.

However, this should not be taken to mean that the sector overall is not performing well. We recognise that there are many excellent providers whose students enjoy fulfilling academic experiences and beneficial outcomes.

⁴ See www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions/.

⁵ See www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions-outcomes/.

Fair, strong and proportionate regulation that targets poor provision will enhance the reputation of the sector. We have revised the strategy to make clear that much of the higher education sector is exemplary; our focus as a regulator will be on addressing cases that fall short.

We already collaborate with providers and the strategy outlines how we will continue to do so. For example, by generating evidence about ‘what works’ to improve access and participation, and publishing effective practice case studies for responding to cases of harassment and sexual misconduct. However, we recognise the need to engage with providers. We have added text to the strategy that commits us seeking providers’ views and understanding their perspectives.

We will have regard to need for clear communications and, where appropriate, consultation with providers as we implement the strategy.

Independence from government

38. There were mixed views about how closely the strategy should align with government priorities. Some respondents welcomed the fact that our goals were in step with government policy on skills and flexible study. Some were concerned that our approach to student outcomes might have an unintended negative impact on the government’s aims for levelling up (discussed further in the section ‘Equality considerations when regulating student outcomes’).
39. Other responses suggested that the strategy signalled an inappropriate lack of independence from government. They questioned whether the strategy is driven more by political interests than students’ interests. It was suggested that aligning with current political agendas, such as levelling up, may become an issue if there is a general election during the lifetime of the strategy.

OfS response

We have noted these concerns but do not believe that the strategy signals a lack of independence from government, nor that it challenges our role as an independent regulator.

The Higher Education and Research Act (2017) states that the OfS must have regard to guidance given to it by the Secretary of State, and gives the Secretary of State powers to give the OfS directions.⁶ The guidance we have received from the Secretary of State is reflected in the strategy we have developed.

The Department for Levelling Up, Housing and Communities has now published a white paper that sets out 12 national missions, to which the government intends to give status in law. It is clear that levelling up is about addressing regional inequality, an issue that is unlikely to diminish in importance over the next few years. As set out in our strategy, we see graduates contributing to local prosperity as supporting this agenda.

⁶ See section 2, paragraph 3, and section 77 in <https://www.legislation.gov.uk/ukpga/2017/29/contents>.

Climate change and environmental sustainability

40. A small but significant number of respondents were concerned that the proposed strategy does not address the issues of climate change or environmental sustainability. These respondents discussed the role of higher education in tackling the climate emergency and suggested that providers should be developing graduates with the skills and sense of social responsibility to make progress possible. They also suggested that providers should be encouraged to limit their carbon emissions and aim for environmental, and not just financial, sustainability.

OfS response

We recognise that climate change is a crucial issue for us all, and providers have an important role in reducing emissions. However, the OfS does not have explicit powers in relation to addressing providers' environmental sustainability.

Providers are increasingly taking collective responsibility for responding to climate change. While we do not intend to address this issue as a strategic priority, we would encourage providers to listen to their student bodies, as well as the wider community, and to continue taking proactive and positive action.

Mission and regulatory objectives

The proposed strategy set out our mission:

We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers.

It also reiterated our four regulatory objectives:

Participation: All students, from all backgrounds, with the ability and desire to undertake higher education, are supported to access, succeed in, and progress from higher education.

Experience: All students, from all backgrounds, receive a high-quality academic experience, and their interests are protected while they study or in the event of provider, campus or course closure.

Outcomes: All students, from all backgrounds, can progress into employment, further study, and lead fulfilling lives, in which their qualifications hold their value over time.

Value for money: All students, from all backgrounds, receive value for money.

41. Many respondents expressed broad support for our regulatory objectives. Most felt that they provide an appropriate, clear and structured foundation for our work.
42. Some respondents wanted greater clarity on some terms within our regulatory objectives. They sought further information on:
 - How we define and measure 'value for money' (noting that this might disproportionately affect smaller specialist institutions)
 - How we define 'fulfilling lives' and whether this would look beyond 'employment' and 'further study' to include, for example, entrepreneurship or volunteering.

OfS response

Value for money in higher education is a complex and contested concept. We believe that students receive value for money when they experience the full benefits of higher education – both during their studies and afterwards – in exchange for the effort, time and money they invest. We believe that by delivering our other three regulatory objectives (on participation, experience and outcomes), we will ensure that students from all backgrounds receive value for money.

The questions raised about how we define 'fulfilling lives' centre on how we view different student outcomes. We are consulting on our approach to constructing student outcome indicators for use in OfS regulation.⁷ We propose to use as one of our student outcome measures the proportion of students progressing to managerial or professional employment, or further study. In constructing this measure, we propose to count any graduates who are self-employed, running their own business or working in voluntary or unpaid roles, as positive outcomes (as long as this activity maps to a managerial and professional occupation).⁸

Furthermore, we recognise that students can benefit from higher education in ways that extend beyond the outcomes we currently measure as part of our baseline regulation. In our consultation on the TEF, we propose to consider not just the extent to which a provider's students succeed in and beyond their studies, but also the educational gains that have been delivered.⁹

We will give due regard to the responses we receive to our consultation on student outcome indicators. The strategy does not entail an approach that would be in conflict with our proposed approach to measuring student outcomes.

⁷ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

⁸ See paragraph 276 of the consultation on outcome and experience data, at www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

⁹ See Proposal 2 in the TEF consultation, at www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/the-tef/.

Regulatory approach

The proposed strategy set out our 'regulatory approach'. This is our approach to performing our functions and delivering the strategy, consistent with the regulatory framework.

43. We received several responses that supported our proposed regulatory approach. There was support for the use of a regulatory baseline to set minimum requirements, and for the use of TEF to incentivise excellence above this baseline. Some respondents stated that the use of the baseline must not become a box-ticking exercise which stifles innovation.
44. Several respondents welcomed the proposed risk-based approach to regulation. They argued that this would reduce burden, increase trust in the sector, and provide an organising principle for our work.
45. Some respondents felt that the strategy would benefit from more detail on how the regulatory approach would be applied in practice for quality and standards. There were requests for more information on:
 - how the baseline will function, including which measures we will use to define it
 - whether we will consider provider context when assessing student outcomes
 - how we will decide when to investigate or take enforcement action
 - how statements of expectations should be interpreted by providers
 - how we will incentivise performance above the baseline, other than through the TEF, with some views that this should include a collaborative approach
 - how we will prioritise our activities.
46. Several respondents argued that our regulatory approach seemed too focused on young undergraduates taking full-time higher education degree courses. They questioned whether our regulatory approach would meet the needs of mature students or those on different types of courses – part-time and flexible; postgraduate; Level 4 and 5; degree apprenticeships and Higher Technical Qualifications (HTQs); innovative online courses; continuing professional development; and transnational education.

OfS response

We welcome the support for the regulatory baseline. We believe that setting minimum requirements for providers, and securing compliance with these requirements, is the best way to ensure students' and taxpayers' interests are protected. We consider it to be the most proportionate way to drive progress towards achieving our overall mission and primary regulatory objectives.

We also welcome the support for a risk-based approach. This enables us to minimise burden on providers where possible. It also allows us to minimise interference with institutional autonomy.

We recently consulted on revised conditions of registration for quality and standards, including our approach to evidence gathering and investigation for registered providers.¹⁰ We have confirmed that we will take a risk-based approach to this activity.

We are also currently consulting on a new approach to regulating student outcomes and the measures we will use.¹¹ These proposals also set out how we intend to consider provider context when making judgements about student outcomes.

Following consultation we will implement these approaches and then identify priorities for our enforcement activity. We will communicate these priorities to the sector.

Once finalised, and taken together, the approach described above to regulating our quality and standards conditions will define a regulatory baseline and provide clarity about how we secure compliance with it.

We will use the TEF to incentivise providers to go beyond our minimum expectations. Our consultation on the TEF proposes that it should assess how far each provider delivers excellent teaching, learning and outcomes for its mix of students and courses.¹² We consider this approach would incentivise excellence in a way that benefits the widest possible range of students.

We also see student choice as playing a significant role in influencing the sector to respond to students' needs. We will promote student choice, for example by running our student information website, Discover Uni.

We believe that providers operating above our baseline are best placed to make decisions about their provision – we do not intend to prescribe how they should go beyond our minimum requirements.

In other areas, we may choose to use a statement of expectations that is not formally expressed in one of our conditions of registration, as we have done previously.¹³ Such statements set out expectations, not regulatory requirements. One reason for doing this is to give providers time to review and, if necessary, amend their practices before we decide if formal regulation is required. If and when we issue a statement of expectations we will be clear about its regulatory standing and our rationale.

¹⁰ See www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions-outcomes/.

¹¹ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

¹² See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/the-tef/.

¹³ See www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/prevent-and-address-harassment-and-sexual-misconduct/statement-of-expectations/.

We recognise that we need to regularly communicate our priorities to the sector. We will publish annual business plans that will provide more detail on how we intend to implement the strategy each year.

The strategy makes clear that we regulate higher education in the interests of all students whether they are undergraduates or postgraduates; UK-based or international; studying full-time or part-time; based on campus or learning at a distance. We believe that our regulatory approach is sufficiently flexible to apply to all types of higher education provision.

Where there are differences in our approach across different types of provision we have chosen to explain these in regulatory guidance, rather than in the strategy. We may also prioritise issues associated with different types of provision at different times, based on our assessment of risk to students and taxpayers.

However, we accept that the strategy did not make clear that our work covers some Level 4 and 5 provision, including Higher Technical Qualifications. We have revised the strategy accordingly.

Areas of focus

The proposed strategy noted two areas that we will focus on from 2022 to 2025: quality and standards; and equality of opportunity.

47. Many respondents welcomed our focus on quality and standards and equality of opportunity. Some respondents felt that it was reasonable and appropriate for a regulator of higher education to focus on these two areas. A few respondents stated that they represented shared aims for both the sector and the OfS.
48. There was also support from many respondents for our assertion that quality and standards and equality of opportunity are mutually reinforcing. Several respondents stated the OfS is right to pursue the two in tandem.
49. However, others suggested that these two areas of focus did not clearly link together. The common concern here was that our approach to regulating student outcomes would disincentivise providers from admitting disadvantaged students.
50. Some respondents wanted a clearer definition of equality of opportunity in the strategy. There were suggestions to refer to academic literature or specific legislation. Other respondents felt that there was a lack of detail about how equality of opportunity would be achieved.
51. There were concerns expressed about whether the two areas of focus are achievable. Some respondents questioned whether the OfS had the power to support providers to deliver in these areas. There was also concern over whether providers would have appropriate financial resources to meet our expectations, given diminishing real terms income from tuition fees and the volatility of international student recruitment.
52. A few respondents suggested alternative areas of focus for the OfS. These included:
 - An increased focus on mental health after the pandemic
 - The development of student and graduate skills
 - More effective support for students with a disability
 - More effective support for care experienced and estranged students.
53. Many respondents recognised the need for our proposed area of 'enabling regulation', particularly our intention to minimise regulatory burden on providers. However, some found the way the strategy introduces this as a third area of focus to be confusing. For example, one respondent felt that the term 'enabling' suggested flexibility in regulation and may be misrepresented by the goals under this heading.

OfS response

We are encouraged by the support we received for our proposed areas of focus. We recognise that these are areas in which many providers excel or wish to improve.

We do not accept the view that quality and standards and equality of opportunity are not connected or mutually reinforcing. We do not want to ensure equality of opportunity to access poor quality provision; nor do we wish to ensure quality and standards if prospective students are unfairly excluded from benefitting. We address concerns about our approach to student outcomes in the section above titled ‘

Equality considerations when regulating student outcomes’.

We acknowledge that equality of opportunity is a complex concept. We have explored and defined what it means for our strategy through our stated strategic goals under the heading of ‘equality of opportunity’, making clear the outcomes we wish to achieve in these areas.

We do not accept the argument that progress in these areas of focus is unachievable. We believe that we can use our powers to incentivise and influence providers and other actors in the sector to bring about the changes needed.

We are of the opinion that the financial resources available to providers should be sufficient for this task. Excellent provision, delivered with the resources available within the current system, already exists in many places and many forms. While we will keep the financial position of providers under review, we do not anticipate a widespread loss of resource that would substantially limit progress.

Many respondents suggested other potential areas of focus. We have chosen our two areas of focus because we believe that they align with our regulatory powers, and closely connect to our regulatory objectives, and will advance these objectives more than any other areas of focus. We believe that most of the other areas of focus suggested will be addressed by one or more of the goals we have stated under the proposed areas of focus. For example, we have goals that address student mental health and graduate skills, and that seek to ensure students are not limited by their background or characteristics.

We acknowledge the confusion about positioning ‘enabling regulation’ as a ‘third area of focus’. We have revised the strategy text to clarify this.

Organisational adaption

The proposed strategy noted how we intend to adapt as an organisation to deliver the strategy.

54. Few respondents commented on this section of the proposed strategy. However, as noted above, several respondents suggested that we could do more to engage with students.

OfS response

We have amended this section of the strategy to note that we will support staff to engage with students effectively. This will help staff to embed the views of students in our work.

Goal on quality

Proposed goal

Students receive a high quality academic experience that improves their knowledge and skills, with increasing numbers receiving excellent provision.

55. We received many responses that expressed support for this goal. The reasons given focused on the importance of academic quality; the need for higher education to produce highly skilled graduates; and the need to address areas of perceived poor provision within the sector. Some respondents suggested that the disruption of the previous two years necessitated a focus on quality and outcomes.
56. Respondents welcomed our plans to implement revised conditions of registration that would provide greater clarity about our minimum requirements. There was also some support for our intention to take a more robust approach to quality, and for us to use data and regulatory intelligence to identify providers and courses that may not meet our minimum requirements.
57. However, some respondents felt unable to comment fully on this goal without confirmation of exactly what these minimum requirements would be. It was suggested that the proposed removal from our regulation of a reference to the UK Quality Code for Higher Education was inconsistent with the stated goal.
58. Many respondents also wanted greater clarity on our approach to regulating student outcomes. There were calls for more information on:
 - the data we will use to assess student outcomes
 - how we will use this data
 - the robustness and validity of the data used
 - the burden of collecting this data, especially from small providers.
59. There were particular concerns regarding progression and employment outcomes. Several respondents suggested that the link between the quality of higher education and employment outcomes is unclear.
60. Respondents also suggested that local context needs to be taken into account when assessing student outcomes at a provider. Some questioned whether the OfS has the resources and regulatory tools to make fair and transparent contextual judgements.
61. There were requests for further clarity on how monitoring would be conducted, and what quantitative and qualitative evidence the OfS might use to determine whether further investigation was necessary. Respondents raised concerns that potentially intrusive inspections of quality would seem inconsistent with the risk-based approach the OfS wishes to pursue. Some questioned why an increase in investigation and enforcement is required and asked us to clarify the areas where we believe improvement is required.

62. There were concerns about the implication that increased enforcement activity would close some courses. Some respondents suggested that if courses were closed this would have an impact on less geographically mobile students, and on local employers seeking graduates. Others interpreted our approach as impinging on institutional autonomy and questioned whether we have the powers to monitor, investigate and intervene at course level.
63. Several responses asked for more information about how we will report on our regulatory activity with individual providers. Respondents stated concerns about the risk of reputational damage for the provider in question if the reporting did not include sufficient context. There was also a query as to whether our approach to reporting regulatory activity would differ from that set out in our consultation on publication of information about higher education providers.
64. The comments we received on the Teaching Excellence Framework (TEF) asked for greater clarity on its relationship to minimum requirements for quality and standards and to access and participation data. Some respondents recommended that the TEF should consider the value added to students, not just their outcomes in absolute terms.
65. Possible negative unintended consequences of our approach to the TEF were also raised. It was felt that smaller providers that choose not to participate may suffer reputational damage and that the use of statistics on progression to professional employment may disadvantage providers that specialise in the recruitment of disadvantaged students.
66. There was support for improving and promoting comparable information about quality for the benefit of prospective students, particularly information about outcomes so that students could assess if their expectations were likely to be met. However, some respondents asked for more detail on the form this information would take. They stated that this additional information needs to help, and not confuse, students when considered alongside other sources.
67. Many respondents supported the proposed use of a small-scale regulatory 'sandbox' activity to promote innovative course design and delivery. Most sought clarity on how this would function and what types of provision it could apply to. A few respondents recommended that the sandbox and any associated funding should be equally available to small providers as well as large providers. Others stated that this activity must not involve unnecessary risk to students, or the OfS intervening in course content.
68. Some respondents suggested that our approach to quality and standards should focus on equipping students with specific skills. Respondents also asked for more detail on how our approach to quality and standards would apply to postgraduate provision, including to research students.

OfS response

The consultation on the strategy closed before we launched our separate consultations on a new approach to regulating student outcomes, on the Teaching Excellence Framework, and on constructing student outcome and experience indicators for use in OfS regulation.¹⁴ We note the comments we received in response to the strategy consultation about student outcomes and teaching excellence. We will respond to these when we publish our final decisions on these matters.

The consultation on the strategy also closed before we published our response and final decisions regarding the previous consultation we ran on quality and standards conditions.¹⁵ In this publication, we set out the reasoning behind our decisions to implement revised conditions of registration which we believe will enable us to regulate more effectively in practice and offer better protection for students. We also give our rationale for adopting our proposal to operate a flexible risk-based approach to evidence gathering and investigation for registered providers; and for removing from our regulatory requirements reference to the UK Quality Code.

On the point about ensuring students develop specific skills, our quality and standards conditions consultation response sets out our decision to adopt the requirement that providers must ensure that ‘each higher education course, as appropriate to the subject matter of the course, requires students to develop relevant skills’. We consider this approach to be principles-based as it does not prescribe the content of courses that a provider should teach or how its courses should be structured or delivered. We consider that a more prescribed and rules-based approach would not be appropriate, given the diversity of courses and approaches to their delivery across the sector.

On the point raised about the consequences of course closures resulting from increased enforcement activity, our quality and standards conditions consultation response notes comments made about the potential impacts of our proposals on equality of opportunity. We take the view that no student from any group should study on a course that does not meet minimum requirements for quality and standards. We believe that the availability of such courses would not amount to meaningful student choice, and it is our role as the regulator to ensure that such courses are not available for students to choose.

Our quality and standards conditions consultation response publication also covers our considerations of regulatory burden and institutional autonomy. It clarifies that we consulted separately on matters relating to the publication of information about individual providers and will publish outcomes following that consultation in due course. This will include matters relating to publication of information about investigations and their outcomes.

¹⁴ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/.

¹⁵ See www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions-outcomes/.

The strategy notes that we will focus on improving and promoting information for prospective students towards the end of the strategic period. We have not yet made decisions about what form these improvements will take. We acknowledge the point that this information should help, and not confuse, students.

We note the support for small-scale regulatory sandboxes. From some of the responses we received on this point, it is clear that most were focused on the possible availability for additional funding. We would like to emphasise that regulatory sandboxes may not necessarily involve funding, and may instead comprise a temporarily revised regulatory environment for providers to test innovative approaches. We have revised the strategy to avoid implying that additional funding will necessarily be available.

Furthermore, the strategy notes that we will consider sandboxes in the coming strategic period, but it is unlikely that we will launch them during this time. We intend to use the next few years to work with the sector and other stakeholders and decide how best to introduce sandboxes, with a view to implementing them in the future. We will have regard to the risks to students and to provider autonomy when making these decisions.

Goal on assessment and awards

Proposed goal

Students are rigorously assessed, and the qualifications they are awarded are credible and comparable to those granted previously.

69. Several respondents indicated concerns about grade inflation in higher education. These respondents supported our intention to take investigatory and enforcement action where significant increases in degree classifications cannot be explained by our data analysis or other evidence.
70. Some respondents requested clarity on how the OfS will make decisions regarding whether increases in degree classifications can be explained. These respondents were concerned that, when investigating these issues, the OfS might not:
- take into account the impact of the coronavirus pandemic on assessment and award practices
 - recognise genuine success in raising attainment.
71. There was some support for our intention to ensure qualifications are credible and comparable with those previously awarded. However, several respondents raised concerns over the idea of comparing qualifications over time. They argued that assuming qualifications should remain consistent leads to failure in recognising innovation and improvements in pedagogy.
72. Some respondents wanted more information on the definition of 'rigour' in assessment. They argued that the OfS should consider innovative and inclusive assessment methods, in which students from non-traditional backgrounds tend to perform better, as equally rigorous as traditional methods. Some respondents were concerned that our requirement for 'rigorous assessment' might have unintended consequences for marginalised groups.
73. Several respondents welcomed the regulatory sandbox proposed in the strategy. They noted the potential value of an opportunity to develop experimental assessment and award practices, while continuing to meet our requirements.

OfS response

We recently published our response and final decisions regarding the previous consultation we ran on quality and standards conditions.¹⁶ This includes a decision to adopt a revised condition of registration related to assessment and awards.

¹⁶ See www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions-outcomes/.

In this publication, we note that we have considered comments that improvements in degree attainment may be the result of improved teaching, support for students or improvements in assessment and course design – we acknowledge that this is possible and where a provider can provide credible evidence that this fully accounts for any increase over time, we are unlikely to have regulatory concerns.

We also recognise that the approach a provider has taken to ensure students are not disadvantaged during the pandemic may have been atypical and we will be able to take account of this context when considering data analysis that includes awards made during the pandemic.

On the point regarding the possible unintended impact of ‘rigorous assessment’ on different groups of students, our view is that opportunities for study are not meaningful if the awards and qualifications granted are not credible and do not hold their value over time. Many English higher education providers offer high quality courses to students from underrepresented groups and we do not accept that it is necessary to compromise quality and standards to deliver to these groups.

We note the support for small-scale regulatory sandboxes. Over the next few years we will work with the sector and other stakeholders and decide how best to introduce sandboxes, with a view to implementing them in the future. As noted above under ‘Goal on quality’, we would like to emphasise that regulatory sandboxes may not necessarily involve additional funding. We have revised the strategy to avoid implying this.

Goal on free speech

Proposed goal

Providers secure free speech within the law for students, staff and visiting speakers.

74. Several respondents supported this goal, suggesting it will help ensure that providers adopt a consistent approach to an essential element of higher education.
75. However, others questioned the need for this goal, either because they felt that existing legal frameworks that govern free speech and academic freedom were sufficient, or because they felt there is a lack of evidence that suggest this should be a priority for the OfS. Some suggested that this goal should not be considered a quality and standards issue and would perhaps be better categorised under equality of opportunity.
76. Several respondents perceived a tension between securing free speech and other requirements on providers, such as the Equality Act, the public sector equality duty and Prevent. Some also suggested that free speech can lead to harassment and have a negative impact on marginalised groups.
77. Many respondents wanted additional guidance for providers about the definition of 'free speech within the law' and how they might secure this, while also protecting certain groups and allowing counter protest. Several respondents suggested that we consult with students on these matters.
78. There were several calls for more information about the consequences of possible forthcoming legislation on freedom of speech in higher education. For example, some requested further clarity about the role of the Director for Free Speech and Academic Freedom within the OfS, as proposed in the Higher Education (Freedom of Speech) Bill. Others were concerned about the regulatory burden of possible additional duties for providers or the proposed powers of the OfS to impose monetary penalties.

OfS response

Our view is that free speech in higher education is important, not least because it exposes students to new and challenging ideas and is a key part of giving students a high quality higher education. For this reason we have placed this under the heading of quality and standards, although we recognise that it also contributes to equality of opportunity.

Universities and colleges have responsibilities under the law in the area of free speech. If they are registered with the OfS then they must also take steps to secure academic freedom and free speech within the law. This goal is intended to strengthen our approach to these existing requirements.

On the points raised about the impact on particular groups, English law restricts speech by prohibiting unlawful behaviour, such as unlawful harassment, or incitement to hatred. We have also made clear in the strategy that, in securing free speech, providers must give due regard to other legal obligations, such as the public sector equality duty.

It is clear from the responses we received that there is not a common understanding of what is meant by 'free speech within the law'. As noted in the strategy, we will report our regulatory activity for individual providers to assist in ensuring that all providers understand what is expected of them. We have also revised the strategy to commit to engaging with students on this matter. We want to help provide clarity and understanding of what free speech within the law means in the context of higher education.

Regarding comments on possible forthcoming legislation on freedom of speech in higher education, this is still subject to Parliament's decisions. As noted in the strategy, if and when any relevant legislation is introduced, we will implement new policies, consulting with students, students' unions and providers where appropriate.

Goal on graduate outcomes

Proposed goal

Graduates contribute to local and national prosperity, and the government's 'levelling up' agenda.

79. We received many responses which supported this goal. Several respondents welcomed the focus on students developing skills and progressing to employment. Other respondents supported our intention to work with government organisations to address skills shortages.
80. Some respondents welcomed the link to levelling up. They felt that our intended actions under this goal could support providers to contribute to this agenda. However, some suggested that this goal, given the link to levelling up, should be placed under the heading of equality of opportunity.
81. Others suggested that the link to the government's agenda compromised the independence of the OfS and the autonomy of providers. Some felt that it was difficult to make informed comments on this goal without seeing the government's white paper on levelling up.
82. Many respondents expressed concerns about our intended minimum requirements for progression of students to employment or postgraduate study. A common complaint was that we might not consider a provider's context when assessing performance against these requirements. Responses also expressed concerns about the scope, definition and timeliness of student progression data.
83. Some respondents felt there were possible unintended consequences of focusing on employment outcomes. Some respondents suggested that metrics which focus on graduate employment may work against local prosperity, as providers in economically disadvantaged regions may be incentivised to recruit geographically mobile students who would move away to find professional employment after graduation. Others suggested that a focus on employment outcomes would stifle innovation and limit the diversity of higher education sector.
84. Some respondents questioned whether the actions under this goal went far enough. They wanted more information on our expectations for providers located in areas with a weaker economy, and on the interventions we would make. Others were concerned that this goal went too far and extended beyond our approach to quality and standards. They also sought more information on how this goal would link with our goals on quality and standards.
85. Other respondents suggested that the goal did not cover the contribution that international students and graduates make to local and national prosperity.

OfS response

We agree with the comments that our focus on students developing relevant skills and graduates progressing to employment or further study will contribute to the levelling up agenda. From a national perspective, levelling up is about promoting equality of opportunity. However, our focus on skills and progression at individual providers is a central element of our approach to quality and standards, and so we have placed this goal under that heading. We note the concerns expressed about the link to levelling up in this goal. These concerns are addressed in our response in the section titled ‘Independence from government’.

Under this goal in the strategy, we describe in broad terms (and subject to consultation where relevant) how we intend to consider the progression of students to professional employment or postgraduate study in our regulation of quality, in the TEF, and in our regulation of access and participation plans. For clarity, this goal does not involve additional regulatory requirements for providers, beyond those set via our conditions of registration.

We have consulted separately on our proposed approach to student outcomes.¹⁷ Concerns about the consideration of context and possible unintended consequences are also addressed in our response in the section titled ‘

Equality considerations when regulating student outcomes’.

We have also consulted on our approach to constructing student outcome and experience indicators for use in OfS regulation.¹⁸ This sets out our intention that, for the time being, international students will be excluded from our calculation of progression measures used in our regulation of quality and standards and the TEF. However, we recognise the important contribution that international students make to local and national prosperity. We intend to explore the feasibility of developing alternative progression measures covering international students in future. We are also clear in our proposals for the TEF that international students are within the scope of the exercise – we intend for providers to be able to submit evidence in relation to international students within their written submissions.

¹⁷ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

¹⁸ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

Goal on access, success, and progression

Proposed goal

Students' access, success and progression are not limited by their background, location or characteristics.

86. Many respondents supported this goal, with several suggesting that access, success and progression initiatives benefit students across their whole life, and discussing the positive impact this has on society and the economy. Respondents pointed to the disruption of the coronavirus pandemic, suggesting that this has had an impact on access, success and progression and that the OfS needs to address this.
87. Some respondents questioned the scope and definition of the goal. Several stated that it oversimplifies a complex social, economic, demographic and personal issue. Others requested a definition of 'characteristics', asking if this is the same as in the Equality Act 2010.
88. Some wanted the goal to make specific commitments in certain areas that affect access, success and progression – such as removing bias and discrimination, greater attention to student mental health, or a focus on place-based inequality. Some respondents advised that it would be necessary to work with communities and other organisations, including charities and the third sector, to achieve this goal.
89. There was some support for reviewing and refreshing the approach to access and participation plans. This particularly focused on the potential value of engaging students in this process.
90. However, some respondents were concerned that any change from the current approach to access and participation plans might cause unnecessary disruption to providers, communities and students. A few respondents suggested that the approach may not always be proportionate for smaller or specialised providers, particularly in relation to data and sharing evidence. However, one respondent felt that minimising burden should not take priority over improving access, success and progression for students.
91. Some respondents were concerned that our approach to access and participation plans might not sufficiently consider the wide spectrum of higher education provision, such as technical education and apprenticeships. Others queried how the experiences and outcomes of international students are captured in our approach.
92. Many respondents welcomed our emphasis on encouraging higher education providers to seek opportunities to work in partnership with schools, particularly to help raise pupil attainment. Some suggested that this collaboration would benefit pupils, schools, students and providers, would help the state school sector recover after the pandemic, and could aid successful transitions to higher education.
93. Several respondents wanted more information about our work in this area. There were a number of suggestions about what this might entail, such as the involvement of postgraduate

students in school teaching. Some respondents advocated for learning from existing interventions and meaningful engagement and partnership with the sector.

94. There were some concerns that the focus on schools could close down opportunities for mature students or outreach with businesses and communities. One respondent also suggested that more resources would be required to partner with schools effectively.
95. Commenting on how our regulation of quality will contribute to this goal, some respondents wanted further information or consultation on the role that the TEF may have for incentivising access, success and progression. Others commented on how our minimum requirements for student outcomes contribute to this goal – they argued that we may have not fully considered the role of employers in addressing inequality in progression to graduate jobs.
96. Many respondents supported generating and sharing new evidence about what works in access, success and progression. One respondent requested the use of a more diverse evidence base to understand the impact and value of interventions. There were calls for long-term sustainable funding for the Centre for Transforming Access and Student Outcomes in Higher Education (TASO).
97. A few respondents commented on use of data in this area. They recommended making our access and participation data dashboard more user-friendly and bringing it to the attention of students, prospective students and those supporting students. Some argued for the use of data on free school meals as a measure for socio-economic disadvantage.
98. Some respondents wanted us to clarify the status of our existing national targets for access, success and progression. Others suggested that we should work more closely with the devolved administrations to secure and share accessible, unified datasets in this area.
99. Others did not support the use of data for assessing access, success and progression. They felt that this might miss contextual nuance behind students' decisions and lived experiences, as well as provider behaviour.

OfS response

English higher education providers are required to have an approved access and participation plan if they are registered in the Approved (fee cap) category of the Register and wish to charge above the basic tuition fee cap. We place requirements on individual providers by assessing and, where appropriate, agreeing their access and participation plans.

These plans set out how providers will improve equality of opportunity for underrepresented groups to access, succeed in and progress from higher education. They include the provider's ambitions for change, the targets it has set, the measures it will put in place to achieve that change, and the investment it will make to deliver the plan. We then monitor providers to ensure they are taking all reasonable steps to deliver the commitments in their plans.

We have set out what we mean by ‘underrepresented groups’ in our regulatory guidance.¹⁹ It includes all groups of potential or current students where the OfS can identify gaps in equality of opportunity at different parts of the student lifecycle.

Access and participation plans should cover certain students and courses as set out in legislation.²⁰ Most home students are covered, but most EU and other international students are not. For this reason, plans focus on equality of opportunity for UK-domiciled students. Plans may also cover those on higher level or degree apprenticeships.

The content of access and participation plans varies between providers. Each plan is informed by the circumstances of the individual provider and the characteristics, needs and views of its potential and current students.

Our new Director for Access and Participation has set out priorities for access and participation plans.²¹ We will work with providers, students and other stakeholders through 2022-23 to set out expectations of how existing plans should change for 2023-24.

We agree with the comments that encouraging higher education providers to work with schools will be beneficial for access, success and progression. We are strongly encouraging providers to vary their existing access and participation plans to include strategic partnerships with schools to raise attainment.

We then plan to consult on requirements for new access and participation plans to cover 2024-25 to 2027-28. As we develop our proposals we will seek to learn from existing interventions, to minimise burden, and to understand provider context and student experiences. Our national targets remain in place until further notice.

We have consulted separately on a new approach to the TEF.²² Our proposed approach would mean that providers will be incentivised to deliver excellent teaching and learning for all their groups of students. If they do not, this will affect their ability to achieve the highest ratings.

We have consulted separately on our proposed approach to student outcomes.²³ We note the comments we received in response to the strategy consultation about the role of employers in addressing inequality in progression to graduate jobs. We will respond to these comments when we publish our final decisions.

¹⁹ See www.officeforstudents.org.uk/publications/regulatory-notice-1-access-and-participation-plan-guidance/.

²⁰ ‘Qualifying persons’ on ‘qualifying courses’ are prescribed by regulations made under the Higher Education and Research Act 2017.

²¹ See www.officeforstudents.org.uk/news-blog-and-events/events/next-steps-in-access-and-participation/.

²² See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/the-tef/.

²³ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

We acknowledge the comments about the way in which we use funding, information and evidence to support this goal. We will consider these comments when we develop the actions set out in the strategy.

Goal on student choice

Proposed goal

Prospective students can choose from a diverse range of courses and providers at any stage of their life, with a wide range of flexible and innovative opportunities.

100. Many respondents expressed support for this goal, although a number requested further information about the actions we will take to increase the diversity of higher education provision.
101. There was particular support for regulatory sandboxes to promote innovation. However, some respondents felt that these may work better for larger providers, as smaller providers may struggle to resource and evidence successful, innovative approaches. It was suggested that funding would be required to support providers in experimenting with flexible and innovative methods of course delivery.
102. A few respondents requested further clarity as to how the OfS would use funding more generally to stimulate diversity of provision.
103. Some respondents welcomed encouraging competition through market entry as a way to increase diversity of provision for different types of students. Several requested further information about potential new categories of registration. There were concerns that the introduction of new categories of registration may lead to greater complexity and confusion for applicants.
104. It was suggested that we should work in partnership with other bodies to better understand student demand. Several respondents felt that we should improve the collection of data about educational routes other than degrees, and promote degree apprenticeships and other technical qualifications.
105. Several respondents felt that the focus on student outcomes in our approach to regulating quality may have a detrimental impact on student choice. They felt that this might make providers more risk averse in their admissions decisions.
106. Some respondents were concerned that a perceived extension of regulatory oversight to include validation arrangements might restrict innovation. They felt that our regulatory approach might make providers less likely to work in partnership with others, which could have a negative impact on student choice and the development of flexible learning opportunities. Others discussed the omission from the proposed strategy of previously announced work to better understand the functioning of the market in validation services for providers without their own degree awarding powers. They suggested that many of the innovative opportunities for students that we wish to promote further are undertaken by specialist providers and new providers which operate under such partnerships.
107. Concerns were raised by respondents that the goal does not fully appreciate the potential impact of greater flexible learning opportunities and the Lifelong Loan Entitlement (LLE). Some respondents suggested that the approach to regulating quality outlined in the strategy

might not be appropriate for flexible courses or lifelong learning. Some were concerned that a possible proliferation of short courses might have a detrimental impact on quality.

108. Some respondents asked for further clarity about our role in the development of the LLE. This included requesting more information about how the higher education short course trial would be evaluated, and any best practice shared, ahead of the LLE rollout in 2025.

OfS response

We note the support for small-scale regulatory sandboxes. As noted above under 'Goal on quality', we would like to emphasise that regulatory sandboxes may not necessarily involve additional funding (we have revised the strategy to avoid implying this) and are unlikely to be launched in the strategy period.

The same applies to any potential new registration categories. We have stated in the strategy that we will consider whether these would be helpful. We intend to use the next few years to work with providers and other stakeholders and decide how registration categories might be amended in future. We will have regard to the risks to students when making any decisions.

Our funding for teaching supports subjects, courses or forms of provision that could otherwise be undersupplied by providers in the Approved (fee cap) category. This supports diversity of choice for students. We make decisions annually on recurrent and capital funding, consulting each time our approach changes. We also fund specific types of providers to maintain diversity of choice, such as world-leading specialist providers. We have recently consulted on our approach to world-leading specialist provider funding, and will set out our decisions in due course.²⁴

We note the point about better understanding student demand and improving the data about diverse educational routes. As noted in the strategy, we intend to explore this in the latter half of the strategic period, and will seek to work with partner organisations as appropriate.

On the point about our approach to quality limiting student choice, we take the view that no student from any group should study on a course that does not meet minimum requirements for quality and standards. We believe that the availability of such courses would not amount to meaningful student choice, and it is our role as the regulator to ensure that such courses are not available for students to choose.

We recently published our response and final decisions following our consultation on quality and standards conditions.²⁵ This confirms our view that we do not consider that minimum requirements for quality and standards disincentivise any provider to engage in partnership activity that meets these requirements.

²⁴ See www.officeforstudents.org.uk/publications/consultation-on-an-approach-to-world-leading-specialist-provider-funding/.

²⁵ See www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions-outcomes/.

However, we recognise that a significant amount of the diversity of provision available to students relies on validation arrangements. We have previously signalled that we would undertake further work in relation to the operation of the validation system in England, subject to decisions about the prioritisation of our resources. We have revised the strategy to note that we will consider, over the course of the next few years, whether we should intervene in the validation system to increase the availability of high quality courses across England.

The LLE is a government policy proposal. However, we are running certain initiatives that support the government in preparing for the LLE, such as the higher education short course trial.²⁶ This trial pilots access to a new student finance product especially designed for learners studying shorter, flexible provision in support of the development of the LLE. It will also allow the OfS to understand and test whether the current regulatory system works for this type of provision and whether we would need to adapt our approaches. As stated in the strategy, we will work with central government to ensure that our regulatory approach is appropriate in the context of the Lifelong Loan Entitlement.

We plan to commission an independent evaluation of the higher education short course trial, which we will publish in due course. Our intention is that the funded projects will share expertise, learning and best practice for the benefit of students and the wider higher education sector.

²⁶ See www.officeforstudents.org.uk/advice-and-guidance/skills-and-employment/higher-education-short-course-trial/.

Goal on preventing harassment and sexual misconduct

Proposed goal

Providers act to prevent harassment and sexual misconduct and respond effectively if incidents do occur.

109. Many respondents supported this goal on preventing harassment and sexual misconduct. Several welcomed our intentions to engage with students on this issue. Some recommended expanding the scope of the goal, for example to cover all forms of discrimination or hate crime based on the protected characteristics in the Equality Act.
110. Several respondents thought that providers needed further guidance from the OfS about addressing sexual misconduct and preventing harassment. Some respondents suggested particular approaches that providers should take to address these issues. There was support for the proposed use of our convening powers, influence, and the publication of case studies and other information to deliver this goal.
111. However, some respondents questioned the value of gathering more evidence, or wanted to know how we would demonstrate that this goal had been achieved. Others noted the complexity for providers involved with addressing issues of harassment and sexual misconduct, given the range of other organisations involved, such as local authorities, police, and health services. One respondent suggested that providers should have the autonomy to deal with these problems on a case-by-case basis. Another was concerned that the goal implied additional reporting for providers on top of existing responsibilities relating to safeguarding (this seemed to be a reference to the Prevent duty).
112. There was also a request for clarity on whether this goal covers only harassment and sexual misconduct between students, or whether it also covers instances when others are involved.

OfS response

Our statement of expectations on preventing and addressing harassment and sexual misconduct sets out our definition of harassment.²⁷ This uses wording from the Equality Act 2010. We have revised the strategy to make this clear.

The statement of expectations also describes the systems, policies and processes we expect all providers to have in place to prevent and respond to all forms of harassment and sexual misconduct.

²⁷ See www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/prevent-and-address-harassment-and-sexual-misconduct/statement-of-expectations/.

Additionally, we will use our convening powers, influence and the publication of case studies and other information to demonstrate how providers can put our expectations into practice to effectively respond to complex cases of harassment and sexual misconduct. We will also carry out evaluative research to understand the progress that providers are making in this area and seek students' views.

We recognise the complexity for providers involved in addressing this and the need to work with a range of stakeholders. Our proposed approach will seek to encourage providers to effectively address and prevent these issues.

This goal, and our statement of expectations, focuses on protecting higher education students from harassment and sexual misconduct from other students, staff and visitors. However, we anticipate that providers would seek to take a similar approach to protecting staff and visitors from harassment and sexual misconduct.

Goal on student mental health and wellbeing

Proposed goal

Providers encourage and support an environment conducive to the good mental health and wellbeing that students need to succeed in their higher education.

113. Many respondents welcomed the commitment to encourage and support an environment conducive to the good mental health that students need to succeed in their higher education. Several respondents welcomed our intention to engage with students on the issue. There was concern that the number of students with mental health problems is growing and has increased during the pandemic. Some respondents felt that more action is needed and expressed concern as to whether universities would have the necessary resources.
114. Several responses welcomed the OfS supporting providers to address this goal. Many respondents suggested ways in which providers can tackle or better target issues related to student wellbeing. Most commonly, respondents suggested that the OfS could provide data to enable better targeting of mental health resources.
115. Many respondents discussed the need to work with other organisations. Some respondents welcomed our intention to work on 'joined up' thinking and planning, as universities could not do this independently. Others felt that the OfS should also be incentivising providers to have a better relationship with external mental health practitioners.
116. However, there were concerns that the pursuit of this goal might be to the detriment of academic rigour – it was suggested that, while academic challenge and debate have the potential to exacerbate mental health issues, they are an essential part of higher education. There were questions about how the OfS might measure success against this goal. One respondent also suggested that, with a lack of evidence on what is currently successful, the OfS's focus on innovation may not be appropriate.

OfS response

There are a wide range of views as to what providers should be doing to address this issue. Providers need to establish what will work for their students and which local organisations they need to work with. Locally collected data is likely to be most effective in helping providers to target mental health resources.

Our intention is to support providers to improve their practice and develop useful partnerships where needed. As noted in the strategy, we intend to work across government and with relevant partner organisations at the national level to make sure that our interventions are well-evidenced and effective in supporting providers.

We agree that academic debate and challenge are essential to higher education. However, we believe that providers can encourage an environment that contains sufficient academic debate and challenge, while also fostering good mental health and well-being for their students.

Goal on provider finances and governance

Proposed goal

Providers are financially viable and sustainable and have effective governance arrangements.

117. We received few responses that addressed this goal. Most of these were supportive, focusing on the need for effective governance in higher education. Some respondents felt this is critical to ensuring the quality and sustainability of higher education provision in England.
118. One respondent requested that we give further consideration to the impact of our existing and proposed frameworks on non-traditional corporate or charity models of governance and management.

OfS response

As noted in the strategy, we intend to consult on changes to our conditions of registration related to management and governance so that we can identify and address issues in providers more effectively.

As we develop our proposed approach we will consider how it might consider non-traditional governance models.

Goal on consumer protection

Proposed goal

Students receive the academic experience they were promised by their provider and their interests as consumers are protected before, during and after their studies.

119. Some respondents sought further information about how the possible revised requirements for consumer protection noted in the strategy would interact with the guidance from the Competition and Markets Authority (CMA), and which would take precedence.
120. There were questions about the scope and definition of this goal. Some respondents requested further clarity on the meaning of protecting the interests of students as consumers, and how 'promised' would be defined.
121. Several respondents suggested that referring to students as consumers could lead to their disengagement with learning. Others wanted more information as to when the student consumer relationship starts and ends. It was suggested that contracts between students and providers would make the consumer relationship clearer.
122. Some respondents suggested that our actions may result in an increase in refunds to students for inadequate provision. Others felt this would be a positive result, given their view that securing financial compensation was too difficult for students currently.
123. Respondents suggested that there might be a tension between setting student protection requirements and a principles-based regulatory approach. Some were of the view that further intervention to protect the rights of students as consumers could increase regulatory burden.

OfS response

Our regulation protecting the interests of students as consumers is currently linked to the CMA's guidance 'UK higher education providers – advice on consumer protection law'.²⁸

This guidance makes it clear that students have rights as consumers. It states that there are three areas where providers have obligations to students under consumer protection law: information (which must be clear, accurate and timely); terms and conditions of contracts (which must be fair and transparent); and organisational complaint handling processes and practices (which must be accessible, clear and fair).

The CMA has made clear that, when prospective students are considering which courses and providers to apply to, providers need to give them the material information they need to make informed decisions. It is important for students to have full information about courses and their costs up front.

²⁸ See <https://www.gov.uk/government/publications/higher-education-consumer-law-advice-for-providers>.

Some consumer rights for students also extend to after the student has completed their studies. The CMA has suggested that providers preventing students from graduating if they owe non-academic debts, for example for accommodation, could be in breach of consumer law.

As noted in the strategy, we intend to develop proposals for more focused requirements that set the student protection norms for the higher education sector. We will consult on the details of our proposals, including our considerations of regulatory burden, at the relevant time.

Goal on regulatory burden

Proposed goal

The OfS minimises the regulatory burden it places on providers, while ensuring action is effective in meeting our goals and regulatory objectives.

124. There was general support for this goal. Respondents suggested that minimal burden means more time and resources for teaching and supporting students. However, some suggested that reducing burden must not affect transparency, accountability, or the ability of the OfS to achieve its goals.
125. A risk-based approach to monitoring compliance received support from many respondents, who stated that it would be cost effective and productive for the sector. However, further clarity was requested on how we will define and measure risk. There were concerns that a risk-based approach may deter providers from innovation.
126. Several providers suggested that a risk-based system should seek to reduce burden for low-risk providers, not just increase burden for high-risk providers. Some also argued that increased requirements for high-risk providers might get in the way of their capacity to improve.
127. Several respondents were concerned that the priorities in the strategy implied an increase in burden. These comments focused on our intention to increase investigation and enforcement activity and to review our approach to access and participation. They argued that these actions were contrary to our goal to minimise burden.
128. Some respondents also suggested that small providers face disproportionate regulatory burden. They argued that this worked against our goal to improve diversity of choice.
129. Several respondents requested a forward looking timetable for our key work, so that providers are better able to plan ahead and resource burdensome activity.
130. A number of respondents requested information on how progress on this goal will be measured. They suggested that measures of burden should not be over-simple (for example just measuring the number of regulatory requirements or the length of documents), as they felt that these did not capture the complexity of burden.

OfS response

Finding the right level of regulatory burden is a balance. We do not want to place unnecessary barriers in the way of providers as they deliver high quality education to their students. Equally, we must be able to protect students and taxpayers. We will seek to ensure we have the correct balance between burdens and benefits as we implement the strategy.

We believe that a risk-based approach, in which the regulatory requirements we place on individual providers vary according to the risks they pose, is the best way to achieve this balance. We use data and regulatory intelligence to identify courses and providers that are most at risk of not meeting our minimum requirements for quality. When monitoring access and participation plans, we focus on those providers that are most at risk of failing to deliver the commitments in their plans.

In relation to the point that a risk-based approach could stifle innovation, our conditions of registration are designed to be predominantly principles-based – we consider that this gives providers more scope to innovate than if we adopted a more prescriptive, rules-based approach or one that required particular processes to be followed.

However, some of the responses we received to this consultation, and further engagement we had with providers during the consultation period, leads us to believe that some providers have created internal bureaucracy that is not required for our regulatory purposes, and is diverting resources from their delivery of education. We have revised the strategy to include a commitment to challenge providers to take purposeful steps to dismantle internal bureaucracy that has accreted over time and is not needed to comply with our regulatory requirements.

We recognise that regulatory burden can in some ways be greater on small providers due to their smaller staff numbers. We consider, however, that the flexibility within our approach can provide small providers with opportunities to adopt solutions that are right for their size and complexity. Because we do not mandate that a particular approach should be adopted, each provider is able to adopt an approach that will meet our requirements that best fits its size and context.

We have introduced an experimental key performance measure (KPM 26) to monitor various aspects of burden. This includes indirect measures of ‘administrative burdens’ that use data we already hold, such as the number of data submissions and the number, word count and readability of OfS regulatory documents.²⁹ Measuring the burden of our regulation directly would involve additional costs and burden for providers. Following the publication of our strategy for 2022-25, we are now reviewing our key performance measures to make sure they are appropriate for this new strategy. KPM 26 will be included in this review.

As noted in the strategy, we will continue to test whether the reporting requirements in place for all providers are appropriate for those that we consider present the least regulatory risk. We will consider the potential for increased ‘substantive burdens’ (costs incurred by providers delivering core activities to meet OfS conditions of registration) when we make decisions about changes to our regulation.

²⁹ See www.officeforstudents.org.uk/about/measures-of-our-success/efficiency-and-effectiveness-performance-measures/regulatory-burden/.

We already publish a page on our website that includes information on upcoming deadlines and publications for higher education providers.³⁰ Proposal 2: Addition to regulatory framework

We proposed to add the text below to Part I of the regulatory framework:

'For more information about our priorities in a particular strategic period, please consult our current strategy, which can be found at www.officeforstudents.org.uk/about/our-strategy/.'

131. Respondents were generally supportive of this addition to the regulatory framework, with several stating that it clarifies the relationship between the two documents.
132. However, others were concerned that there was the potential for confusion. Some suggested it might create a way for the OfS to change regulatory requirements without proper consultation and communication with the sector or without scrutiny by Parliament.
133. Several respondents suggested that we add wording to clarify how the two documents will interact and influence each other. They recommended we make clear that the strategy does not include regulatory requirements for individual providers.

OfS response

The regulatory framework states how the OfS intends to perform its various functions, and provides guidance for registered higher education providers about our ongoing conditions of registration. It sets out our four primary regulatory objectives and the regulatory approach by which we will achieve them.

The regulatory framework does not give information about our priorities at any given time for delivering the regulatory objectives.

The strategy reiterates the regulatory objectives and goes on to describe our areas of focus and goals for the strategic period. It also sets out our approach to delivering the strategy, consistent with the regulatory framework.

The strategy does not provide guidance for registered higher education providers about our ongoing conditions of registration.

³⁰ See www.officeforstudents.org.uk/deadlines/.



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www.nationalarchives.gov.uk/doc/open-government-licence/version/3/