Securing student success

Analysis of responses to consultation

Reference **OfS 2018.10**

Enquiries to **info@officeforstudents.org.uk**

Date of publication **28 February 2018**

Contents

Introduction

1. This document presents the analysis of responses to the consultation 'Securing student success: Risk-based regulation for teaching excellence, social mobility and informed choice in higher education', held between 19 October and 22 December 2017.
2. The consultation responses have informed the decisions made by the Office for Students (OfS) about its regulatory framework, and have allowed it to meet the requirements of section 75(8) of the Higher Education and Research Act 2017 (HERA).
3. This document provides information about how these responses, including the written responses submitted and the discussions that took place at consultation events, have informed the design of the OfS's regulatory framework.

Where to find out more

4. The OfS and its regulatory framework are located within a broader policy context. The legislative underpinnings for the regulatory framework are found in HERA and more broadly in the government's strategy for the reform of higher education in England. Those interested in understanding these issues in more detail should refer to:

- The consultation on the OfS's regulatory framework – https://consult.education.gov.uk/higher-education/higher-education-regulatory-framework/.
- The Higher Education and Research Act 2017 – www.legislation.gov.uk/ukpga/2017/29/contents/enacted/data.htm.
- White paper 'Success as a knowledge economy: teaching excellence, social mobility and student choice' – https://www.gov.uk/government/publications/higher-education-success-as-a-knowledge-economy-white-paper.
- Green paper: 'Fulfilling our potential: Teaching excellence, social mobility and student choice' – https://www.gov.uk/government/consultations/higher-education-teaching-excellence-social-mobility-and-student-choice.

Contact details

5. If you have any queries please contact info@officeforstudents.org.uk.

Overview

6. In this document we identify and discuss the most significant issues raised by respondents, whether or not these have led to changes to the proposals set out in the consultation. We have also set out the OfS's response to the issues raised in the Department for Education's (DfE's) question-by-question summary of responses. The DfE summary has been replicated in Annex A. In this document 'we' or 'our' refers to the OfS.

7. The policy decisions set out here are reflected in the regulatory framework, which has been published at https://www.officeforstudents.org.uk/#documents.

8. The published regulatory framework contains less narrative rationale for its approach than the consultation. This should not be seen as a move away from the positions set out in the consultation, unless this is explicitly stated. Rather it reflects the nature of the published regulatory framework as a legal document that describes how the OfS intends to perform its functions and provides guidance for registered higher education providers on the general ongoing conditions of registration.

Background

9. This was a public consultation, and stakeholders were invited to share their views on 27 consultation questions by using an online portal and mailbox to submit written responses. Respondents could identify their level of agreement with the proposals on a five-point Likert scale, and provide optional supplementary comments.

10. The consultation closed on 22 December 2017. As the OfS was not legally established until 1 January 2018, the DfE managed the consultation on the OfS's behalf. During the consultation period, officials met with over 300 representatives of students and higher education providers, and 334 written responses were received. Sir Michael Barber and Nicola Dandridge, respectively the chair and chief executive of the OfS, also engaged personally with students, providers and sector groups.

11. The Secretary of State for Education has issued guidance to the OfS under section 2(3) of HERA. This guidance covers a number of issues that relate to the regulatory framework. The OfS has had regard to this guidance as it has considered responses to the consultation and developed its regulatory framework.

12. The regulatory framework has been prepared with due regard to the Public Sector Equality Duty and we are publishing an equality impact assessment that demonstrates positive impact.

The OfS's response to significant and cross-cutting themes

13. The consultation responses indicated broad support for the proposed principles and core components of the regulatory framework. However, in a number of specific areas there were challenges to the consultation proposals. The following sections outline the most significant themes that emerged from the consultation responses, and set out the OfS's response to these. These themes were identified as significant because a broad range of respondents raised them or because of the nature of the challenge itself.

14. This analysis focuses on issues of policy intent and direction. However, many of the responses also sought clarification on specific aspects of the regulatory framework or on transition and implementation issues. We have addressed these as appropriate in the regulatory framework itself and in accompanying regulatory guidance. Areas requiring significant clarification are indicated in the question-by-question analysis (see paragraphs 84-156). We will also take them into account as we develop our transition plans and in our engagement with students and providers.

The OfS's primary regulatory objectives

15. The consultation proposed that the OfS would have four primary regulatory objectives to underpin its primary aim to ensure that students, whatever their background, have a fulfilling experience of higher education that enriches their lives and careers[1]. The regulatory framework seeks to mitigate the risk that these objectives are not met.

16. The primary regulatory objectives are central to the OfS's work as a regulator, and the consultation therefore asked respondents whether they thought that these were the right objectives for the OfS to prioritise.

17. Around two thirds of respondents either strongly or slightly agreed that these were the right objectives for the OfS to prioritise. In some written responses, a number of specific changes or additions were suggested. These fell into two distinct areas. First, sector representative groups, and some individual providers, called for the introduction of new objectives or increased focus in

[1] The consultation set these out as follows (see paragraph 24 for how they appear in the regulatory framework):

Objective 1: All students, from all backgrounds, are supported to access, succeed in, and progress from, higher education.

Objective 2: All students, from all backgrounds, receive a high quality academic experience, and their qualifications hold their value over time in line with sector-recognised standards.

Objective 3: All students, from all backgrounds, have their interests as consumers protected while they study, including in the event of provider, campus, or course closure.

Objective 4: All students, from all backgrounds, receive value for money.

certain areas. Second, the National Union of Students (NUS), student bodies, and other individual providers called for changes to the current objectives.

Proposed new objectives

18. There were three main areas where respondents proposed new objectives or an increased focus on certain areas. These were:

    a. **Diversity of provision**. This issue was raised by Universities UK (UUK), GuildHE and the Association of Colleges, as well as by a range of providers. Many of these respondents said that the OfS's interest in diversity should include protecting and supporting the current diversity in the higher education sector, rather than being limited to encouraging new providers.

    b. **Institutional autonomy.** This was mentioned by a range of respondents, with the Russell Group, the Association of Heads of University Administration and some providers funded by the Higher Education Funding Council for England (HEFCE) particularly emphasising it.

    c. **Reputation of the higher education sector.** This was raised by MillionPlus and some HEFCE-funded providers. It was also raised by the Higher Education Funding Council for Wales and some universities in other parts of the UK, with a view to protecting the reputation of the higher education sector across the UK.

19. We agree that these are important issues, but we have decided not to include additional regulatory objectives in these areas. The reasons for this are set out in paragraphs 20-22.

20. Diversity of provision and institutional autonomy are factors to which the OfS must have regard as part of its 'general duties' set out in section 2 of HERA. The OfS is therefore legally obliged to have regard to both these principles such that including reference in an additional objective is unnecessary. Further, the OfS is committed to the principles in any event and believes that a diverse sector underpinned by institutional autonomy will be essential in delivering its regulatory objectives.

21. The OfS's intention to promote student choice in a system with diversity of provision and providers will be delivered by protecting current diversity, encouraging innovation by existing providers and reducing unnecessary barriers to entry for suitable new providers. In particular, by establishing a level playing field and focusing on outcomes rather than specifying process, the OfS will unlock innovation and diversity in providers of all kinds.

22. The reputation of the higher education sector in England will be maintained and enhanced through the pursuit of the four primary regulatory objectives. An additional objective in this area would therefore be duplicative. Such an objective could also shift the OfS's regulatory attention towards protecting the interests of providers rather than those of students, which would undermine its core purpose of acting in the student interest.

Changes to the current objectives

23. The main areas where respondents called for changes to the proposed objectives are listed below. They were raised by NUS and by some student representatives, as well as by a small number of providers.

    a. Extension of Objective 2 to cover non-academic experience as well as academic experience.

    b. Extension of Objective 3 to protect students' status as co-creators as well as consumers.

    c. Clarification of Objective 4 to better define 'value for money' and link it more clearly to students' understanding of value. In contrast, some sector groups and providers argued this objective should be less student-focused and cover wider value for money concerns. Others argued that value for money was given too much emphasis in the consultation.

24. We agree that these are important issues, and have taken them into account as we have made some adjustment to the OfS's regulatory objectives and changes to other aspects of the regulatory framework. The OfS's objectives as published in the regulatory framework are:

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

    'Objective 1: Are supported to access, succeed in, and progress from higher education.

    'Objective 2: Receive a high quality academic experience, and their interests are protected while they study or in the event of provider, campus or course closure.

    'Objective 3: Are able to progress into employment or further study, and their qualifications hold their value over time.

    'Objective 4: Receive value for money.'

25. Objectives 2 and 4, taken together, state that the OfS will seek to support students in a way that relates to the whole spectrum of their experience. This does not mean the OfS will directly regulate the wider student experience at the provider level. We believe that empowering individual students, supported by those who advise or represent them, to exercise informed choice and to know their rights is more appropriate, and more effective, than the OfS attempting to regulate non-academic quality directly.

26. Objective 2 now provides a broader articulation of student interest beyond the circumstances in which students act as consumers. This change recognises the complexity of the relationships in higher education, but does not absolve providers from their responsibilities towards students. The OfS will still hold them to account for delivering positive learner outcomes.

27. In relation to Objective 4, on value for money, we recognise the strength of arguments that greater clarity, and a clear link to students' interests, is important. The forthcoming report on student perceptions of value for money in higher education is a first step towards such clarity, and the OfS, involving the student panel, will use these findings as a platform for further research and exploration. This will help us to develop a more student-focused understanding of this concept.

28. However, we do not agree that the objective is too student-focused or that too much emphasis is placed on value for money for students in the regulatory framework more broadly. The consultation made clear that value for money for people other than students will also be considered, and this is included in the regulatory framework. We will continue to focus first and foremost on student interests, and the importance of ensuring students obtain value for money, given that this is a statutory requirement.

Regulating in the interests of students

29. The consultation set out the OfS's intention to regulate in the interests of students and this approach was largely welcomed by respondents.

30. A range of suggestions were made to ensure that the framework both empowered students and protected their interests:

    a. Student representatives and a range of providers emphasised the benefits of current approaches to promoting the student voice and student representation, whether driven by individual providers or required through, for example, the quality review process.

    b. Student representative groups in particular drew attention to an imbalance of power and information when students had complaints. They argued for additional measures in the regulatory framework to ensure that students had access to impartial advocacy and advice.

    c. A wide range of respondents argued that it was necessary to increase the regulatory requirements for the proposed registration category of Registered (basic) to protect the interests of students at such providers.

    d. A range of respondents argued that, alongside any specific changes to the regulatory framework, the OfS must ensure that it put students at the heart of its own decision-making processes.

31. We agree that these are important issues, and have made some adjustment to the OfS's regulatory framework to reflect them. We have sought to address these issues in a way that fits with the OfS's wider approach to regulation, and our approach is set out below.

Student voice and representation

32. A common theme emerging from the consultation responses and the consultation events was that of 'student voice', with a challenge that the regulatory approach should ensure that providers actively engage with their students. These arguments encompassed general concerns that providers should communicate with, and listen to, their students, alongside more specific ideas about student representation and students as co-producers and co-designers of their education.

33. Consultation responses from student unions and NUS argued strongly for a requirement in the regulatory framework for providers to engage with, and listen to, their students, in particular through governance arrangements. Some other responses called for this in the context of co-production of the academic experience.

34. In response, we have decided to introduce an additional public interest governance principle, and will expect all registered providers to uphold this in their governing documents and to deliver it in practice. The new principle is:

    'The governing body ensures that all students have opportunities to engage with the governance of the provider, and that this allows for a range of perspectives to have influence.'

35. In judging whether a provider has delivered this public interest governance principle in practice, we would look to see whether there was a student member of the provider's governing body, unless the provider's legal form precludes this.

36. There was also challenge from some respondents that the OfS should, when determining whether the quality conditions are met, take into account whether a provider was providing its students with opportunities to actively engage in shaping the quality of their academic experience. The OfS has decided to adopt the expectations and core practices in the revised version of the Quality Assurance Agency for Higher Education's 'UK quality code for higher education', to be published in March 2018, to underpin its quality assessment system. One of these core practices relates to student engagement:

    'The provider actively engages students, individually and collectively, in the quality of their educational experience.'

Impartial advocacy and advice

37. NUS and some student representatives argued in their responses to the consultation that a condition, or public interest governance principle, should be introduced to require providers to fund independent advocacy and advice for their students.

38. We agree that having access to appropriate advice is an important part of being an empowered consumer, and have clarified condition E4 in the regulatory framework to ensure that providers have given due regard to

relevant guidance, such as that published by the Competition and Markets Authority (CMA), about how to comply with consumer protection law.

39. This is intended to ensure that students have the information they need to make informed choices, have terms and conditions that are fair, and have access to fair and transparent complaints procedures. The CMA's guidance makes clear not only that complaints processes should be fair and transparent but also that providers must inform students about their processes, including any right to escalate internally and to an external complaint scheme. For English higher education students this is the Office of the Independent Adjudicator (OIA). Its good practice framework states that:

> 'it is good practice to provide students with access to support and advice and, where it is not practicable to do so internally, providers should consider making arrangements for students to access support services at neighbouring institutions, partner providers or other local community services.'

Registered (basic) category and protection of student interests

40. The regulatory framework is underpinned by a single register. The consultation proposed three registration categories – Registered (basic), Approved and Approved (fee cap). Approved and Approved (fee cap) categories were designed with a wide range of conditions and to give providers access to the student support system, Tier 4 sponsorship licences and, in the case of the Approved (fee cap) category, public grant funding. The Registered (basic) category was designed very differently, with minimal regulatory requirements and no access to these benefits.

41. The Registered (basic) category was designed to encourage a wide range of currently unregulated higher education providers to register, and therefore be included in the new regulatory system. It was intended to benefit students in terms of assurance that their course was indeed higher education, and by guaranteeing access to the OIA student complaints scheme, as well as to increase the OfS's oversight of the sector as a whole.

42. A large proportion of responses to the consultation raised concerns about the minimal level of regulation proposed for Registered (basic) providers, often suggesting that additional conditions should be applied. A wide range of these were proposed, particularly the student protection plan condition. Various reasons were given, but two linked arguments were predominant and particularly compelling, both with a student focus:

43. The first was that the consultation aligned regulatory requirements in this category with benefits for the provider, and that they should instead be aligned with protecting students.

44. The second argument, made in particular by the CMA, was that there was a risk that prospective students could misinterpret 'OfS registered' as a sign of a higher degree of regulation and quality assurance than in fact would exist for this category. If this argument is correct, excluding providers from the register

entirely, even if doing so reduces protection at those providers, might be preferable.

45. We agree with respondents that the Registered (basic) category as set out in the consultation carries more risk to students than benefit.

46. We have considered whether this could be addressed by placing some additional requirements on providers in this category, for example by requiring that they have a student protection plan. However, there seems little logic, from a student perspective, in imposing some of the conditions included in the Approved category and not others. So, for example, the inclusion of an obligation to have a student protection plan, but not one about quality of courses, makes little sense in terms of student protection. It would not alleviate the concern about giving misleading signals about the level of assurance offered to students about providers in the Registered (basic) category. Further, the more conditions imposed on providers in this category, the less likely it is that providers would find this an attractive alternative to not registering at all. Therefore widening the conditions would be unlikely to draw in a significant proportion of the currently unregulated sector.

47. Given these points, we have decided to remove the Registered (basic) category from the published regulatory framework. The effect of this decision is to avoid misleading students about the protections available at Registered (basic) providers.

48. We recognise that unregulated providers will continue to operate, as they would have done even if the Registered (basic) category had been included (albeit, possibly, in lesser numbers). We are concerned with all students, not only those at registered providers, and remain committed to the policy intention set out in the regulatory framework consultation – to improve transparency and student protection at those higher education providers that are currently unregulated. We shall therefore give priority to developing our understanding of providers and students in the unregulated parts of the sector, to determine how we can most effectively have a role in protecting the interests of students at these providers.

Students at the heart of the OfS's decision-making

49. There was widespread support for ensuring the student voice was heard in the OfS, with a number of responses noting the importance of the Student Panel and the student representative on the OfS board. There was a suggestion from the University Alliance that the OfS should develop a comprehensive student engagement strategy that includes resources to enable research into students' views.

50. We agree with both these points. The OfS has now appointed its student panel, which will play a central role in facilitating student engagement, advising the OfS's Board and senior team, and holding them to account. The panel will support the OfS in developing a comprehensive student engagement strategy, and refining it over time.

51. The 13-member panel includes representation from current undergraduate and postgraduate students, part-time and international students, prospective students and recent graduates. It will consider how the OfS can ensure its work properly engages with, and is relevant to, students from all backgrounds, and will produce research on key issues affecting students.

Risk-based approach and regulatory burden

52. The consultation set out the intention for the OfS to be a risk-based regulator that takes a proportionate approach, with the level of regulatory focus on each provider being based on the risks it poses.

53. The principle of a risk-based approach was challenged by NUS and several student bodies. They argued that a risk-based approach would not protect all students, because some providers would not be regularly checked, and because the indicators would often 'lag' and be retrospective in nature. NUS proposed retaining the current approach where providers are annually reassessed.

54. The OfS remains committed to a risk-based approach as a more effective way of protecting the student interest. A risk-based approach will reduce unnecessary regulatory burden on compliant providers and allow swifter, more effective responses to providers with a higher risk.

55. Other respondents, including UUK and GuildHE, argued that the risk-based approach should go further. They suggested that the OfS should disapply some conditions of registration for low risk providers to reflect their lower risk profile. We agree that low risk providers should face less monitoring and oversight than higher risk providers. However, we do not think that removing conditions entirely is the way to achieve this: doing so would mean that if a low risk provider in fact failed to meet a condition for whatever reason, the OfS would be unable to respond. Instead, we will ensure that the regulatory burden associated with monitoring is proportionate for each provider.

56. A significant number of provider respondents sought more clarity on the specific processes involved in monitoring risk and how these would be implemented. There were particular questions in relation to random sampling, efficiency studies and the formulation of lead indicators. This type of response came from across the range of provider types.

57. Smaller providers were concerned about the regulatory burden that such an approach would place on them, and that their particular circumstances would not be taken into account. In a similar vein, the Russell Group and a small but diverse range of providers also asked about the extent to which contextual information would be taken into account when making risk assessments as part of ongoing monitoring.

58. We have considered these comments and are committed to implementing the regulatory framework in a way that minimises unnecessary regulatory burden on providers during the process of registration and then as providers are monitored. Information about the supporting evidence required for registration will be published alongside the regulatory framework. These requirements have been carefully formulated to ensure that the OfS is able to draw on existing evidence as far as possible to keep additional requests for information to a minimum.

59. Longer term requirements, particularly in relation to data returns, are intended to reduce regulatory burden for all providers. We will work closely with the designated data body to ensure that ongoing data requirements are published as soon as possible, and that the schedule for data collection is aligned with the transition period. The main student data for higher education students in further education will continue to be collected by the Education and Skills Funding Agency and shared for use with the designated data body.

60. As set out in the consultation document, we will have a discussion with providers, rather than immediately deploying sanctions, when a breach of their conditions appears likely.

Random sampling

61. The consultation proposed the random sampling of a small proportion of providers annually, to confirm whether they are continuing to meet their conditions of registration. This approach is designed to allow us to review our approach to monitoring and improve it. It will also encourage compliance from all providers as this will be tested in those randomly selected for assessment.

62. There were concerns raised on this topic from across all provider types and from some student bodies (see Annex A for more detail), with challenges being raised under two main themes:

    a. The potential effectiveness of using random sampling under a risk-based framework, as opposed a more selective process.

    b. The need for more detail on the 'mechanics' of the process of sampling as it will apply to providers.

63. On the challenge around the appropriateness of random (as opposed to selective, risk-based) sampling, having considered the full range of responses on this issue, we remain content that the underlying principles of this approach remain valid. As outlined in the consultation, while the process will yield information about an individual provider's continued compliance with its conditions of registration, this is not the primary purpose of random sampling. The purpose is to 'provide assurance about the effectiveness of ongoing monitoring approaches'.

64. By comparing findings from random sampling against the regulatory regime's findings and risk assessments from routine monitoring, we expect to be able to determine whether the regime is effectively capturing the level of risk at a provider and sector level. Applying a risk-based approach to sampling would

effectively be only sampling from a cohort of providers already identified as posing a risk of breach of conditions of registration. This would not allow us to review the overall effectiveness of the risk approach. A selective approach would also undermine the incentivising effect of random sampling across all providers.

65. On the second theme, we shall provide further information to providers during 2018-19 about how random sampling will work. We do not wish to add to the regulatory burden for providers. As random sampling will form part of the risk-based approach, it will come into force only once the initial period of registration and transition is completed. Providers can therefore expect random sampling to commence from August 2019.

Efficiency studies

66. A small number of responses expressed concerns about the use of efficiency studies, suggesting that they may have a 'chilling effect' on institutional autonomy and innovation. The use of these studies is provided for under section 69 of HERA, to allow the OfS to ensure that providers are delivering value for money for students and taxpayers. On this basis, we do not have the option to remove or disapply this power, and nor would we want to. In the right circumstances, efficiency studies will be an effective tool in ensuring providers deliver value for money for students and the taxpayer.

67. However, we are able to reassure providers that we shall deploy this power where monitoring activities suggest that this is required, in line with our proportionate, risk-based approach to regulation. We expect that the majority of providers will be able to assure the OfS that they are delivering value for money through normal ongoing monitoring and value for money statements (see the OfS response to question 6, paragraphs 99 to 101), without the need for efficiency studies to be carried out. We are not looking to impose a 'one size fits all' measure of efficiency and recognise that the fact that an institution may operate in a different way from others is not necessarily a sign of inefficiency; indeed it may indicate greater efficiency on the part of that institution.

Senior staff pay

68. Responses were split in their views on the proposed condition of registration on senior staff remuneration, with some arguing for it to go further, and others expressing concern about regulatory burden. In light of the responses, and following further reflection, we have decided to adopt a different approach that has the same effect as the consultation proposal but is more targeted and therefore more robust. The approach we have decided to take also allows for greater flexibility in the future and for us to intervene more forcefully in truly egregious cases.

69. We have bolstered the proposed accountability condition of registration to require providers to comply with the OfS's accounts direction. The accounts

direction will include requirements for the disclosure of senior staff pay. The OfS's first accounts direction will require disclosures that include, but are not limited to:

a. The number of staff with a basic salary of over £100,000 per annum, broken down into pay bands of £5,000.

b. Full details of the total remuneration package and job titles for each member of staff with a basic salary of over £150,000 per annum, including bonuses, pension contributions and other taxable benefits.

c. A justification for the total remuneration package for the head of provider and the provider's most senior staff.

d. The relationship between the head of provider's remuneration and that of all other employees, expressed as a pay multiple.

70. We have added an additional public interest governance principle to require transparency around value for money, of which senior staff remuneration is a part:

> 'The governing body ensures that there are adequate and effective arrangements in place to provide transparency about value for money for all students and (where a provider has access to the student support system or to grant funding) for taxpayers.'

71. In judging whether a provider has delivered this public interest governance principle in practice, we would review whether the provider is committed to the Committee of University Chairs' higher education remuneration code, or has provided reasons for not being committed to that code.

The OfS as a regulator

72. The consultation document included proposals for how the OfS would act as regulator. Several points were raised during the consultation, which are addressed in turn in paragraphs 73 to 79.

73. Many respondents encouraged the OfS to introduce mechanisms for effective collaboration with other regulatory bodies such as the CMA and UK Research and Innovation (UKRI).

74. We agree that strong and effective relationships with these bodies and others will be critical in operating a successful regulatory regime; relationships are already being built with these organisations. We will put in place collaborative agreements and data sharing agreements with a number of bodies including UKRI, the Student Loans Company, the Education and Skills Funding Agency, and the Charity Commission.

75. Some respondents called for the OfS to strengthen the sector's (and thus providers') involvement in the design and implementation of regulation. We will certainly be alive to the sector's views on the way that it is regulated, and will

maintain an open and honest dialogue with the sector. This interaction with providers will form part of the OfS's engagement with stakeholders. Interaction with the OfS's most important stakeholder group – students – has already been covered in this document.

76. The OfS will also engage with employers. To support informed student choice, improve student outcomes and address skills needs, the OfS will need reliable insight into what employers need today and what they could require in the future. The OfS will do this through direct interactions with employers, through a network of intermediaries, and by producing and analysing data.

77. Responses included comments on the OfS's own internal processes. They included calls for the OfS to ensure that its own processes and governance arrangements are transparent and accountable. We agree with these suggestions; the OfS will operate in the spirit of transparency, and will hold itself to the same high standards of governance to which it holds providers. For example, our governing documents and actions will exemplify the applicable public interest governance principles set out in the regulatory framework; providers will understand how their registration fees are used, and information about the OfS's expenditure will be publicly available on our website.

78. Many responses called for the OfS to be held to account for various aspects of its regulatory approach. We agree with the need for accountability, and the OfS will be open and transparent about its performance. The objectives against which the OfS will measure its performance are covered in paragraph 24. The OfS will be accountable for the regulatory burden it imposes on providers, and will explicitly aim to reduce the burden for low risk providers delivering high quality outcomes for students. Later this year, we shall publish success factors and performance metrics, including on regulatory burden, as part of our strategy and business plans. Our annual report will examine the performance of the sector and our performance as a regulator, offering an opportunity for reflection and exploration on areas of success and areas requiring improvement.

79. There were calls for the OfS to undergo an independent review after a fixed period of time. Whilst we agree with the sentiment of this suggestion (indeed, the consultation documents made explicit reference to the need for the OfS to be self-critical and reflective about its approach), the OfS will not undergo an independent review so soon after its launch. We will instead use comprehensive stakeholder engagement, evaluation, and accountability to monitor our own performance.

Collaboration with UKRI

80. A number of respondents raised concerns about how effectively the OfS and UKRI will work together, and what the impact of the separation of policy and funding for teaching and research will be, in particular on postgraduate students and postgraduate only providers.

81. Collaboration between the OfS and UKRI will be vital to ensure a strategic and co-ordinated approach is taken to delivering efficient and effective regulation

and funding of the higher education sector in England, and to ensure that the success of the sector and the interest of students are met. The OfS and UKRI are developing a 'collaboration agreement', which will set out the principles and commitment of collaboration across a range of areas. The agreement will include collaboration on policy areas where there is a mutual interest of both parties (for example postgraduate provision, progression and skills, and knowledge exchange).

82. We anticipate that this collaboration agreement will be published on the respective OfS and UKRI websites in due course.

83. In addition there will be a data sharing agreement, as well as more detailed agreements about detailed accountability mechanisms.

Other issues raised during the consultation

84. The DfE managed the regulatory framework consultation on behalf of the OfS, and has published a factual analysis in response. Annex A contains a copy of the DfE's analysis. We have taken all of the responses into account in developing the regulatory framework, and have responded to specific issues highlighted in the summary of each consultation question below.

Question 1: Do you agree or disagree that these are the right risks for the OfS to prioritise?

85. A full discussion of our response to these issues is set out in paragraphs 15-28.

Question 2: Given all the levers at its disposal, including but not limited to access and participation plans, what else could the OfS be doing to improve access and participation and where else might it be appropriate to take a more risk-based approach?

86. We will consider the full range of views and challenges raised by respondents as we develop our approach to assessing and monitoring access and participation plans.

87. Some respondents expressed concerns about the use of indicators measuring absolute performance (under condition B3). Lead indicators will be assessed in the context of a provider's business model, mission, and actions. Rather than a sole reliance on indicators of student retention, satisfaction or employment, for example, we will seek to understand the provider's context in order to make a rounded judgment on how well it is working to recruit and support students. This will enable the OfS to act as an intelligent, data-informed regulator when determining whether a provider is satisfying the student outcomes condition. We do not expect this approach to disincentivise progress on access and participation.

Question 3: Do you agree or disagree that a new quality review system should focus on securing outcomes for students to an expected standard, rather than focusing on how outcomes are achieved?

88. While more focus on enhancement and continuous improvement was of concern to many respondents, we remain committed to a regulatory approach that involves directly regulating a minimum baseline of performance for all providers, and this will be our priority as a regulator. This is not to say we do not want to see improvement across the sector, but rather than directly regulate this, we will instead use sector-level regulatory tools to create the conditions to incentivise providers to continuously improve. This will be achieved by supporting students to make informed choices, driving competition through the publication of important metrics, including in the Teaching Excellence and Student Outcomes Framework (TEF) and other innovative datasets.

89. Paragraphs 32-36 set out the changes that we are making to ensure that requirements for student engagement are incorporated into the regulatory framework.

90. In relation to students and quality assessment, we agree that this is an important issue and we will work with the designated quality body (DQB) to ensure that there are mechanisms to fully involve students in the new approaches.

91. The OfS's assessment of whether or not a provider can (or has the capability to) deliver successful outcomes for students will make use of a wide range of data. This will provide a rigorous assessment of the risk of a provider failing to meet its conditions. This assessment will be context-sensitive and will determine whether further engagement is required, for example through more frequent and intensive monitoring, or by asking the DQB to undertake a more detailed scrutiny of quality and standards issues in an individual provider.

Question 4: Would exploring alternative methods of assessment, including grade point average (GPA), be something that the OfS should consider, alongside the work the sector is undertaking itself to agree sector-recognised standards?

92. We have listened to the views of respondents and also recognise that the sector is already undertaking work to protect the integrity of degree standards on a UK-wide basis.

93. We expect this to lead to guidance for providers about managing grade inflation and to the publication of information for students and others that sets out the range of mechanisms in place to protect the reliability of degree classifications.

94. Preliminary work led by the UK Standing Committee for Quality Assessment is due to conclude by September 2018. We will consider the outcomes of this activity before deciding whether further action is necessary.

Question 5: Do you agree or disagree that a student contracts condition should apply to providers in the Approved categories, to address the lack of consistency in providers' adherence to consumer protection law?

95. We have decided to remove the Registered (basic) category from the published regulatory framework (see paragraphs 40-48).

96. We have considered the issues raised about the language of the proposed student contracts condition. We have reworded the condition to make it clear that it relates specifically to a provider's approach to ensuring compliance with consumer protection law.

97. It is not our intention for a focus on students' consumer rights to minimise the important and established processes for redress for individual students – rather, HERA and the new regulatory framework further strengthen the scope and remit of the alternative dispute resolution through the OIA to more providers.

98. As we have refocused the proposed condition more clearly on ensuring that providers have regard to guidance about how to comply with consumer protection law, we have also considered the extent to which further action is necessary in relation to student contracts. We expect to undertake further work to understand the range of practice across the sector in relation to student contracts, and the needs of students in this area. We will then consider whether providing model contracts, whether or not we require their use, would be helpful to students.

Question 6: What more could the OfS do to ensure students receive value for money?

99. Ensuring that all students, from all backgrounds, receive value for money is one of the OfS's four primary objectives. We will ensure that providers' and students' responsibilities and interests in securing value for money are adequately protected.

100. To this end, we are committing to ongoing reflection on the various issues raised by providers and student bodies in relation to value for money as a concept, and how this can be best defined according to the various perspectives outlined in the consultation responses. We will incorporate views from this consultation into our wider exploration of value for money.

101. We will not be prescriptive about how providers should deliver value for money. We will instead focus on ensuring transparency and monitoring whether students are receiving value for money, as measured by student outcomes. Accordingly, the related public interest governance principle will not be

accompanied by prescriptive requirements about how a value for money statement should be presented.

Question 7: Do you agree or disagree that a registration condition on senior staff remuneration should apply to providers in the Approved categories? Are there any particular areas on which you think the OfS should focus when highlighting good practice?

102. As set out in the consultation, while higher education institutions are autonomous in setting the salaries of their staff, there is a legitimate public interest in their being run efficiently. Transparency in relation to pay and the way that this is set for senior staff is an important element of the OfS's remit to ensure robust governance and efficient use of public and student funds.

103. The responses were mixed on the specifics of proposed condition E3. In light of the responses, and following further reflection, we have decided to adopt a more robust approach which is stronger and more flexible, but still respectful of institutional autonomy. More detail on this change can be found in the main body of this response (see paragraphs 68-71).

Question 8: What are your views on the potential equality impacts of the proposals that are set out in this consultation? Please provide any relevant evidence if you can as this will support future policy development.

104. We recognise the concerns expressed by some respondents that the risk-based model may inadvertently impact efforts to widen participation. We are committed to making sure this does not happen.

105. The OfS will appreciate the diversity of the student body and the different modes of study by which students participate in higher education; we will protect and promote the diversity of the market to service the needs of all students.

106. The Public Sector Equality Duty requires the OfS to give due regard to these obligations when making decisions. As part of this duty, the OfS will publish its own equality impact assessment at the earliest opportunity.

107. We recognise the concerns of smaller providers about regulatory burden, and will adopt a tailored approach and engage in dialogue when appropriate to understand and prevent it from occurring. This approach will ensure that smaller providers are not disadvantaged or disproportionately affected by the requirements of either registration or ongoing monitoring.

108. Recognising the concerns expressed about the lack of protection for students, we have decided to remove the Registered (basic) category from the published regulatory framework (see paragraphs 40-48).

Question 9: Do you agree or disagree that participation in the TEF should be a general condition for providers in the Approved categories with 500 or more students?

109. The independent review of the TEF will take place in the academic year 2018-19, meaning it will have been completed before any requirement to take part in TEF, as a condition of registration, comes into effect.

110. Participation in TEF will be a general condition of registration for providers with 500 or more students that meet the TEF eligibility requirements. We have decided to adjust the way that the size of provider is expressed and will bring this in line with the way that the regulatory framework calculates student numbers for other purposes: this means that the student number limit for this condition will be expressed in terms of student FTE.

111. Should the independent review raise any significant concerns about the TEF, we would be able to review the conditions in the regulatory framework. We will consider carefully the recommendations of the independent review, when they are published.

112. The argument that the wording of section 25 of HERA prohibits TEF participation being made a condition of registration is incorrect. Section 5 of HERA allows the OfS to determine the general ongoing conditions of registration that apply to a registered provider.

Question 10: Do you agree or disagree with the proposed ongoing general registration condition requiring the publication of information on student transfer arrangements?

113. The DfE's 2016 call for evidence on switching university or degree found that student awareness was a key barrier to wider take-up of transfer opportunities. The call for evidence also found that 91 per cent of providers already have transfer systems in place. The condition of registration requires that these arrangements be published, to give students the best opportunities to find the right course and provider for them to fulfil their potential. Those providers choosing not to accept transfers can state this and their reasons why without regulatory consequences.

Question 11: Do you agree or disagree with the proposed approach to sector level regulation?

114. We have listened to the range and degree of challenge about the use of 'market language' throughout the regulatory framework, and while we still advocate an ethos of co-production in higher education (as opposed to a transactional market) we also recognise the use of 'market language' can be polarising, especially for students. The language of the published regulatory

framework has therefore been chosen to better reflect the unique nature of the relationship between students and providers in higher education.

115. We firmly believe choice and competition are critical to driving continuous improvement at a sector level. They also work in the interests of fairness for students, in the short, medium and long term.

116. On the issue of student engagement, see paragraphs 49-51 for more detail on how we intend to engage with, and understand, the views of students.

Question 12: If you are a provider, can you provide an indication of which category you would apply for (under these proposals) and why?

117. We will use this information to inform our transition and registration planning.

118. The issues relating to collaborative provision and embedded colleges are addressed in our response to Question 15 on Tier 4 provision.

Question 13: The initial conditions should provide reassurance that providers will meet the general ongoing conditions without creating unnecessary barriers to entry. Given this, are the initial conditions appropriate?

119. As discussed in the main body of this consultation response, we have decided to remove the Registered (basic) category from the regulatory framework. See paragraphs 40-48 for more detail.

120. A response on how the OfS will consider the needs of smaller providers is set out in paragraphs 57-60.

Question 14: Do you agree or disagree with the proposed lists of public interest principles in the guidance, and who they apply to?

121. We agree with the spirit expressed in some responses that the public interest governance principles should be flexible. They have been designed and will be implemented with this in mind.

122. We are also introducing a new public interest principle on student engagement. See paragraph 34 for more detail.

123. As stated in response to Question 6, the OfS will not be prescriptive about how providers deliver value for money for their students. We have introduced an additional principle relating to transparency on value for money. In judging whether a provider has delivered this principle in practice, we will look for, among other things:

> ‘regular publication of clear information about its arrangements for securing value for money including, in a value for money statement, data about the sources of its income and the way that this is used’.

124. Apart from this, the OfS has decided to keep the scope of the public interest governance principles in line with the consultation proposals, which had strong support. The principles selected cover the key areas to ensure that providers perform their functions in the public interest.

125. In terms of the concerns raised by UUK in relation to freedom of speech, the proposal was developed with full awareness of the legal context and we are confident that the requirements set out in the regulatory framework are within the remit and powers of the OfS. The proposal does not confer any enforcement powers on the OfS in relation to the Education (no. 2) Act 1986 duty, which remains enforceable via the courts.

126. The principle does not impose any new burden on providers beyond that already required by law (under section 43 of the Education (no. 2) Act 1986). It does not impose any requirements on student unions and as such does not encroach on their autonomy.

Question 15: Do you agree or disagree with the proposed approach on the application of conditions for providers wishing to seek a Tier 4 licence?

127. Given the Home Office's requirements for educational oversight, and the requirement that English higher education providers must be registered with the OfS for this purpose, we do not intend to disapply conditions of registration for providers seeking only a Tier 4 sponsor licence (i.e. not seeking other benefits that OfS registration provides, such as student loan funding).

128. OfS guidance will also provide a number of clarifications that providers have requested, including registration advice for embedded colleges and other forms of collaborative provision. The Home Office will be issuing a statement on the Tier 4 requirements and extended visa privileges for Tier 4 providers registered with the OfS in the Approved categories.

Question 16: Do you agree or disagree that paragraph 7 and 8 should be removed from Schedule 2 of the Education (Student Support) Regulations 2011, which lists the types of courses that allow with access to the student support system? If you disagree, are you aware of any courses dependent on these provisions to be eligible for support?

129. This consultation question was asked on behalf of DfE, and it will provide a response.

Question 17: Do you agree or disagree with the proposed approach for the benefits available to providers in the different registration categories?

130. We have decided to remove the Registered (basic) category from the published regulatory framework (see paragraphs 40-48).

131. The eligibility requirements for access to public grant funding are a matter for the government. Eligibility will be set out in regulations made by the Secretary of State under section 39(3) of HERA.

Question 18: Do you agree or disagree with the general ongoing registration conditions proposed for each category of provider?

132. We will apply the full range of applicable general ongoing conditions of registration to each provider, and will not normally disapply conditions for some providers. We will ensure that the monitoring requirements placed on a provider are proportionate to the level of risk it presents.

133. We have decided to remove the Registered (basic) category from the published regulatory framework (see paragraphs 40-48).

134. We will consider the requests for more information about monitoring and risk assessment as we produce further guidance and implement the regulatory framework. Considerations around data requirements are covered under paragraphs 58-60.

Question 19: Do you agree or disagree with the proposed approach to risk assessment and monitoring?

135. Having considered the challenges raised in relation to the fundamental principles of the risk-based approach to regulation, we are content that the approach as proposed remains appropriate to deliver our regulatory objectives. It is our view that a risk-based approach is critical to delivering these objectives, while also allowing for effective regulation at both provider and sector level. We do, however, recognise the requests for more detailed information about how the risk-based system will work in practice and these issues are addressed in more detail in paragraphs 52-60.

136. When considering evidence from providers at initial registration and during routine monitoring, we will ensure that we have sufficient understanding of a provider and its circumstances to make good regulatory decisions. As stated in the consultation, ‘the assessment of providers will look at whether they can achieve outcomes rather than their processes and will be designed to be able to be applied to providers without a track record’ (page 23, xvi (b)). This does not mean established providers cannot submit relevant evidence based on their established business model and practices, but all providers, regardless of track record, will be required to demonstrate that they meet the high bar for entry and can then continue to meet their ongoing conditions.

137. Those queries raised around random sampling and efficiency studies are addressed in more detail in the main body of this response (see paragraphs 61-67.).

138. Providers will be monitored on an ongoing basis, with risk profiles updated as necessary. We will engage with a provider only when ongoing monitoring indicates that there may be an increased risk of, or an actual breach of,

registration conditions. A risk profile is not intended to provide an annual assurance to the provider about its compliance, and it would not therefore be appropriate to share risk profiles with providers on a routine basis. This approach also helps the OfS mitigate the risk of these profiles being inadvertently published and generating an uneven reputational impact on different providers.

Question 20: Do you agree or disagree with the proposed approach on interventions (including sanctions) and do you agree or disagree with the proposed factors the OfS should take into account when considering whether to intervene and what intervention action to take?

139. We will set out which individuals or groups will make significant regulatory decisions in the OfS board's scheme of delegated decision making. This will give providers greater clarity about how decisions on the use of sanctions will be taken.

140. HERA requires the OfS to provide an opportunity for a provider to make representations before a decision is taken to suspend its registration. It is not, therefore, necessary, to operate an additional appeal process, not least because suspension is intended to be a short-term sanction, with specified actions for the provider to take for suspension to be lifted.

141. In response to student unions' calls for the OfS to engage with them before sanctions are imposed, we can assure them that we will be working in the student interest when considering using our powers to sanction providers. Before we impose a sanction we will consider the intervention factors set out in the regulatory framework and will consider how imposing a sanction would affect students.

142. We have added a new intervention factor to specifically consider the impact of a sanction on students and their experience.

Question 21: Do you agree or disagree with the proposed approach the OfS will take to regulating providers not solely based in England?

143. We are committed to working with partners in the devolved administrations to protect the interests of students and the reputation of UK higher education.

144. The DfE is working with the devolved administrations to give further clarity on the designation of alternative providers in the devolved administrations, which are currently designated for student support for their English domiciled students.

Question 22: Do you agree or disagree with what additional information is proposed that the OfS publishes on the OfS register?

145. We intend that the OfS register will provide a clear and reliable source of information for students, employers and other regulators. For students and prospective students in particular, we intend it to be used alongside other tools and information sources that cater specifically to their needs.

146. We will only apply a sanction after engagement with the provider and where there is a clear reason for doing so. We can thus confirm that no such information would be made public without due process which would include prior discussions with the provider.

Question 23: Do you agree or disagree with the principles proposed for how the OfS will engage with other bodies?

147. We are committed to building strong working relationships with a range of other organisations. We will put in place collaboration agreements (and data sharing agreements where necessary) to underpin these relationships and establish effective mechanisms for working together. In the case of UKRI, we will ensure collaboration at all levels of both organisations, and both will set out how they have worked together in their annual reports.

148. The OfS will participate in the Apprenticeship Quality Alliance and work collaboratively with partner bodies (DfE, the Education and Skills Funding Agency, the Institute for Apprenticeships, Ofsted and Ofqual) towards the common goal of high quality apprenticeships.

149. The OfS will also collaborate with professional, statutory and regulatory bodies to share relevant information and ensure that students have accurate information about courses leading to professional accreditation. Any loss of accreditation will need to be reported by a provider to the OfS.

Question 24: Do you have any comments on the proposed exercise of OfS functions in relation to validation, in particular in relation to ensuring that the validation service is underpinned by the necessary expertise and operates in a way that prevents or effectively mitigates conflicts of interest?

150. We will assess the operation of the current validation system to identify any unnecessary barriers for providers seeking a validation partner, or any areas of current practice that are not in the interests of students. Where it is possible to intervene to remove or mitigate such barriers and to ensure that students are protected, we will take action at a sector wide level.

151. Where we conclude that such interventions are not sufficient to secure necessary improvements in the operation of the validation system, we will

make use of our powers under section 50 of HERA to enter into commissioning arrangements.

152. If authorised by the Secretary of State, HERA also makes provision for the OfS to act as a validator of last resort. If this authorisation were to be granted, we recognise that it would create a conflict of interest. In such circumstances, we would consult about how best to perform this function and manage the inherent conflict of interest.

Question 25: Does the information provided offer a sufficiently clear explanation of how a provider will apply for registration in the transitional period and what the consequences of registration are in this period?

153. We will support and provide information to providers during the transition period. We will publish alongside the regulatory framework guidance to help providers to understand what they need to do to register and the evidence that we will use to assess applications.

154. We will also publish, before 1 April 2018, the approach that the OfS will take to regulating providers during the period up to 31 July 2019.

Question 26: Do you have any comments on the above proposal of how the OfS will act as the principal regulator for exempt charities?

155. This consultation question was asked on behalf of DfE and it will provide a response.

Question 27: Provided that the Secretary of State considers OfS regulation is sufficient for these purposes, should exempt charity status apply to a wider group of charitable higher education providers? In particular, considering that providers in the Approved categories will be subject to conditions relating to financial sustainability, management and governance, and the provision of information (as set out in the guidance), do you have any views on whether the OfS's proposed regulation of providers in these categories would be sufficient for the purposes of it carrying out the functions of principal regulator?

156. This consultation question was asked on behalf of DfE and it will provide a response.

DAPs and university title consultation

157. The DfE consulted on the criteria and processes for degree awarding powers (DAPs) and university title, on its own behalf and on behalf of the OfS. A full factual response has been published by the government and has been replicated in Annex A.

158. The consultation responses were generally supportive of the proposals, in particular regarding the alignment of DAPs processes with the OfS registration process and the wider regulatory framework. The main issues identified from the consultation responses were as follows.

Degree awarding powers

159. The area with the greatest disagreement was the question asking whether research DAPs should be made available on a probationary basis. 54 per cent of respondents either slightly or strongly disagreed with this suggestion. 33 per cent agreed with the proposal.

160. There was some disagreement about the adequacy of the proposed New degree awarding powers ('New DAPs') test, with some detailed comments and suggestions. A number of providers and representative groups argued that established providers would be disadvantaged by not being able to apply for New DAPs on the same basis as new providers without a track record.

161. 57 per cent of respondents considered the proposed monitoring processes during the probationary period to be adequate.

162. 59 per cent of respondents agreed that the Level 6 criterion for DAPs should be interpreted more flexibly to allow providers with a significant number, but not 50 per cent, of higher education students on courses at Level 6 to apply.

University title

163. Overall there was support for the proposals. In line with these responses and the guidance provided by the Secretary of State, the published regulatory framework makes it clear that only providers that meet both the Level 6 criterion for DAPs and the 55 per cent criterion are eligible for university title.

Variation, revocation, and change in circumstances

164. There was strong support (more than 70 per cent) for proposals about the implementation of the statutory provisions for the variation of DAPs, and the revocation of DAPs and university title; and for the proposed definition for change in circumstances.

165. We have considered these views, and respond to the issues raised as follows:

    a. New DAPs will not be available to providers seeking to award research degrees.

b. All providers will be able to apply for New DAPs if they prefer, regardless of their track record.

c. The consultation proposals regarding increased flexibility in relation to the Level 6 criterion will be implemented for providers seeking DAPs for bachelor degrees only.

166. In addition, a number of respondents had detailed, technical comments or suggestions, which have been considered in the development of regulatory framework and the guidance for providers about the DAPs and university title processes. These included comments about the frequency and practicalities of monitoring New DAPs holders, and the detailed criteria and assessment methods for new types of DAPs, such as subject specific DAPs.

167. To ensure that the new DAPs processes are functioning as intended and remain appropriate and effective, we will review them after around three years.

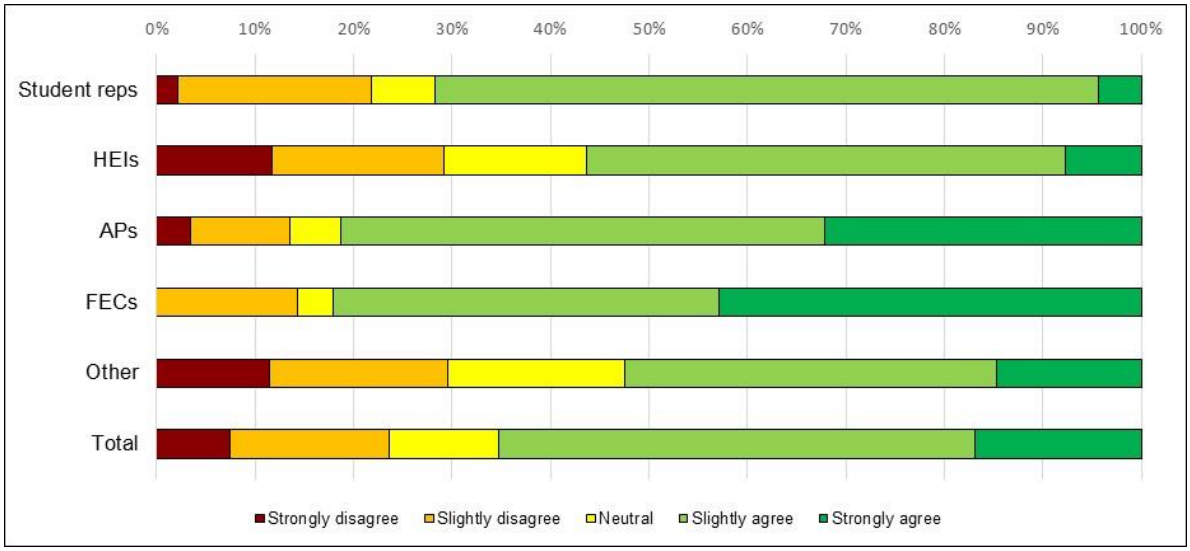
List of abbreviations

CMA	Competition and Markets Authority
DQB	Designated quality body
DAPs	Degree awarding powers
DfE	Department for Education
FEC	Further education college
GPA	Grade point average
HEFCE	Higher Education Funding Council for England
HEI	Higher education institution
HERA	Higher Education and Research Act 2017
NUS	National Union of Students
OfS	Office for Students
OIA	Office of the Independent Adjudicator
QAA	Quality Assurance Agency for Higher Education
TDAP	Taught degree awarding powers
TEF	Teaching Excellence and Student Outcomes Framework
UKRI	UK Research and Innovation
UUK	Universities UK

Annex A: DfE analysis by consultation question

The DfE managed the regulatory framework consultation on behalf of the OfS, and has published a factual analysis in response. This annex contains a copy of the DfE's analysis, including quantitative analysis and a summary of respondents' comments.

Question 1 - Do you agree or disagree that these are the right risks for the OfS to prioritise?



Response	Total	Percent
Strongly disagree	22	7.4%
Slightly disagree	48	16.2%
Neutral	33	11.1%
Slightly agree	144	48.5%
Strongly agree	50	16.8%
Total	**297**	**100%**

Respondents generally agreed with the proposed objectives and associated risks, and the student focus. Some respondents proposed additional areas for the OfS to prioritise or include in its objectives. Of these suggestions, those with the widest degree of support, particularly from representative groups of providers and from providers directly, were the protection of diversity of provision, institutional autonomy, and the reputation of the higher education sector.

Student representative bodies, including the NUS, argued for the current objectives to be clarified or extended, including extending the quality objective beyond academic quality and the consumer objective to cover students' other roles such as co-production (where students are involved in suggesting course content, structure or delivery modes, thereby playing an active part in shaping their academic experience). Some student bodies also called for the value for money objective to be clarified and linked more closely with students' views on value for money, while some bodies also argued that value for money was given too much priority in the consultation.

Some respondents also used this question to raise specific concerns around the conditions, such as a view that the senior staff remuneration condition might threaten institutional autonomy.

Question 2 - Given all the levers at its disposal, including but not limited to access and participation plans, what else could the OfS be doing to improve access and participation and where else might it be appropriate to take a more risk-based approach?

NOTE: There were no metrics captured for this question in the consultation – qualitative responses only.

Responses to this question generated a wide range of issues and views.

A number of concerns were raised around the appropriate use of indicators, data and benchmarks in relation to assessing whether the access and participation plan condition was being met.

Respondents suggested that the OfS could, for example, consider indicators such as free school meals and indices of multiple deprivation. There were calls for a single measure of disadvantage across higher education, further education and schools.

There were also comments about the benchmarks currently used to monitor access and participation activity, with some respondents commenting that

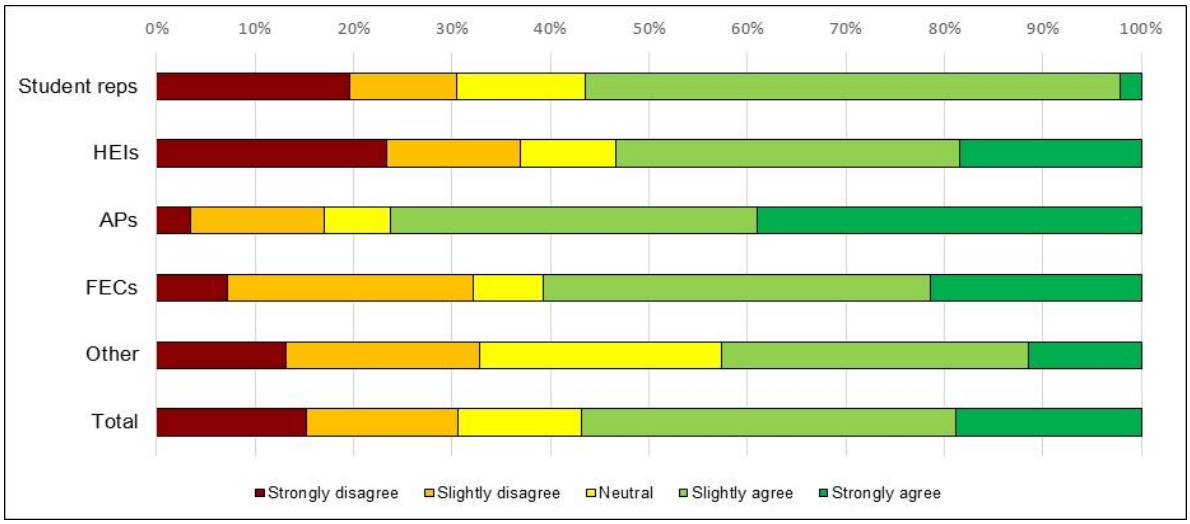
these were not fit for purpose. Some respondents argued for benchmarks to be tailored to the provider and mode of provision.

There were calls for the continuing need to recognise the diversity of the sector in relation to access and participation, particularly the size of the provider and/or its specialist provision.

A number of respondents commented that access and participation activities were not risk-free and that greater activity in one area may lead to conflict with other outcomes, and potentially higher non-continuation rates were mentioned. Linked to this respondents raised the potentially negative consequences of focusing only on absolute performance (under condition B3) and that providers recruiting inclusive populations could as a result be seen as riskier. This might then act as a disincentive to progress on access and participation.

Many responses said they expected, and would value, the OfS continuing the Office for Fair Access (OFFA) role in identifying and disseminating good practice and in encouraging collaboration through but not limited to the National Collaborative Outreach Programme. A number of responses, particularly from students' unions, suggested that the OfS should, as a priority, look at the gaps in differential attainment (particularly for black students) as part of a long-term strategy.

Question 3 - Do you agree or disagree that a new quality review system should focus on securing outcomes for students to an expected standard, rather than focusing on how outcomes are achieved?



Response	Total	Percent
Strongly disagree	45	15.2%
Slightly disagree	46	15.5%
Neutral	37	12.5%
Slightly agree	113	38.0%
Strongly agree	56	18.9%
Total	**297**	**100%**

Overall, there was clear agreement by more than half of respondents that the OfS should operate a quality review system that focuses on outcomes themselves rather than how those outcomes are achieved. Providers cited that a focus on outcomes encourages innovation in delivery and provider models, leading to greater diversity of specialist providers, with models tailored to meet the needs of specific sectors and industries, and to better support the interests of students as well as other stakeholders. However, some respondents raised concerns that the proposals were too reliant on a narrow set of outcomes data, and that process (how outcomes are achieved) should also be taken into account.

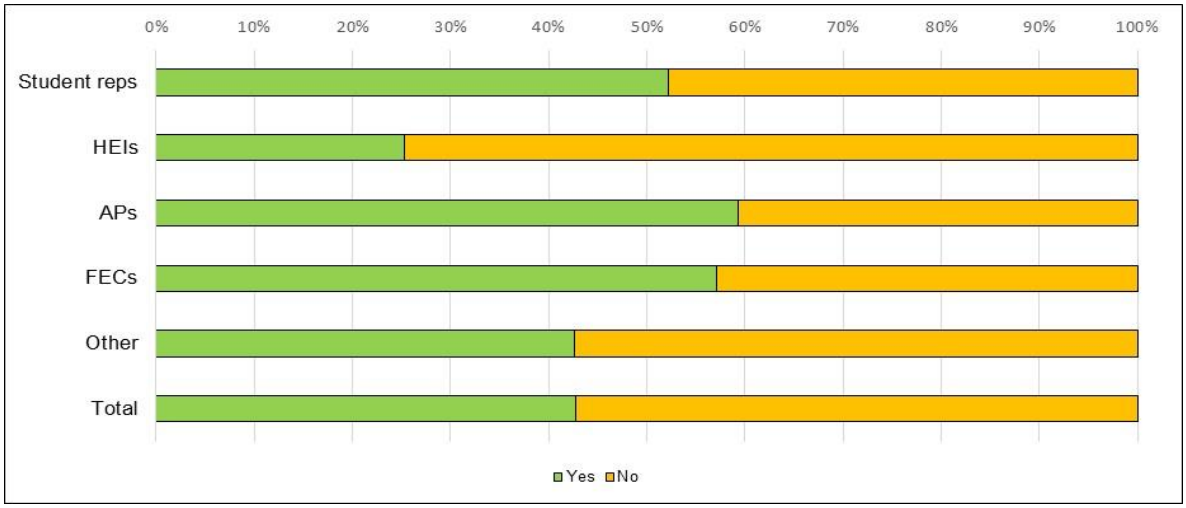
Within the detail of the responses, the most significant theme raised, particularly by providers and student bodies, was in relation to student engagement and student experience/voice to ensure that the views of students are taken into account. Where this was raised respondents took the position that successful outcomes are the product of `co-production' between students and providers, and that it is therefore important that the regulatory framework makes it mandatory that students be given the opportunity to be involved in the development, assurance, and enhancement of their courses.

However, a number of respondents argued that the regulatory framework should go further than focusing on the quality of the academic experience, to include the institutional environment and services, and that providers should be held to account for any issues highlighted in the National Student Survey and/or from direct feedback from students and students' unions.

The role of students in quality assessment was raised in particular by student bodies. Their view was that the regulatory framework should provide an annual opportunity for students to feed into the OfS or DQB on the student experience (both academic and wider) and for it to be a requirement that students be involved in any DQB assessment of quality or standards.

From some providers and student bodies, there was a challenge to the OfS to place a requirement on providers to demonstrate 'continuous improvement' in relation to quality as well as meeting a minimum (although high) quality baseline.

Question 4 - Would exploring alternative methods of assessment, including Grade Point Average (GPA), be something that the OfS should consider, alongside the work the sector is undertaking itself to agree sector-recognised standards?



Response	Total	Percent
Yes	128	42.8%
No	171	57.2%

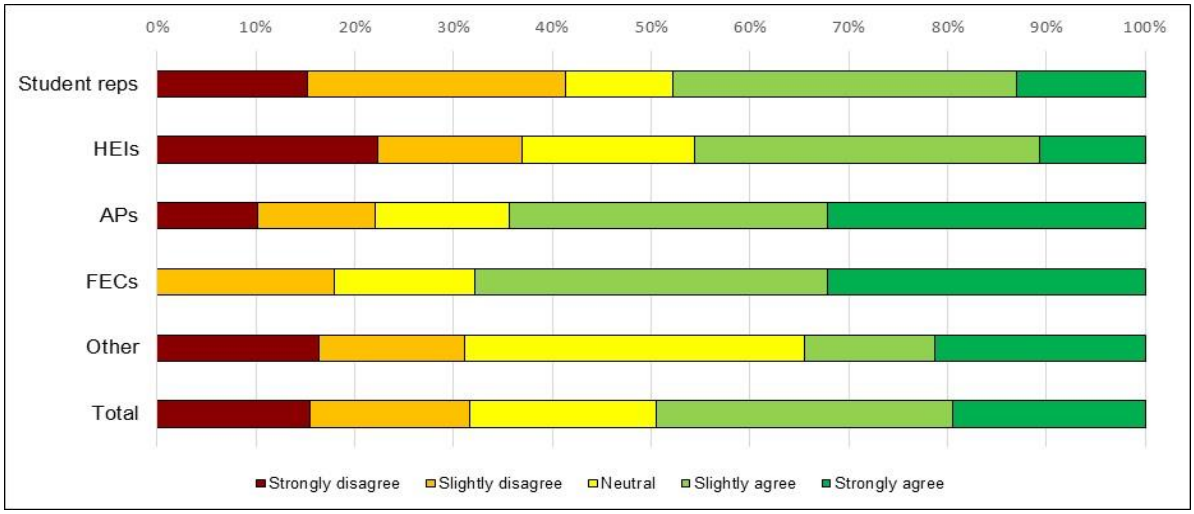
Overall, more respondents said no than yes to this proposal for the OfS to consider exploring alternative methods of assessment, alongside the work the sector is undertaking itself. Of those respondents that were supportive (42.8%), the majority of this group caveated their support along the lines that

while there are some strengths in the use of GPA, they questioned whether this is urgently needed now, whether its introduction could wait, and indeed questioned whether GPA itself is the answer to improving assessment. In addition, respondents felt that more work needs to be done by the OfS, in partnership with stakeholders, to demonstrate that a GPA approach to degree classification would produce greater consistency than the current arrangements.

From those disagreeing that the OfS should explore alternative methods of assessment, there was limited appetite for further expansion of the GPA methodology as a way to address grade inflation. Indeed, there was much criticism about GPA in the responses - that GPA is not 'a method of assessment' but a formula for comparing the overall performance of one student with another and with a cohort as a whole. Respondents referred to it being applied with different algorithms in different institutions, and so not providing a sector-wide standard approach, and stated that grade inflation is still prevalent in higher education sectors (i.e. the USA) where GPA is in use – so it is not considered to be a robust mechanism to tackle this issue.

There was also widespread concern (especially from providers and some sector bodies) that a regulatory approach to new methods of assessment would appear to be imposing an approach on the sector which contradicts sector autonomy and the OfS's own principle of focusing on outcomes (not processes).

Question 5 - Do you agree or disagree that a student contracts condition should apply to providers in the Approved categories, to address the lack of consistency in providers' adherence to consumer protection law?



Response	Total	Percent
Strongly disagree	46	15.5%
Slightly disagree	48	16.2%
Neutral	56	18.9%
Slightly agree	89	30.0%
Strongly agree	58	19.5%
Total	**297**	**100%**

While there was a relatively even split of responses in terms of agreement/disagreement, there was a recurring theme raised by nearly a third of all respondents, stating that this condition should apply to providers in the Registered (basic) category as well as those providers in the Approved categories.

Of those who agreed with the condition, there were views that it was consistent with the CMA's existing guidance, and that this was preferable, for example, to a new system. Others indicated that the principle of clear and transparent information, terms and conditions and complaints processes was appropriate.

Of those who disagreed, a significant proportion of respondents raised questions relating to the language used in the condition, with many of these considering it to be part of an unhelpful wider narrative, which commodifies education and/or minimises the importance of students' collective rights and established systems of redress. Additionally, some responses argued that some of the language used in the condition was confusing or misleading. This was particularly in relation to the use of the term 'contracts'. Responses argued it might confuse students by incorrectly implying there is now a change in the legal status in relation to existing student partnership agreements or student charters, or detract from their established status.

Other respondents queried the purpose of the condition, whether consumer rights was the right focus, and how the OfS's role sat alongside other bodies such as the CMA and the OIA. Many respondents also called for clarification on the OfS's intentions around 'future work' (as detailed in the guidance, around either mandating or 'imposing' model contracts).

Question 6 - What more could the OfS do to ensure students receive value for money?

NOTE: There were no metrics captured for this question in the consultation – qualitative responses only.

There was a diverse range of responses to this question, which included the opinion that the OfS should take no action, though more respondents thought it was appropriate for the OfS to take an interest in this issue, particularly seeking clarity on what was meant by value for money. It was highlighted that value for money could mean different things to different groups and should account for the diversity of the sector. Respondents also highlighted the wider benefit of higher education to society, suggesting that any definition should encompass the wider student experience, noting that the value derived from higher education might not be apparent until years after graduation.

High quality teaching was mentioned as an important consideration for value for money. Some responses suggested that contact hours could be used to inform value for money, but others opposed this. Some responses suggested a focus on learning gain, while other responses prioritised outcomes (including graduate salary) or public good as provided by vocational degrees,

health, wellbeing, citizenship and community. It was suggested, by both providers and student bodies, that there should be a focus on support for current students (e.g. support for mental health) rather than expansion activity (e.g. new buildings, recruitment) from which current students would see less benefit. In contrast, there was concern, in particular from providers, that such a focus might restrict their ability to plan strategically.

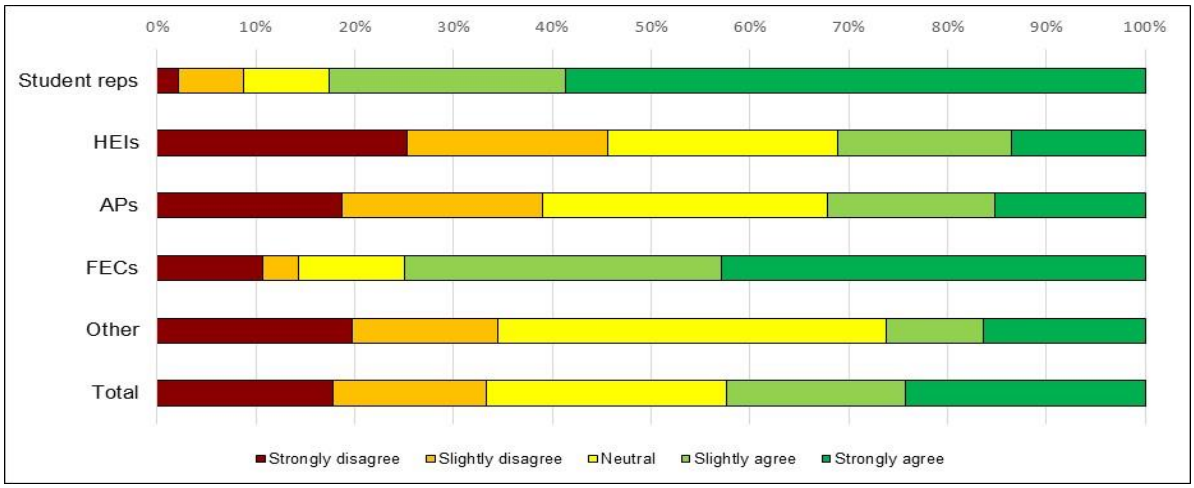
The issue of cross-subsidy was also reflected in a number of ways – there were responses that questioned cross-subsidy between courses, while others emphasised that such cross-subsidy was important. It was noted that in some cases providers may profit from certain areas, e.g. accommodation. In areas such as this, it was argued that providers should be more transparent.

Many student bodies expressed support for improved transparency, so that students could see where fees were being spent, enabling them to more easily compare providers. It was also suggested that transparency should extend to giving students a clearer picture of the total cost of studying at a particular provider by giving information on additional course expenses.

A number of responses, from both providers and student representatives, criticised the idea of reducing the role of students to one of consumers and emphasised the benefits of students acting in partnership with their providers. This included having increased involvement in teaching, learning and assessment and in governance (particularly in remuneration committees).

The role of students' unions was also mentioned in terms of supporting the provision of value for money. It was suggested that the OfS could support students' unions in providing services for students.

Question 7 - Do you agree or disagree that a registration condition on senior staff remuneration should apply to providers in the Approved categories? Are there any particular areas on which you think the OfS should focus when highlighting good practice?



Response	Total	Percent
Strongly disagree	53	17.8%
Slightly disagree	46	15.5%
Neutral	72	24.2%
Slightly agree	54	18.2%
Strongly agree	72	24.2%
Total	**297**	**100%**

Overall, views of respondents on this question were split, though more supported the proposal than opposed it (42% versus 33% respectively). Of those supporting this condition, many argued for it to go further, for instance with action on pay scales as a whole or requiring providers to keep within pay

ratios. There were also arguments for more transparency around remuneration committees, or student representation on them.

Some opposition was based on the belief that the OfS would make an assessment if pay over £150,000 was justified, rather than simply requiring a justification to be published. Others thought the thresholds at £100,000 and £150,000 felt arbitrary and wanted to know if they would change over time.

Concerns were raised on the administrative burden, the requirement for role descriptions, and the inclusion of academic staff. There were specific concerns from certain providers, including medical schools where staff were paid on NHS pay scales, and further education colleges that were already covered by the Education and Skills Funding Agency reporting requirements.

Question 8 - What are your views on the potential equality impacts of the proposals that are set out in this consultation? Please provide any relevant evidence if you can as this will support future policy development.

NOTE: There were no metrics captured for this question in the consultation – qualitative responses only.

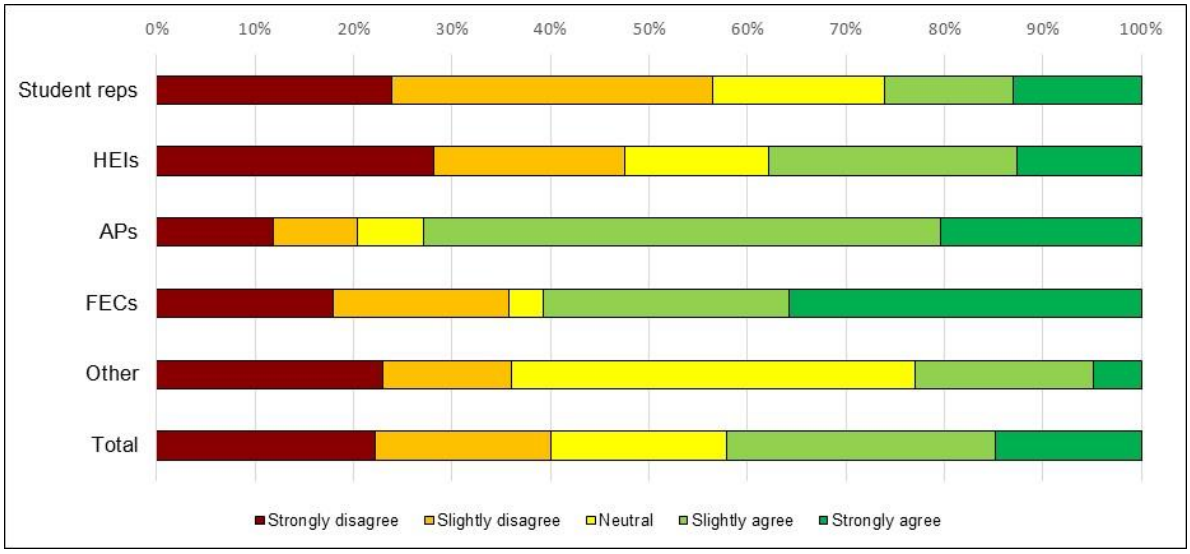
Responses were broadly supportive that, if properly implemented, the OfS's central objectives should have a positive impact on equality. They also supported the recognition that widening participation needs further intervention beyond a reliance on market forces. Respondents did, however, request more details on implementation and a greater focus on non-traditional modes of study.

Some respondents also expressed views that the OfS could have a long term sector-level role in monitoring and tackling inequalities and discrimination. A diverse range of providers were concerned that the risk-based model may disincentivise providers from widening participation work, as recruiting higher proportions of disadvantaged students (who tend to carry higher rates of non-completion) may result in higher risk profiles. Concerns were also raised (particularly by alternative providers, further education colleges and their mission groups) that compliance burdens would disproportionately affect smaller providers, and could result in closure. Respondents felt that this might make higher education less accessible to disadvantaged and less geographically mobile students.

Respondents (particularly student representatives, providers and mission groups) also raised concerns about the lack of protection for students studying at Registered (basic) providers.

A number of respondents also raised the lack of an accompanying Equality Analysis at this stage of public consultation.

Question 9 – Do you agree or disagree that participation in the TEF should be a general condition for providers in the Approved categories with 500 or more students?



Response	Total	Percent
Strongly disagree	66	22.2%
Slightly disagree	53	17.8%
Neutral	53	17.8%
Slightly agree	81	27.3%
Strongly agree	44	14.8%

While respondents were almost evenly split along levels of agreement versus disagreement, the comments were broadly positive, with providers expressing support for the framework overall and welcoming the commitment to improve

teaching excellence in higher education. Those in favour of the proposal claimed that making participation in the Teaching Excellence and Student Outcomes Framework (TEF) a condition of registration would create a level playing field for providers and provide students with comparable, consistent data. Some respondents also supported this decision as a method of ensuring value for money, both for students and the taxpayers, by ensuring providers in receipt of Government funding were providing excellent teaching.

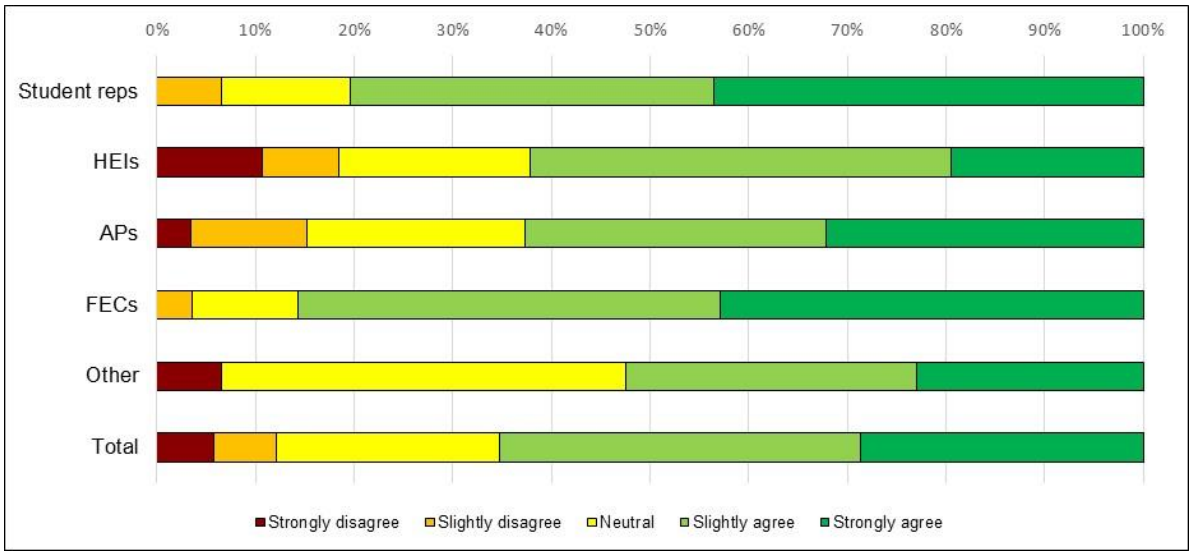
Over a quarter of respondents felt that the decision of whether to make TEF a condition of registration should not be taken until such time as the independent review has concluded and the TEF has taken account of its recommendations. They considered that TEF was still in its development phase and needed to become better established.

Some argued that if it was required for some it should be required for all, with no exemption for small providers, and others that even with an exemption, small providers risked reputational damage if they did not have the resources to take part. Similarly, providers ineligible for the TEF (due to e.g. being largely international or postgraduate) might face reputational damage.

A small number of respondents challenged that there is no statutory basis to include TEF as a condition of registration, as HERA states that providers would be rated as part of a scheme '*where they apply for such a rating'*. Respondents commented that making TEF mandatory would be a departure from the intention of HERA and of Parliament.

Some respondents also sought clarification as to whether the 500 student limit referred to overall headcount or full time equivalent numbers (FTE).

Question 10 - Do you agree or disagree with the proposed ongoing general registration condition requiring the publication of information on student transfer arrangements?



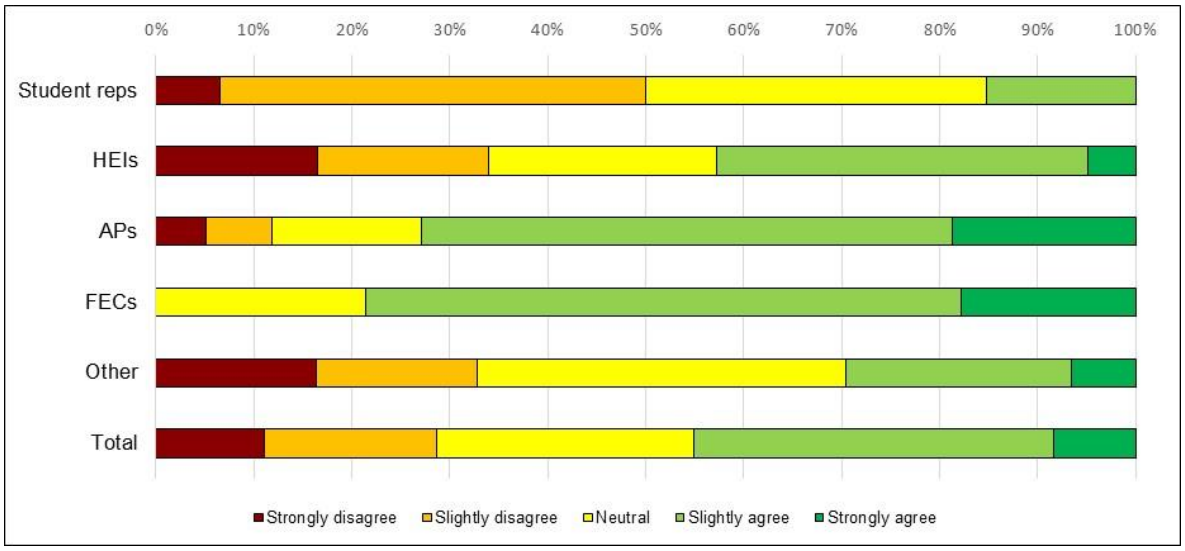
Response	Total	Percent
Strongly disagree	17	5.7%
Slightly disagree	19	6.4%
Neutral	67	22.6%
Slightly agree	109	36.7%
Strongly agree	85	28.6%
Total	**297**	**100%**

This question prompted widespread agreement: nearly two-thirds of responses agreed with the proposed condition including a majority of respondents in every category and over 80% of student representatives. Reasons cited included the promotion of a more flexible approach to study to both providers and students.

Those who disagreed argued that there was low demand and that it might be burdensome, especially for small providers, if monitored at module level rather than programme level. Concerns were also raised that transfers out would appear as 'non-completion' of a course, affecting a provider's compliance with this condition.

In response to the additional question about how the OfS might best facilitate, encourage or promote the provision of student transfer arrangements, respondents also suggested other ways to support transfer beyond the regulatory framework, such as dissemination of good practice and examining other barriers.

Question 11 - Do you agree or disagree with the proposed approach to sector level regulation in chapter 2?



Response	Total	Percent
Strongly disagree	33	11.1%
Slightly disagree	52	17.5%
Neutral	78	26.3%
Slightly agree	109	36.7%
Strongly agree	25	8.4%
Total	**297**	**100%**

While overall responses were largely positive or neutral, over 50% of student representatives disagreed with the proposed approach and less than 20% agreed with it.

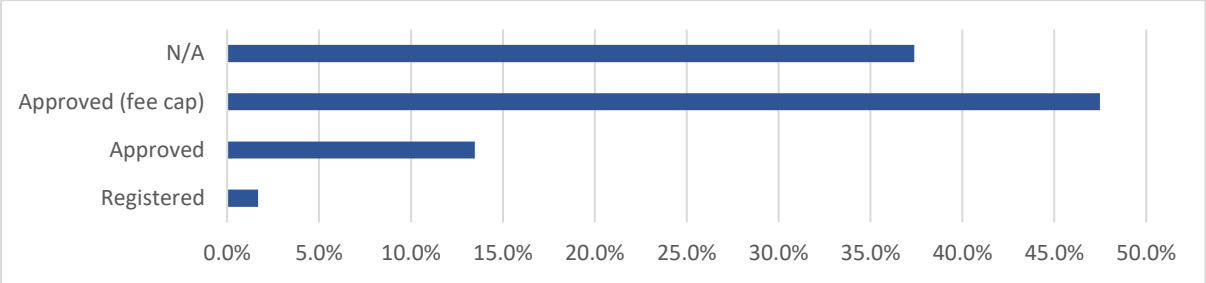
Of the responses that engaged with the sector level proposals specifically in chapter 2 of the consultation, comments were broadly supportive (in particular of thematic reviews and the importance of student information). There were, however, a significant number of responses that focused on provider level regulation in their commentary. This largely reiterated points made in response to other questions (and covered elsewhere in this document), including concerns around regulatory burden, the possible duplication of regulation of students' unions with the Charity Commission, and comments on individual conditions.

Among those who disagreed, there was significant opposition across the range of responses to any implication that higher education could be treated like a typical consumer goods market, though many responses did note that the consultation text acknowledged this. A related challenge from several respondents was an opposition to marketisation: some respondents opposed marketisation on principle, whilst others doubted whether it would drive the continuous improvement that the consultation presumed it would.

A significant number of respondents raised concerns about the market-focused language in the consultation and the belief that choice and competition could improve quality. Some argued that students must be seen as co-producers as well as consumers.

There were widespread calls for a greater emphasis on student engagement, building on the newly created OfS student panel as the means by which the OfS can engage students and seek to understand students' interests more widely. Calls for student engagement extended to the proposals on thematic reviews, which were generally perceived as being positive.

Question 12 - If you are a provider, can you provide an indication of which category you would apply for (under these proposals) and why?

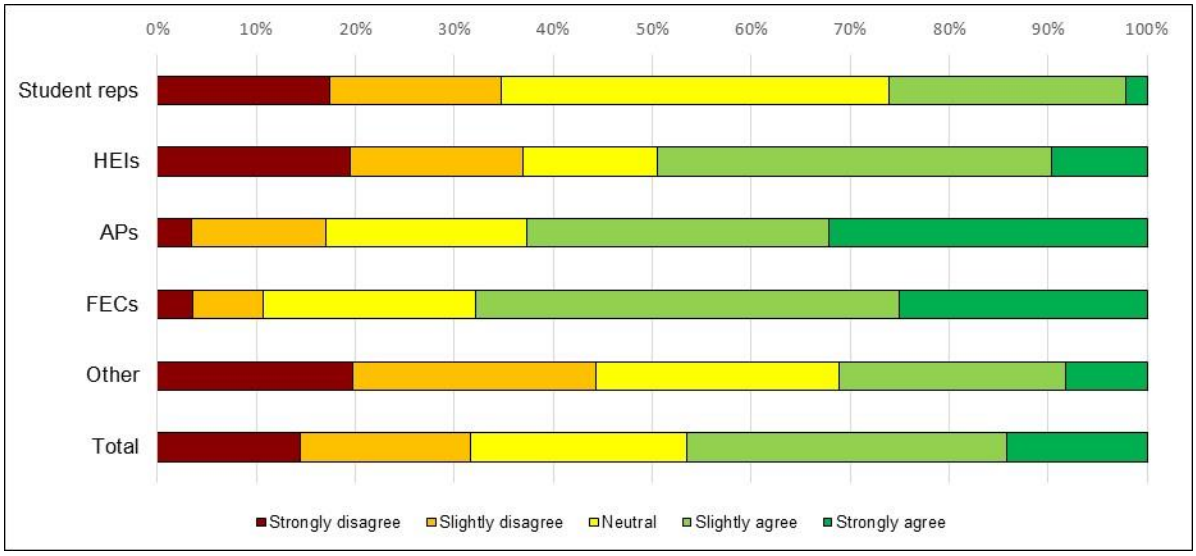


Response	Total	Percent
Registered (basic)	5	1.7%
Approved	40	13.5%
Approved (fee cap)	141	47.5%
N/A	111	37.4%
Total	**297**	**100%**

This question was asked to inform the OfS's planning for the transition and registration processes. The figures above do not reflect a representative cross-section of the sector as a whole, given only a proportion of the currently regulated sector responded.

The majority of those who said they would apply for Approved (fee cap) said they would do so for reasons including: their retention of their Degree Awarding Powers (DAPs), University Title (UT) and Tier 4 Licence; their right to charge fees above the basic amount with equivalent loan funding for students; and their access to research funding.

Question 13 - The initial conditions should provide reassurance that providers will meet the general ongoing conditions without creating unnecessary barriers to entry. Given this, are the initial conditions appropriate?



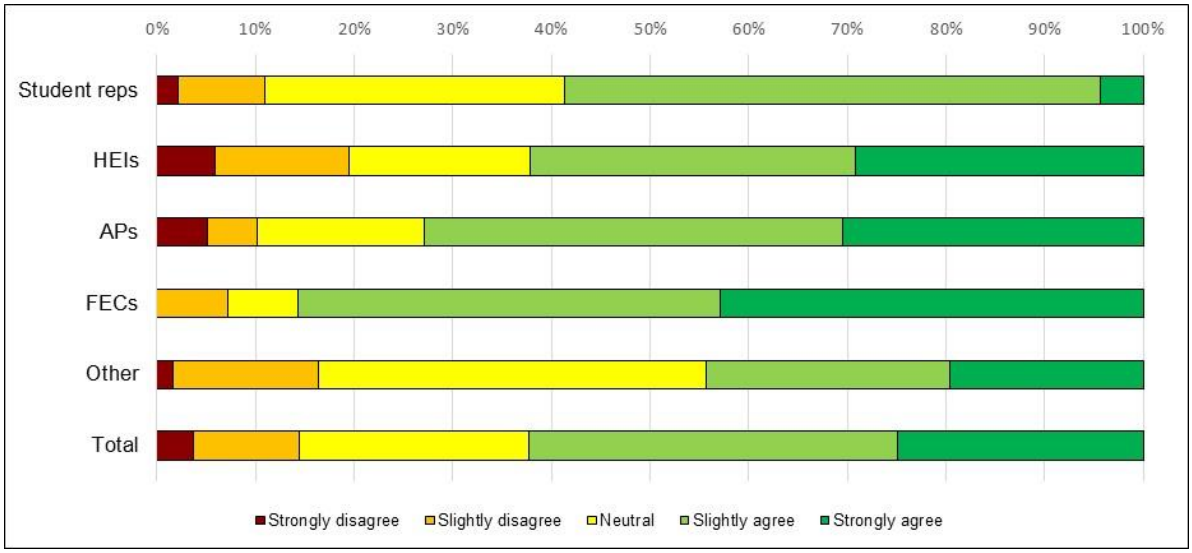
Response	Total	Percent
Strongly disagree	43	14.5%
Slightly disagree	51	17.2%
Neutral	65	21.9%
Slightly agree	96	32.3%
Strongly agree	42	14.1%
Total	**297**	**100%**

There was broad overall support for those conditions applied to Approved and Approved (fee cap) categories – with respondents generally querying the underpinning detail and seeking clarification, rather than disagreeing with the principles of what the OfS would be seeking to regulate, or how it would do so.

The main area of concern across student representatives, providers and their representatives was that additional conditions should be applicable to the Registered (basic) category, especially on student protection, although a wide range of additional conditions were proposed in total. Whilst respondents appreciated that the aim was to make conditions proportionate, some argued that, given there is a focus on students, the conditions should be proportionate to the risk to students, not related to the benefits accessed by the provider. Of the responses to this question, a significant number requested more conditions for the Registered (basic) category, many of which mentioned applying student protection plans.

There were some calls for a risk-based approach to be extended to the applicability of certain conditions, i.e. only apply certain ongoing conditions (such as student protection plans) to providers that present a higher risk. Respondents argued that this would be a significant reduction in burden for low risk providers. Alongside this, there were a few concerns around initial burden during transition and minimising burden during registration, along with financial impact upon smaller providers.

Question 14 - Do you agree or disagree with the proposed lists of public interest principles in the guidance, and who they apply to?



Response	Total	Percent
Strongly disagree	11	3.7%
Slightly disagree	32	10.8%
Neutral	69	23.2%
Slightly agree	111	37.4%
Strongly agree	74	24.9%
Total	**297**	**100%**

Responses were overall supportive, with over 80% of respondents in each category being neutral or agreeing with the proposed principles. The reasons given for agreeing with the principles were largely around a perception that these principles were proportionate, well established, and would support good governance. One respondent, for instance, stated that *"The proposed principles are encompassing and worthy."*

A relatively small percentage (<10%) of respondents raised concerns relating to a lack of student representation/engagement, and this was a theme that was also raised by student representatives during our engagement period. Other responses covered a wide spectrum of smaller points, with few patterns emerging. Points made by respondents included:

- A request for OfS flexibility a) in the early years, and b) for providers with different corporate forms (such as further education colleges)
- Suggestions that public interest principles should apply to Registered (basic) providers as well as those in the Approved categories
- Requests to reflect the wider role of providers, in particular universities, in relation to the UK's economy, society, culture and international reputation.
- Concern around the fit and proper principle, which some respondents read to mean that if any indicator is not met, the person in question will be deemed not fit and proper.

Some respondents sought clarification about how OfS would monitor compliance and others sought reassurance that different legal forms would be taken into account.

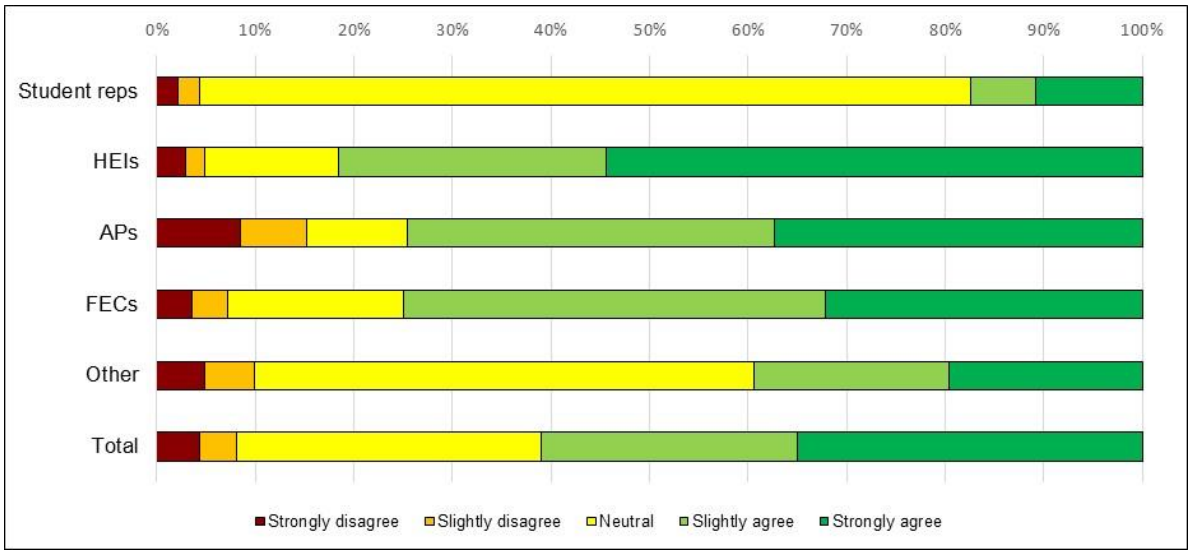
Around 15% of respondents referred to the freedom of speech principle, with a mix of positive and negative comments on this. The main issues raised on freedom of speech were:

- Universities UK argued that the public interest principles should not be used to deliver wider policy goals, and on this basis opposed the inclusion of the freedom of speech principle
- Legal concerns that the proposal goes beyond HERA or the Education (No. 2) Act 1986 (raised in particular by Universities UK)
- Concerns about the impact on academic freedom/institutional autonomy
- Significant strength of feeling from students' unions that this proposal should not encroach on their autonomy.

Under HERA, there is a requirement to consult the Secretary of State (as well as others) in relation to the public interest principles.[2] This requirement has been met through the Department for Education's preparation and issue of consultation documentation, which included proposed public interest principles, and by having Secretary of State representation at OfS Board meetings.

[2] HERA section 14 includes a duty to consult the Secretary of State and others, including the representative bodies of providers.

Question 15 - Do you agree or disagree with the proposed approach on the application of conditions for providers wishing to seek a Tier 4 licence?



Response	Total	Percent
Strongly disagree	13	4.4%
Slightly disagree	11	3.7%
Neutral	92	31.0%
Slightly agree	77	25.9%
Strongly agree	104	35.0%
Total	**297**	**100%**

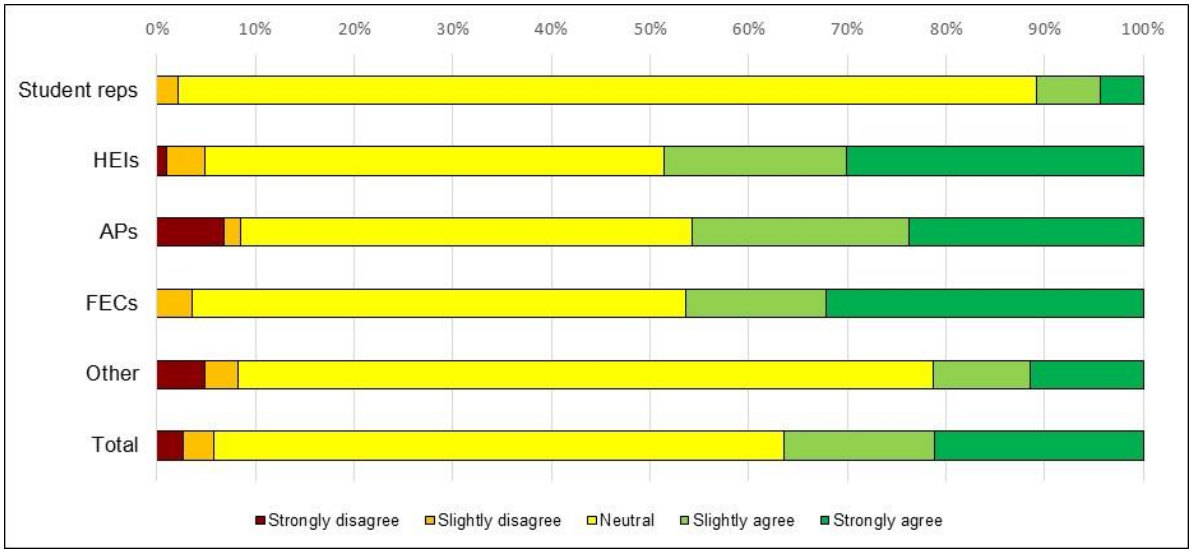
There was widespread support in principle for the proposals to extend visa benefits to all those in the Approved categories with a track record of compliance. Independent Higher Education responded, "*We strongly support the Home Office proposal that all providers registered in the Approved categories who have a track record of immigration compliance will benefit from the full privileges of Tier 4".* GuildHE wrote that *"The extension of the benefits associated with Tier 4 to private providers and publicly funded FECs that publicly funded HEIs currently receive with Tier 4 is very welcome".*

Key issues raised focused on:

- potential burdens for smaller providers (especially those seeking Tier 4 only),
- a need for clarity on how the need to register fits with the obligation to hold a Tier 4 licence (particularly for franchise only providers),
- linked to the above, more clarity for embedded/pathway/collaborative venture and study abroad providers,
- additional Ofsted requirements for FECs,
- potential separate educational oversight arrangements for below Level 4 in the Framework for Higher Education Qualification,
- a call for the removal of in-country restrictions on student visa transfers.

There were also several concerns noted that the arrangements related to English providers only, with calls for information on corresponding devolved authority arrangements. Some respondents expressed their desire for there not to be too great a divergence between devolved authority and OfS arrangements.

Question 16 – Do you agree or disagree that paragraph 7 and 8 should be removed from Schedule 2 of the Education (Student Support) Regulations 2011, which lists the types of courses that allow with access to the student support system? If you disagree, are you aware of any courses dependent on these provisions to be eligible for support?

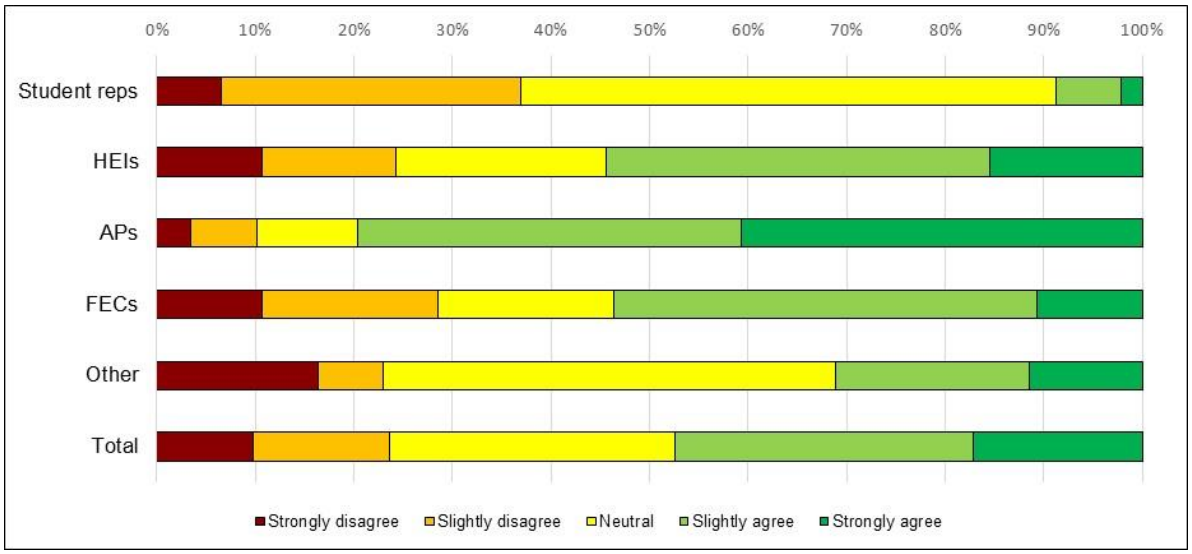


Response	Total	Percent
Strongly disagree	8	2.7%
Slightly disagree	9	3.0%
Neutral	172	57.9%
Slightly agree	45	15.2%
Strongly agree	63	21.2%
Total	**297**	**100%**

Respondents were overall supportive or neutral regarding the proposal to remove paragraphs 7 and 8 from Schedule 2 of the Education (Student Support) Regulations 2011. Many of the comments confirmed that the current paragraphs 7 and 8 were unclear and ambiguous, and that removing them would make the regulations clearer.

There were some concerns raised about the potential impact on access to higher education and Year 0 courses, with implications for widening participation more broadly. Some alternative providers and Independent Higher Education suggested waiting until the DfE Level 4 and 5 Review has taken place. There were also some potential cross-border issues raised. One respondent identified some courses potentially covered by these paragraphs and raised concerns that removing the paragraphs might stifle innovation in "*smaller, more flexible tranches of learning*".

Question 17 – Do you agree or disagree with the proposed approach for the benefits available to providers in the different registration categories?



Response	Total	Percent
Strongly disagree	29	9.8%
Slightly disagree	41	13.8%
Neutral	86	29.0%
Slightly agree	90	30.3%
Strongly agree	51	17.2%
Total	**297**	**100%**

Responses were mixed across respondent types, but generally, respondents were in favour of the Approved categories and their links to benefits and conditions. The importance of students having clear information on the difference in regulation between Registered (basic) and Approved categories was emphasised by respondents.

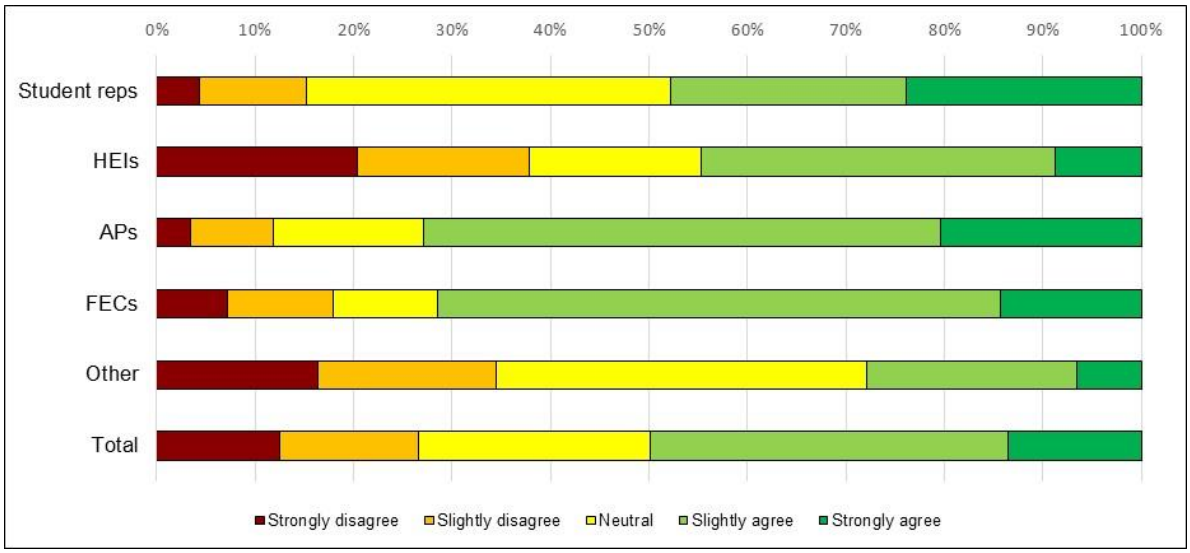
There was support for the ability to enrol overseas students and the potential to gain DAPs, particularly from alternative providers. Provider-level

designation for Approved providers was also mentioned by several providers as a positive step.

Concerns were raised about the Registered (basic) category, with respondents calling for more conditions in the interests of student protection. Student protection plans were proposed in particular. Some also argued that degree-awarding powers should not be available to Registered (basic) providers because of the lack of assurance undertaken in this category, with the result that those with Degree Awarding Powers should not be able to move into that category.

A number of respondents also questioned why most public funding (particularly research funding) would only be available to Approved (fee cap) providers.

Question 18 – Do you agree or disagree with the general ongoing registration conditions proposed for each category of provider?



Response	Total	Percent
Strongly disagree	37	12.5%
Slightly disagree	42	14.1%
Neutral	70	23.6%
Slightly agree	108	36.4%
Strongly agree	40	13.5%
Total	**297**	**100%**

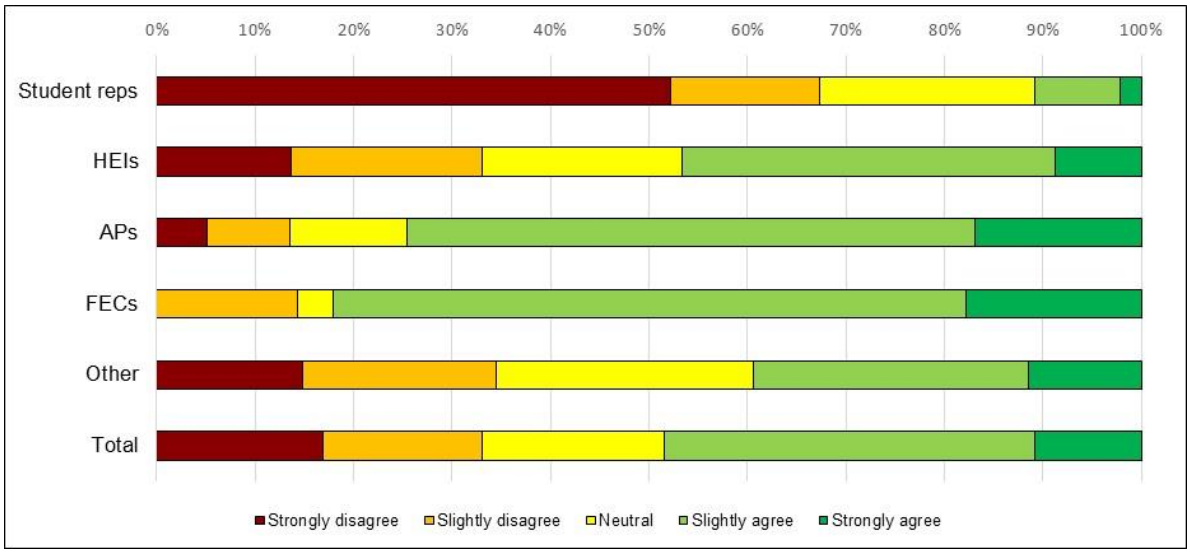
Overall, respondents supported the general ongoing registration conditions that were proposed, but with some exceptions in relation to certain conditions. Universities UK and some other respondents sought clarification on whether all of these conditions were truly baseline or if some were driven by other policy goals.

There was particular support for the conditions applied to Approved categories.

However, there were widespread calls for the Registered (basic) category to carry additional conditions to protect students' interests, such as transparency, student protection plans, student transfer and electoral registration conditions. Respondents were concerned that students at those providers in the Registered (basic) category would be at risk of assuming greater protection than will be provided in that category. Some respondents challenged the proposals on grounds of proportionality regarding the same conditions applying to lower and higher risk providers within a category, and called for conditions to be waived for the lowest risk providers.

Other issues raised in response to this question included calls for clarity on how risk assessment and monitoring would work in relation to the conditions, questions about transition, and concerns from alternative providers about specific data sets and the burden of data collection.

Question 19 – Do you agree or disagree with the proposed approach to risk assessment and monitoring?



Response	Total	Percent
Strongly disagree	50	16.8%
Slightly disagree	48	16.2%
Neutral	55	18.5%
Slightly agree	112	37.7%
Strongly agree	32	10.8%
Total	**297**	**100%**

The range of responses broadly fall under two main themes:

- The NUS and a majority of student representatives expressed concerns around the fundamental principles of adopting a risk-based approach (being too retrospective in nature and at odds with an outcomes-based approach)

- Providers however were broadly supportive of the risk-based approach (as the proposed lead indicators are broadly familiar and in line with a baseline approach) while expressing concerns around the practicalities of meeting their compliance obligations under this approach.

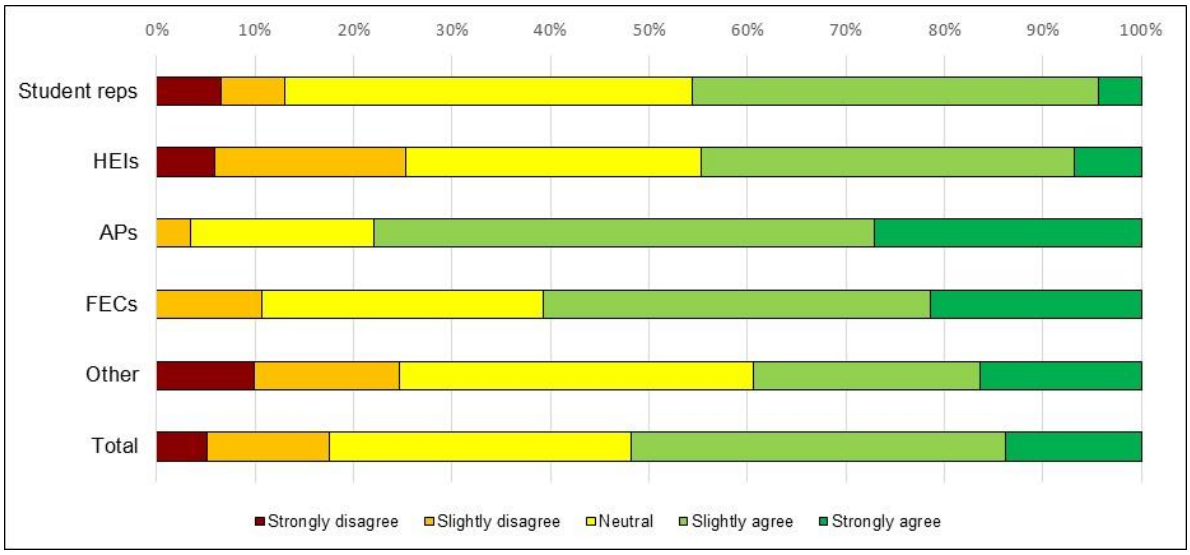
A range of providers and student representatives also requested clarification around the practical requirements and intended purposes of the random sampling and efficiency studies approaches.

Some representative groups (Russell Group and members) also raised queries on whether contextual information would be taken into account by the OfS in making ongoing assessments of provider risk and whether a provider's track record would be taken into account at point of registration (MillionPlus).

Independent Higher Education and a number of its members suggested the OfS should also consider adopting or replicating the current approach to engagement with alternative providers.

There was widespread agreement that the risk assessments and risk profiles of providers should not be published – no responses opposed this proposal. Universities UK and a small number of individual providers queried whether providers themselves would be informed of their individual risk profiles on a cyclical or annual basis and proposed they should be.

Question 20 - Do you agree or disagree with the proposed approach on interventions (including sanctions) and do you agree or disagree with the proposed factors the OfS should take into account when considering whether to intervene and what intervention action to take?



Response	Total	Percent
Strongly disagree	15	5.1%
Slightly disagree	37	12.5%
Neutral	91	30.6%
Slightly agree	113	38.0%
Strongly agree	41	13.8%
Total	**297**	**100%**

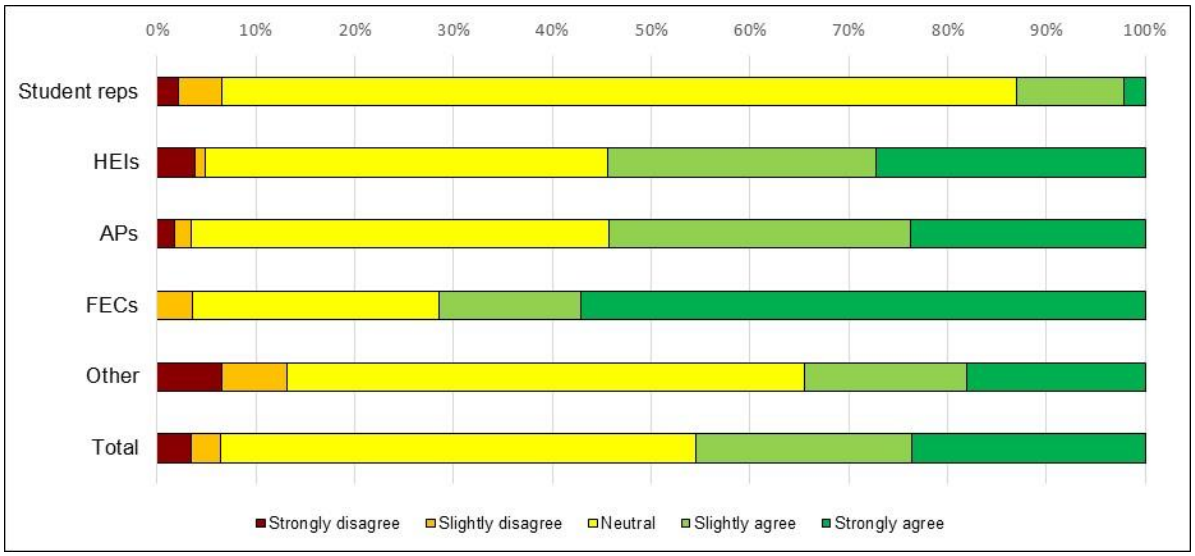
The responses were broadly supportive of the consultation proposals, including the proposed intervention factors, and the range of available interventions and sanctions. However, respondents would like more clarity on the triggers and circumstances for when interventions may be used.

One respondent commented positively on the “availability of a range of appropriate sanctions, along with an approach that uses risk-based and other factors in assessing a provider’s particular situation”. Respondents were particularly supportive of the OfS having an open and honest dialogue with providers.

Where providers had said they did not agree with the proposals, in a significant number of cases these were based on concerns that the OfS would make decisions on data without taking into account the context for that data.

There were calls for an appeals process for suspension of registration. Additionally, concerns were expressed that before imposing a sanction, the OfS should take into account the impact of that sanction on students. Some students’ unions called for the OfS to engage with them before imposing a sanction.

Question 21 - Do you agree or disagree with the proposed approach the OfS will take to regulating providers not solely based in England?



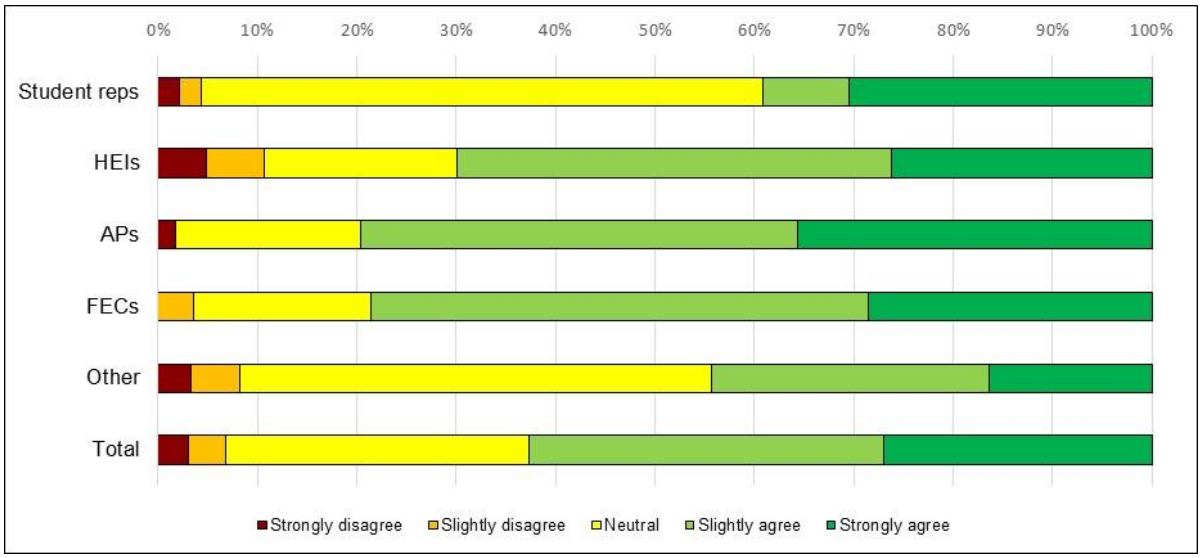
Response	Total	Percent
Strongly disagree	10	3.4%
Slightly disagree	9	3.0%
Neutral	143	48.1%
Slightly agree	65	21.9%
Strongly agree	70	23.6%
Total	**297**	**100%**

The majority of respondents were largely supportive of, or neutral, regarding the proposed approach the OfS takes to regulating providers not solely based in England. Only 6.4% disagreed with our proposed approach. There were significant calls for UK-wide consistency and protection of UK-wide reputation, and for ensuring that students' interests would be protected.

Of those that disagreed, a number of comments focused on concerns regarding Tier 4 issues and consistency across the UK. Concerns were also voiced about the impact on the reputation of UK higher education if individual policies and approaches to higher education within England and the devolved administrations diverged too far from each other. Some calls were also made for clarity on the regulation of transnational education[3], particularly in relation to their particular risks, and the ownership and accountability of such providers.

[3] The provision of higher education from institutions in one country to students in another.

Question 22 - Do you agree or disagree with what additional information is proposed that the OfS publishes on the OfS Register?



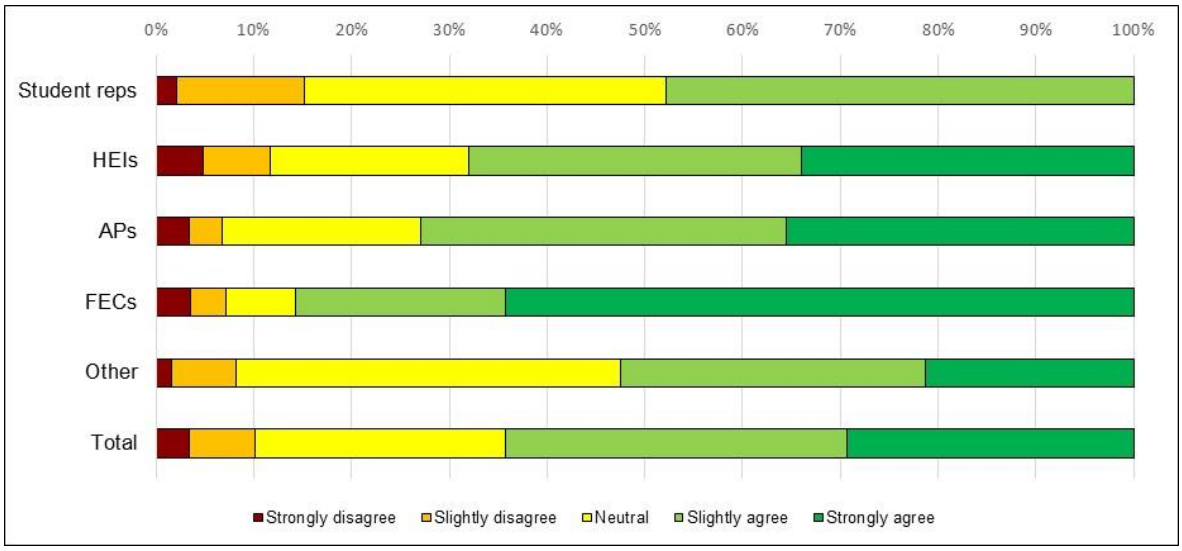
Response	Total	Percent
Strongly disagree	9	3.0%
Slightly disagree	11	3.7%
Neutral	91	30.6%
Slightly agree	106	35.7%
Strongly agree	80	26.9%
Total	**297**	**100%**

Overall, the majority of respondents agreed with the proposals for additional information to be published on the OfS register. There were some requests for the OfS to give some clarity on particular details.

Whilst there was significant support for proposals, particularly around the requirement for information to be up-to-date, there were concerns expressed by some providers on the potential negative impact of displaying information on sanctions (beyond what is required as part of HERA) and specific

conditions. Additionally, there were requests for confirmation that information would only be published after full investigation, with opportunity for the institution to respond.

Question 23 - Do you agree or disagree with the principles proposed for how the OfS will engage with other bodies?



Response	Total	Percent
Strongly disagree	10	3.4%
Slightly disagree	20	6.7%
Neutral	76	25.6%
Slightly agree	104	35.0%
Strongly agree	87	29.3%
Total	**297**	**100%**

Overall, the majority of respondents were supportive of the principles proposed for how the OfS will engage with other bodies. Respondents supported proposals for collaboration and joint working.

Respondents particularly welcomed the aim to minimise duplication and burden to providers where possible. They agreed with the need for cooperation with UKRI as a particular area of focus, related to the Industrial Strategy, Research Excellence Framework, Knowledge Exchange Framework and Teaching Excellence and Student Outcomes Framework, as well as day-to-day communication.

There were calls for greater clarity on how interactions would work in practice, with some respondents expressing concern that groups such as postgraduate research students and degree apprentices might '*fall between'* the remit of various bodies. Some respondents sought clarity on how the OfS would cooperate with the devolved nations and bodies to ensure cohesion across the UK.

Question 24 - Do you have any comments on the proposed exercise of OfS functions in relation to validation, in particular in relation to ensuring that the validation service is underpinned by the necessary expertise and operates in a way that prevents or effectively mitigates conflicts of interest?

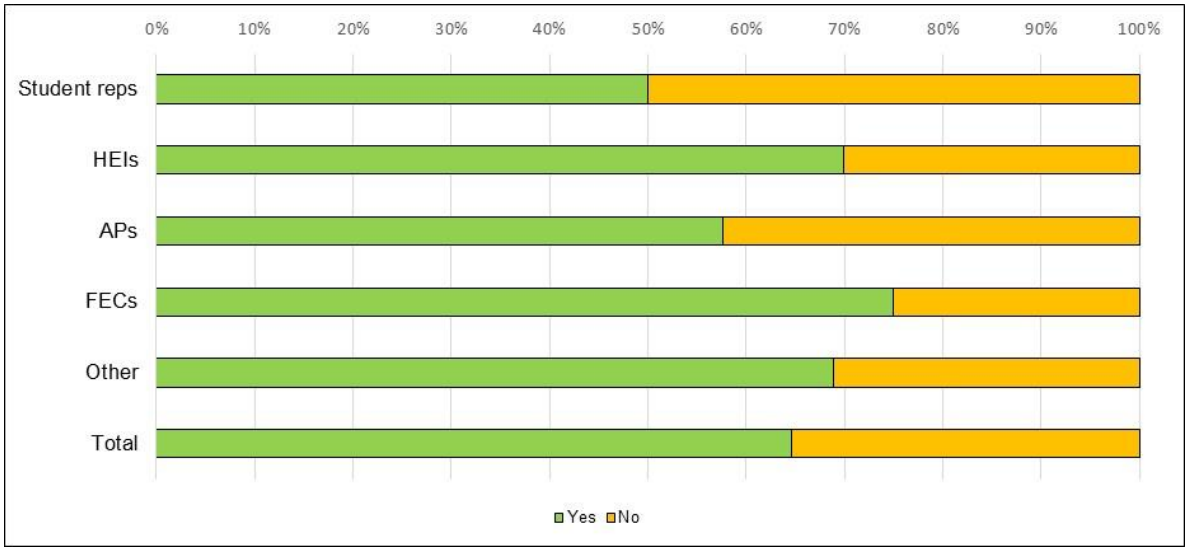
NOTE: There were no metrics captured for this question in the consultation – qualitative responses only.

The majority of responses focused on the OfS acting as a validator, with a few responses referring to commissioning arrangements. It was felt that the OfS should have a role in making the market work in a better, fairer way, with more detail requested particularly on the specific role of validator of last resort.

The responses demonstrated a strong need for validation within higher education and supported the OfS working to improve validation services. Many respondents who were positive about validation in the regulatory framework sought further clarification on how the OfS would act as a validator and would like to ensure that students are protected.

There was a widely held view from respondents that if the OfS became a validator this would create a conflict of interest, with concerns expressed on "how can a regulator regulate itself". A large number of respondents provided negative views on the OfS becoming a validator of last resort and the majority of these expressed views that there should be an external body that should act as a validator of last resort.

Question 25 - Does the information provided offer a sufficiently clear explanation of how a provider will apply for registration in the transitional period and what the consequences of registration are in this period?



Response	Total	Percent
Yes	192	64.6%
No	105	35.4%
Total	**297**	**100%**

Respondents, across the range of providers, mainly felt that the information provided clearly explained how a provider will apply for registration in the transitional period and what the consequences of registration would be in this period. The majority of comments focused on asking specific questions, with requests from further education colleges in particular for support during the transition period.

The responses were broadly supportive of the proposals for initial registration and processes in the transition period. There were requests for clarification on what existing information can be used, and on how processes with QAA for quality reviews and educational oversight (Tier 4) will be consolidated with initial registration to reduce duplication.

There were some concerns that the timelines for implementation appeared very tight, with particular worries from smaller providers and alternative providers about the burden of satisfying the new conditions (student protection plans, access and participation plans and consumer law) in a short period of time.

Question 26 - Do you have any comments on the above proposal of how the OfS will act as the principal regulator for exempt charities?

Question 27 - Provided that the Secretary of State considers OfS regulation is sufficient for these purposes, should exempt charity status apply to a wider group of charitable higher education providers? In particular, considering that providers in the Approved categories will be subject to conditions relating to Financial Sustainability, Management and Governance, and the provision of information (as set out in the Guidance), do you have any views on whether the OfS's proposed regulation of providers in these categories would be sufficient for the purposes of it carrying out the functions of Principal Regulator?

NOTE: There were no metrics captured for this question in the consultation – qualitative responses only. Responses to questions 26 & 27 are grouped into a single response below.

Respondents were broadly supportive or neutral regarding the proposals on how the OfS would act as principal regulator for exempt charities, and on how this should apply to a wider group of charitable higher education providers. Respondents welcomed the reduction in burden caused by registered higher education providers that are exempt charities not being required to make duplicative returns to both the OfS and the Charity Commission.

Respondents also acknowledged that the OfS would have the regulatory oversight to perform the role of Principal Regulator effectively over providers in both of the Approved categories of the register, and welcomed that the

widening of this oversight, as compared to HEFCE's, would open opportunities for more eligible providers to gain exempt status in future.

Some respondents raised a few issues and concerns, and requested:

- further detail and consultation
- more Charity Commission involvement
- clarification about the status of for-profit providers
- further thought to be given on possible conflicts of interest caused by either the OfS being both higher education regulator and Principal Regulator; or between the Charity Commission and the OfS as charity regulators.

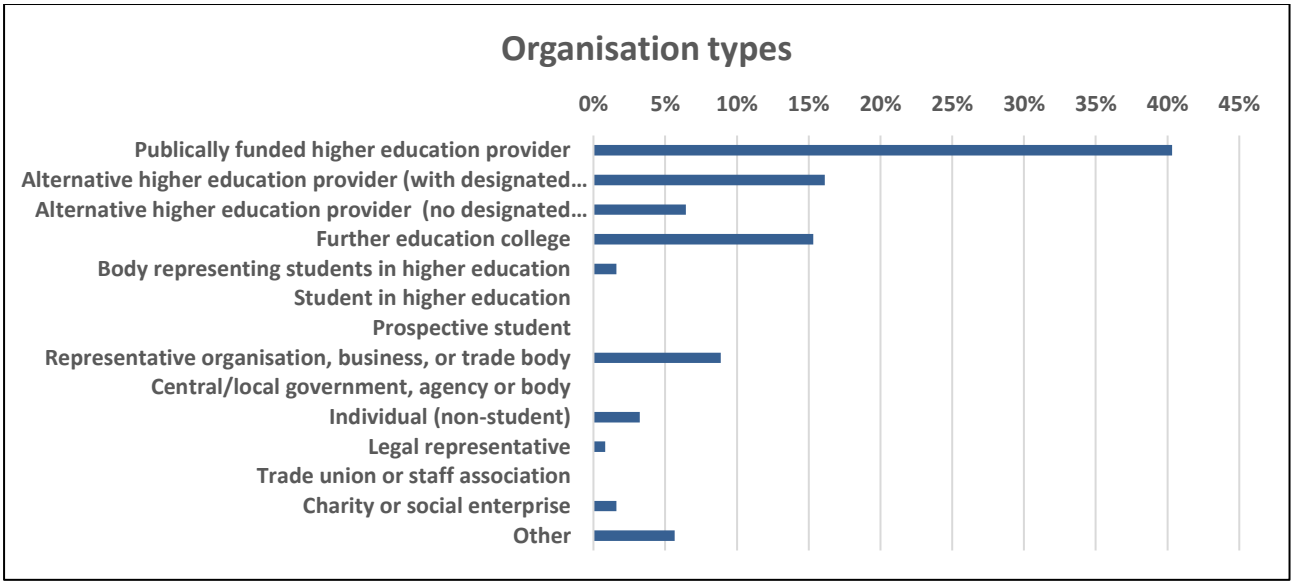
Degree awarding powers and university title

The following analysis is taken from the government's response to the 'Simplifying Access to the Market: Degree Awarding Powers & University Title' consultation.

Questions 1- 4

These questions invited the respondents to provide their names, organisation and location in order for us to explore the results by respondent type.

The chart and table below provide a breakdown of the organisation types that responded.



Organisation types	Total	%
Publically funded higher education provider	50	40.32%
Alternative higher education provider (with designated courses)	20	16.13%
Alternative higher education provider (no designated courses)	8	6.45%
Further education college	19	15.32%
Body representing students in higher education	2	1.61%
Student in higher education	0	0.00%
Prospective student	0	0.00%
Representative organisation, business, or trade body	11	8.87%

Central/local government, agency or body	0	0.00%
Individual (non-student)	4	3.23%
Legal representative	1	0.81%
Trade union or staff association	0	0.00%
Charity or social enterprise	2	1.61%
Other	7	5.65%
Total	**124**	

Part 1 - Degree Awarding Powers

Question 5

Do you agree or disagree that the OfS should consider applications for New DAPs for research awards from providers without a three-year track record of delivering higher education in England?

The majority of respondents did not agree that the OfS should consider applications for New DAPs for research awards from providers without the required track record of delivering higher education.

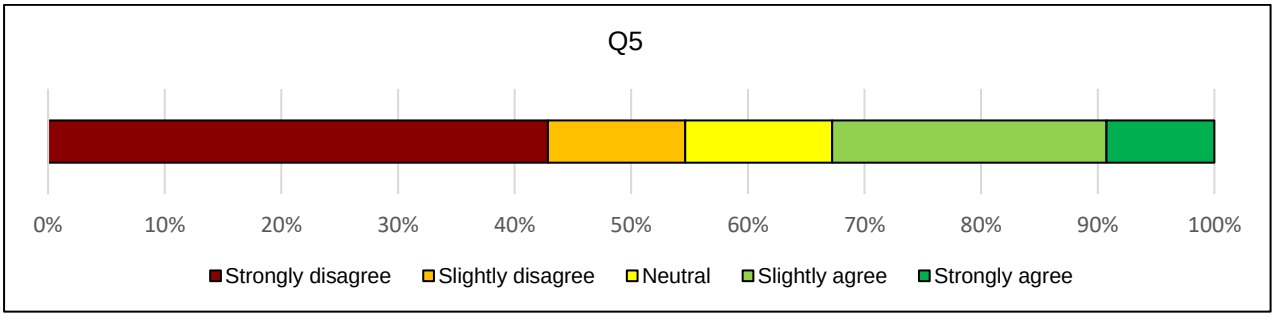
This lack of support was largely because of a concern that UK Higher Education has a worldwide reputation for high quality research and that allowing providers with no English research track record would risk undermining that reputation. This concern was particularly driven by a view from respondents that there is no guarantee that a provider establishing a research-base in the UK would be able to immediately create the vibrant research community required to support research student education.

Whilst recognising that some providers of this kind might conceivably be able to make a credible application, a number of respondents had some concerns about how often this would be practicable. This was particularly the case with overseas providers. It may not always be easy for the regulator to make direct comparisons between UK research degrees and those from another jurisdiction. There can be significant differences in terms of what constitutes a research degree in different countries, for example, some may have a large taught component.

Some respondents were in favour of the proposal on the basis that there will be some specialist institutions with extensive experience within research but

with limited experience or intention to develop a taught offer. One respondent noted that preventing new providers from being able to deliver research degrees alongside their undergraduate offering would be a sticking point for many would-be industrial providers.

Such providers may well want to obtain distinctly more business value from PhD students than from undergraduate students. Another respondent said that separating research powers out so that it requires a validation agreement track record perpetuates all of the same issues that Taught Degree Awarding Powers (TDAPs) faces and risked excludes high quality research organisations from training and developing more in house experts.



Response	Total	Percent
Strongly disagree	51	43%
Slightly disagree	14	12%
Neutral	15	13%
Slightly agree	28	24%
Strongly agree	11	9%
	119	

Question 6

(With reference to question 5) Are there particular circumstances where authorisations of this type would be appropriate? If so, what are they?

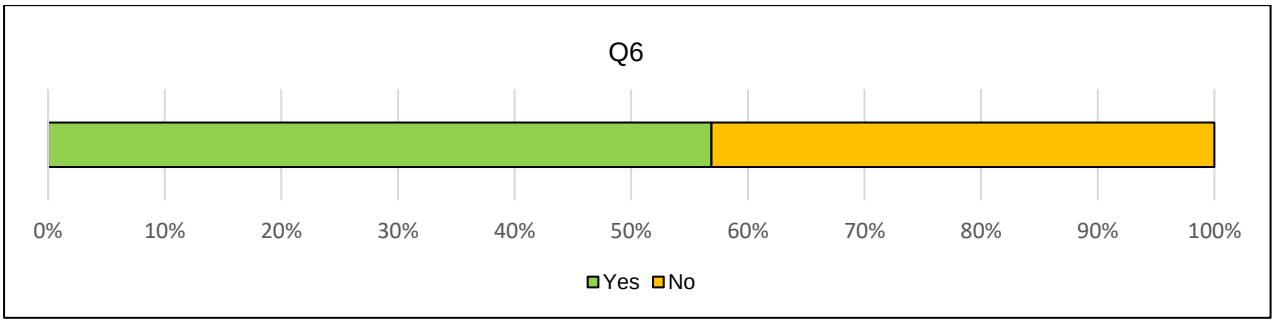
While only a minority were in support of this proposal, some did say research awards of this kind might be appropriate for certain types of providers, in particular:

- Well established overseas institutions with the equivalent of research degree awarding powers in another jurisdiction
- Where a domestic provider has extensive experience of delivery of higher education, in particular where they themselves match this

qualification at level 6 or 7, but has not had the necessary validation or franchise arrangements for evidence, they too should be able to apply for New DAPs

- An organisation with a research culture with links to universities that already hosts research students, but wants to increase their research base and have greater control of their research agenda

- Well established and internationally recognised research expertise either overseas or as a result of other UK funding sources (e.g. Wellcome Trust or other larger medical charities), then an authorisation should be considered.



Response	Total	Percent
Yes	62	57%
No	47	43%
	109	

Government Response

In light of the responses to questions 5 and 6, we are maintaining the position that New DAPs will not be available in respect of research degrees.

Question 7

Do you have any comments on the proposed New DAPs test and associated processes? In particular, do you think these tests and processes provide appropriate safeguards whilst enabling high quality new providers to access DAPs?

Opinions were mixed on this question. Overall, there were a larger number of respondents with some concerns about how the New DAPs process would work in practice.

A strong theme running through many responses was the view that there should be very strong Student Protection Plans in place to ensure that students are well cared for should DAPs be revoked or not renewed. One respondent thought that the requirements of the plan needed to be particularly strong in respect of providers without any track record of delivering higher education courses.

With this in mind, a number of respondents commented on the risk to students if the provider in question subsequently exited the market and the potential negative future impact this could have on the perceived value of their award.

A number of respondents commented on the potential difficulty regulators could face in assessing and monitoring providers with no track record at all. This was felt to be particularly the case during the period immediately following the authorisation. On this basis, it was acknowledged that such providers needed to be the subject of close supervision from an early stage. One respondent suggested the New DAPs process in the first couple of years for the institution should be much more akin to a validation agreement than the current Advisory Committee for Degree Awarding Powers (ACDAP) process.

Some respondents also questioned whether a three year probationary period, would be long enough to make a definite judgement on whether the provider had done enough to confirm their ability to deliver a consistent high-quality higher education experience. It was also suggested that providers with New DAPs should have undergone at least one year's scrutiny before being able to award a qualification (e.g. top-ups, one year Masters, or exit qualifications such as CertHE etc).

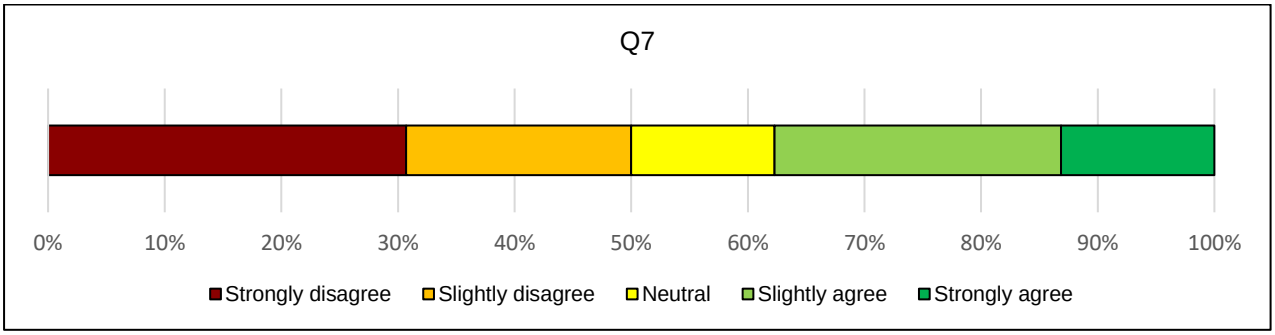
Eligibility for New DAPs

Although there was no specific consultation question regarding who should be eligible to apply for New DAPs, a number of respondents commented on what they believed was an illogical effect of the New DAPs process. Namely that because it has been designed for providers either new to the sector or who do not have experience of operating under a validation agreement, this could be seen to offer them an advantage in comparison with those providers that do have a track record. This is because the process for awarding New DAPs is expected to take a shorter time than a full authorisation would (where the full scrutiny against all the criteria takes place before any award is made).

It was argued that it would be unfair and inappropriate to allow untested providers to be able to make awards to a faster timetable to providers that did

have a track record, even if the former's authorisation was of a probationary kind.

It was suggested by some respondents that either the New DAPs route should be open to all providers, or the nature of the scrutiny process should fundamentally change to allow providers that have passed an initial test to begin making awards on a probationary basis whilst the full scrutiny process is ongoing (which would take place for an appropriate amount of time depending on the nature and experience of the provider).



Response	Total	Percent
Strongly disagree	35	31%
Slightly disagree	22	19%
Neutral	14	12%
Slightly agree	28	25%
Strongly agree	15	13%
	114	

Government Response

We acknowledge that existing providers see themselves at a disadvantage if they were unable to apply for New DAPs. However, it has been the government's position throughout the reforms that the process for obtaining Full DAPs is strong and well tested, and should not be completely overhauled. Redesigning the Full DAPs processes has not been consulted on, and would significantly change and put at risk a well established process.

As such, we believe respondents' concerns are best addressed by enabling all providers to apply for New DAPs, regardless of their track-record, if this is their preference.

In the guidance, the Secretary of State has also asked the OfS to conduct a review of the operation of the effectiveness of the reformed system for

applying for, and obtaining DAPs, at an appropriate point after at least three years of operation of the new regime.

Additional comments on the detail of the New DAPs test and associated processes have been considered by the OfS as part of its work to produce the regulatory framework and detailed guidance for providers about the application and assessment process. The OfS's regulatory framework makes it clear that providers with New DAPs must have a strong Student Protection Plan in place, that mitigates against the risk of losing DAPs or not proceeding to Full DAPs at the end of the probationary period.

Question 8

Do you consider the proposals for monitoring a provider with New DAPs during the probationary period to be adequate and appropriate?

A majority of respondents thought that the monitoring proposals were adequate and appropriate. A significant minority had some concerns. These concerns largely revolved around how specific aspects of the monitoring process would work in practice.

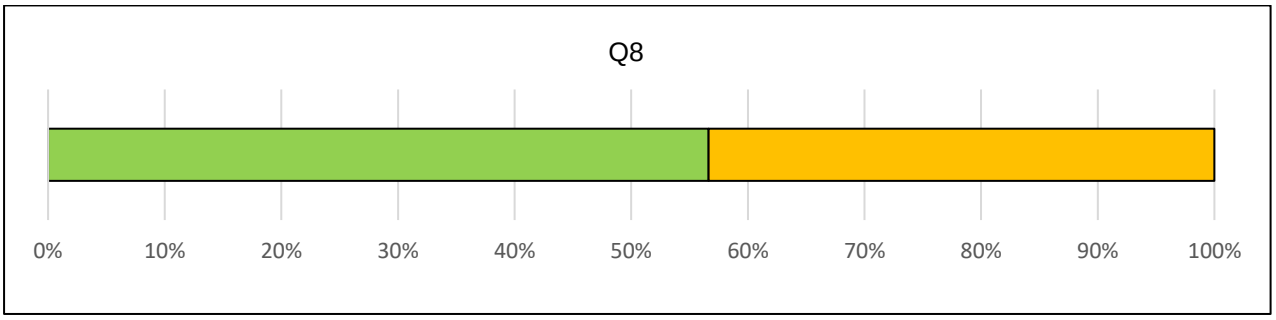
A number of respondents highlighted the proposed quarterly progress update. Some respondents were concerned that this would not be sufficient, at least in the initial period, and that the regulator needed to take a more hands on approach, especially given that it will not be able to rely on actual data during much of the probationary period. Therefore, visits to the provider by the regulator would play an important role. Student engagement was also noted, and their views on the performance of their institution should be taken account of during these visits and also in other parts of the monitoring process.

Other respondents noted that evidential indicators may not actually be available until after the probationary period had lapsed. Therefore, the probationary period might need to last longer than three years.

A few respondents also highlighted the need to put in place particularly stringent monitoring of overseas providers setting up an English higher education provider, given their lack of experience of quality and standards expectations of the English higher education system.

The inclusion of other regulatory intelligence held by the regulator to help inform progress against the probationary plan and performance against the DAPs criteria was welcomed by a number of respondents. Some respondents made specific suggestions to help develop the monitoring process, in

particular, that providers establish a steering group with external membership to help guide them through the probationary period.



Response	Total	Percent
Yes	64	57%
No	49	43%
	113	

Government Response

In light of these responses, we are retaining the overall approach to monitoring providers with New DAPs.

The OfS is taking these detailed comments into account when delivering their approach of putting in place robust systems to monitor New DAPs according to these proposals.

Question 9

Do you agree with the proposals for the OfS and providers to best ensure that students are aware of what type of DAPs, including New DAPs, a provider has? If you think there should be additional information requirements, please give details.

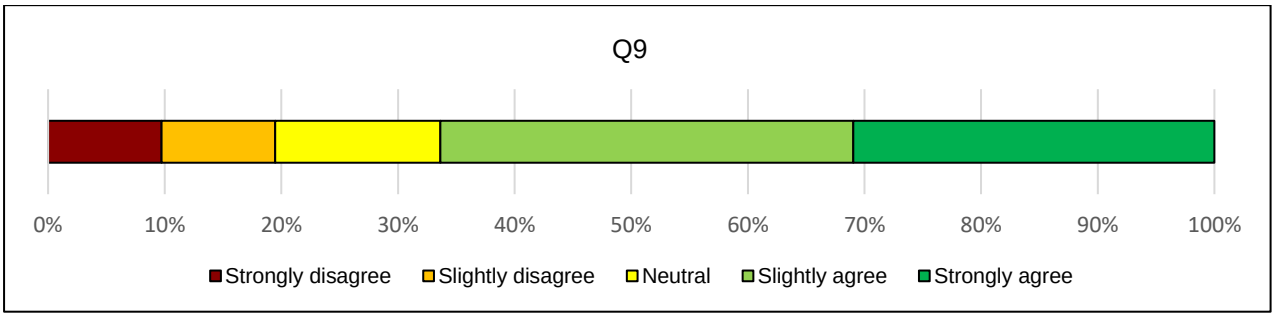
Around two thirds of respondents either strongly agreed or agreed with the information and awareness raising proposals.

A number of respondents noted the read-across to Student Protection Plans and that it was important that students were not only made aware of the plans but also the content, in particular what contingency plans were in place for students affected by market exit.

Other respondents suggested that information about the probationary nature of the powers was couched in language that was user friendly. For example, it would not be sufficient to simply state that the provider held New DAPs.

This term would need to be described in more detail and include information such as when the New DAPs would expire. It was also important that the information could be found in places most likely to be accessed by potential students, e.g. UCAS and Unistats.

A number of respondents pointed out current Competition and Market Authority's (CMA) requirements in this area. To ensure compliance with CMA guidelines, it was suggested that providers should (as a minimum) make the information on the type of DAPs that the institution has easily accessible on their website. To aid transparency about the DAPs system more generally, it was also suggested that the OfS develop literature for key stakeholders such as students, and employers to enable a better understanding of the various categories/powers that an institution has.



Response	Total	Percent
Strongly disagree	11	10%
Slightly disagree	11	10%
Neutral	16	14%
Slightly agree	40	35%
Strongly agree	35	31%
	113	

Government Response

The OfS is taking these responses on board in considering proposals for ensuring students are aware of which type of DAPs a provider has.

Question 10

Do you agree or disagree with the suggested change regarding the possible variation of the level 6 TDAPs criterion?

There was broad support for the proposal to adopt a more flexible approach to the TDAPs requirements concerning the percentage of students studying on level 6 courses.

There were a number of factors given by respondents in support of this proposal. These included:

- The current position is arbitrary and unfair – the ability to award up to level 6 will enable colleges who deliver courses below level 6 to provide seamless Technical and Professional Education

- The current position also discriminates against providers with extensive part-time provision because students on these programmes are even more likely to be studying their higher education though a ladder of progression to honours

- A more flexible approach would help providers specialising in technical education, such as Institutes of Technology, to emerge to help address higher technical skills shortages

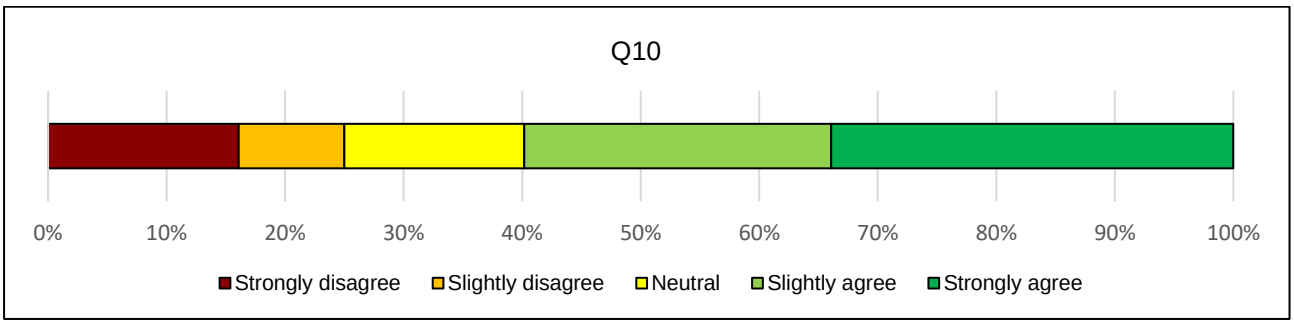
- There will also be scope for colleges with excellent track records in work-based learning and apprenticeship delivery (especially higher apprenticeships) to create, without any constraints from a validation partner, innovative delivery methods for degree courses.

A significantly smaller number of respondents disagreed with this proposition. They cited the following factors:

- If a TDAPs holder did not have a majority of level 6 students, there would be little to distinguish them from Further Education colleges delivering mainly courses at level 5 or below

- Doubts as to whether a provider that specialised in delivery below level 6 could offer a viable academic community of staff and students, which is a key aspect of the quality of the student experience.

One stakeholder also suggested that the OfS could provide for Level 5 specific TDAPs where a provider has significant experience in delivering level 5 provision and is not eligible to apply for foundation DAPs.



Response	Total	Percent
Strongly disagree	18	16%
Slightly disagree	10	9%
Neutral	17	15%
Slightly agree	29	26%
Strongly agree	38	34%
	112	

Question 11

(With reference to question 10) If the 50 per cent criterion is to be disapplied in some exceptional cases, what factors do you think the OfS should take into account when determining whether an application is an exceptional case?

Many respondents who agreed with this proposition also put forward suggestions as to factors the OfS might want to take account of in order to allow an application for TDAPs. Many of the suggestions revolved around the number of level 6 students at the provider in question.

A number of respondents suggested that progression routes were also important. For example, an organisation may have a structure of Foundation Degrees that can be 'topped up' to a full degree. In these cases, the OfS should take into account high rates of progression to study for level 6, either at the college or elsewhere.

Other factors mentioned included specialist nature of the level 6 provision in question or where the provider is situated in a 'cold spot' and is planning to extend Level 6 provision within a three-year period.

Government Response

We have considered the responses to questions 10 and 11 and have concluded that there should be a more flexible approach to consideration of applicants for TDAPs who do not have the requisite percentage of level 6 students.

However, to address the concerns expressed during consultation, this flexible approach will initially be restricted to applications for Bachelor DAPs only. DAPs holders that do not have at least 50% of their HE students on level 6 courses will not be able to apply for full TDAPs extending to level 7.

The OfS is considering the detailed implementation of this.

We are not asking the OfS to develop level 5 specific TDAPs at this stage and believe that this needs to be considered alongside other issues at this level, as part of the current review of level 4/5 qualifications.

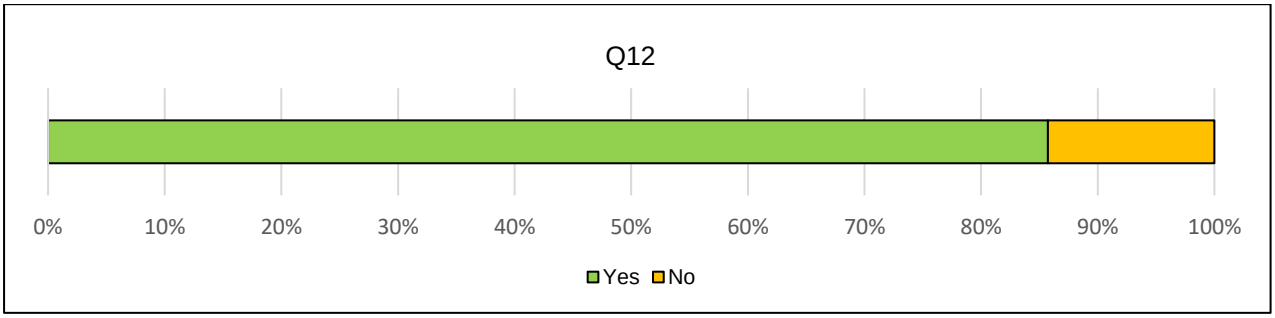
Question 12

Do the application processes for DAPs sufficiently align with the registration processes and conditions?

86% agreed with this.

A large number of respondents welcomed the fact that alignment of the processes will cut out duplication, and simplify and streamline processes, thus reducing burden. There was also strong support for the retention of some form of peer review process. Several respondents welcomed the continuation of a committee like the current Advisory Committee for Degree Awarding Powers (ACDAP), although several stated that any committee would need to evolve from the current ACDAP.

A few respondents also requested further information about the cost associated with applying for Degree Awarding Powers, which will be published by the Designated Quality Body in due course.



Response	Total	Percent
Yes	90	86%
No	15	14%
	105	

Government Response

The Secretary of State guidance makes it clear that the DAPs advice committee should evolve to ensure it remains fit for purpose, and reflects the needs of a diverse set of providers.

The OfS is taking these responses into account in their design of the detailed processes for assessing DAPs applications.

Part 2 - University Title

Question 13

Do you agree or disagree that for providers that have obtained DAPs on an exceptional basis without having the majority of higher education students at level 6 or above (as proposed in question 10), the 55 per cent criterion for University Title should be adjusted to additionally require the majority of higher education students to be on courses at level 6 or above?

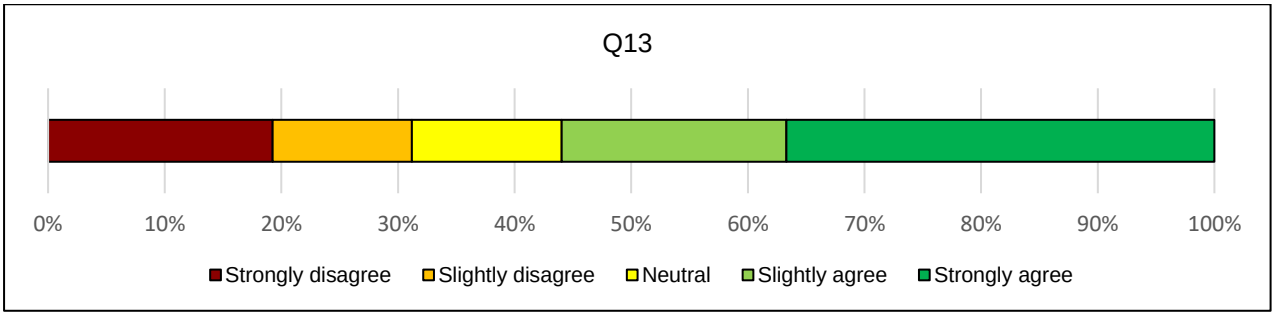
Many of the respondents who were in favour of the more flexible approach regarding level 6 provision also expressed a view about additional criteria for University Title.

A significant majority agreed that it would be appropriate to require a majority of higher education students studying on level 6 courses under these circumstances. This was because a university by nature is associated with level 6 provision and above and it would be confusing and inappropriate to allow institutions who did not have a majority of their higher education students studying at level 6 to also be able to obtain University Title. Such a move would also dilute the prestige of University Title more generally.

The counter-argument put forward by other respondents was that if the provider in question had gone on to satisfy all the requirements leading to the award of TDAPs, then there was no reason why they should not be able to then make an application for University Title.

A number of other respondents, whilst agreeing that it would not be appropriate to allow such providers to apply for University Title unless they could satisfy the majority level 6 requirement, suggested that it would be worth considering whether to allow applications for University College Title

from providers in this position. In fact, this is a misunderstanding, as the proposals set out in the consultation already allow for that.



Response	Total	Percent
Strongly disagree	21	19%
Slightly disagree	13	12%
Neutral	14	13%
Slightly agree	21	19%
Strongly agree	40	37%
	109	

Government Response

Having considered the responses, we believe that the arguments for the importance of protecting the concept of a university as focussing on degree level provision are strong.

We are therefore maintaining the position set out in the White Paper that only providers that meet the 55 per cent criterion should be able to obtain University Title. Further, a provider that has gained DAPs without having a majority of higher education students on courses at level 6 or above (see question 10) would not be able to apply for University Title.

Question 14

Do you agree or disagree that student numbers, for the purposes of the 55 per cent criterion for University Title, should be calculated based on the intensity of study, disregarding the mode of study?

67% of respondents either strongly agreed or agreed with this proposal.

Respondents felt this method to be the fairest and that any other method could give rise to unequal treatment between institutions with different proportions of full and part-time students.

Calculating student numbers based on intensity of study using the Higher Education Statistics Agency (HESA) standard populations was deemed to be the established practice of the sector.

It was felt that the criteria for calculating student numbers should align with those for calculating Registration Fees.

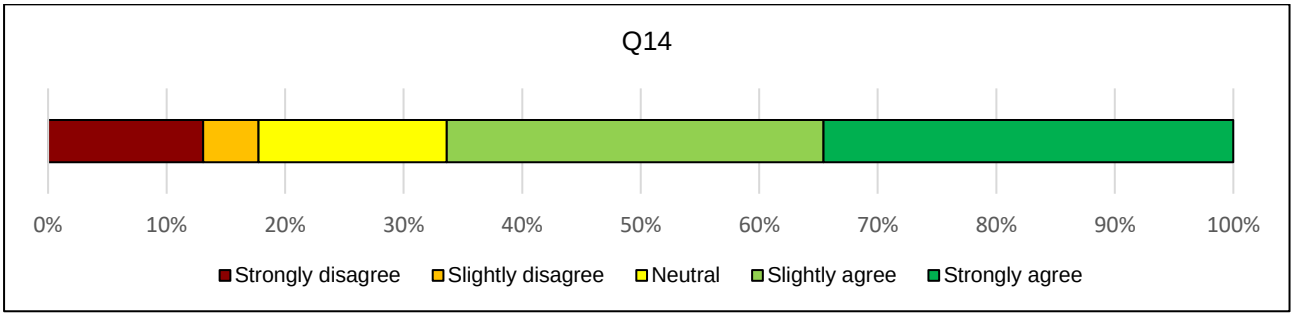
Respondents agreed that the current weightings for online learning did not reflect the nature of the learning that individual students undertake, or the student's level of engagement.

Amongst those who disagreed, views were widely expressed around the need for more information on how intensity of study will be calculated.

A concern was expressed that this approach could harm the options available to providers that take significant volumes of non-traditional entrants on a less intensive basis and that this may not widen participation in 'cold spot' areas.

It was suggested that OfS should model the impact of this approach, consulting with providers on how to measure intensity of study to ensure independent study expectations are captured as well as time in formal learning.

An assumption was made that students studying accelerated courses (a two-year bachelor's degree) tended to study at 1.5 intensity compared with full time students completing a degree in three years, which should be included in considering the approach for calculating the intensity of study.



Response	Total	Percent
Strongly disagree	14	13%
Slightly disagree	5	5%
Neutral	17	16%
Slightly agree	34	32%
Strongly agree	37	35%
	107	

Question 15

(With reference to question 14) Do you have any views on how students on accelerated courses should be taken into account, when calculating the percentage of higher education students at a provider? Should these students be counted as 1 Full Time Equivalent (FTE), or more?

Views were mixed on this. Whilst many thought they should be counted as 1 FTE, a clear majority thought a pro rata approach to reflect the intensity of study should be adopted.

Where a specific figure was suggested, this was mostly 1.5 FTE e.g.

- Honours degree over 3 years - 3 x 1 FTEs
- Honours degree over 2 years - 2 x 1.5 FTEs

Respondents felt that students studying accelerated courses would typically be studying at 1.5 intensity compared to full-time students completing their three-year Bachelor degree in two years and that this should be reflected in calculations relating to their FTE. It was felt that this approach would avoid providers being penalised for introducing alternative modes of delivery, which teach students more quickly.

Respondents suggested that a review of the model in the Education Reform Act 1988 should include exploring how accelerated courses, alongside new blended models of delivery, global delivery models and employment-based learning, should be reflected in FTE.

Government Response

Having considered the responses to questions 14 and 15, we are following the consultation proposal of calculating student numbers based on intensity of study.

The OfS has also taken these responses into account, and will determine the detailed methodology for calculating student numbers, for the purposes of the 55 per cent criterion for University Title, based on the actual intensity of study. This method will be aligned with the measure for calculating Registration Fees.

Question 16

Do you agree with this assessment of the factors that should be set out in Secretary of State guidance to which the OfS must have regard to when determining applications for University Title? If you disagree, please give reasons. If you believe any additional factors should be included, please indicate what these are with reasons.

55% of respondents either strongly agreed or agreed with our proposed factors for determining University Title applications.

It was widely felt that there was no need for more prescriptive and stringent criteria for University Title than is already in place, and that introducing any further criteria, which go beyond the factors listed, would likely restrict diversity of provision.

In addition, some respondents felt that the University College Title option for institutions who map against every aspect other than the 55 per cent rule should be emphasised as a separate opportunity for providers.

Amongst the 32% of respondents who disagreed, these were the main reasons provided:

- A misunderstanding among some respondents who thought there would still be a wholly separate and lengthy application process and expressed a desire that the award of University/University College Title should be automatic once an institution is awarded indefinite Full DAPs,[4] and that there should not be a further process for an institution that has TDAPs and meets the other agreed criteria

- It is not appropriate to award University Title on the basis of a provider having only Research Degree Awarding Powers (RDAPs). It is important that undergraduate/taught postgraduate provision is a condition of the title

[4] In fact, the process will be much streamlined, and most of the information needed to assess an application will be held by the OfS already.

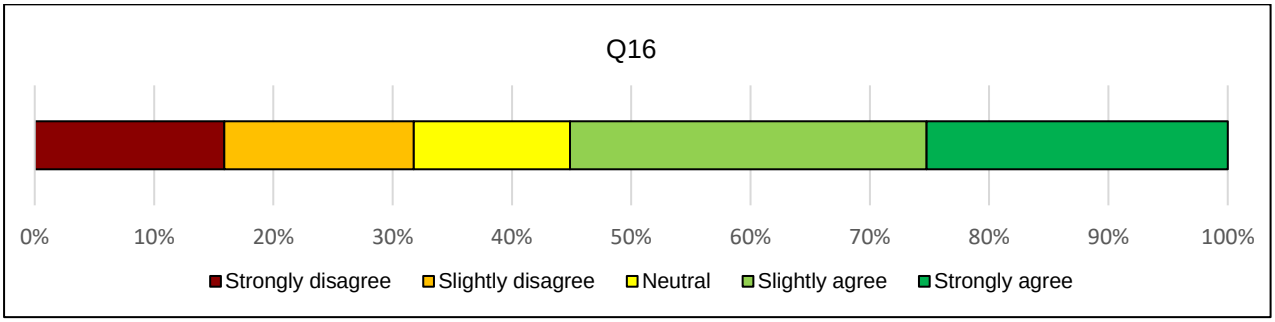
- The proposal to limit University Title to providers with a three-year track record of Full DAPs will prove prohibitive to providers who are not deemed to be VAT exempt.

These additional factors were suggested:

- Separation of the timing of achieving indefinite DAPs and the granting of University Title would be preferable. This would enable a DAPs track record to be fully embedded beyond the initial three years (by which time only one cohort of students may have undertaken courses at the provider). There should be a further period of two years before a University Title application can be considered

- More consideration should also be given to contacts and relationships with employers both locally and nationally

- A similar set of criteria should be employed for access to University College Title to prevent misuse and confusion amongst potential students. Further clarification in general about the use of the University College Title would be welcome.



Response	Total	Percent
Strongly disagree	17	16%
Slightly disagree	17	16%
Neutral	14	13%
Slightly agree	32	30%
Strongly agree	27	25%
	107	

Government Response

In light of a majority of respondents supporting the consultation proposal, we are not making any changes to the factors set out by the Secretary of State in guidance to the OfS.

The disagreeing responses were in part based on a misunderstanding, and also did not show any strong consensus for any particular changes or additional criteria.

Part 3 - Post-award issues

Question 17

Do you agree or disagree with this proposal of implementing the statutory provisions that allow for the revocation of DAPs and University Title and the variation of DAPs?

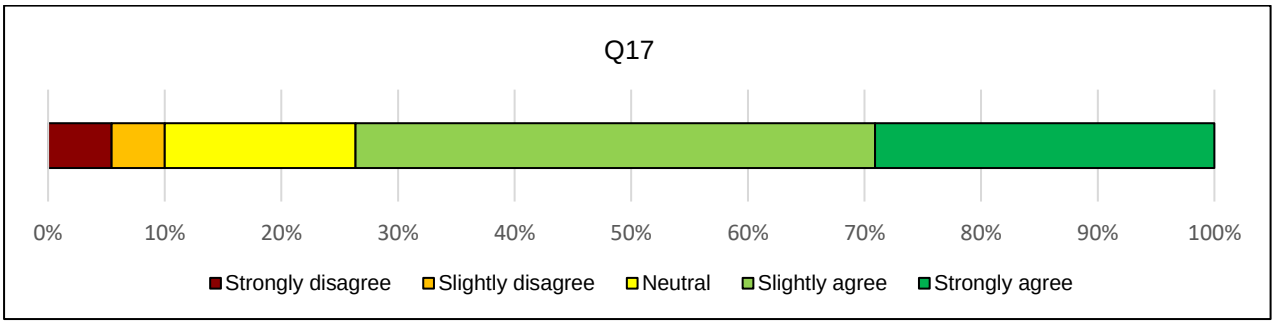
74% either strongly agreed or agreed with these provisions.

It was broadly felt that HERA's revocation powers should only be exercised as a last resort or in cases of extreme violation of registration conditions.

Further consideration was requested on which specific changes in circumstances could trigger revocation of DAP/University Title.

Clarification was required on the role the Designated Quality Body would have in the process and how students would be kept informed and protected during any cycle of appeals and/or legal challenges.

Greater clarity was also requested around how concerns relating to quality and standards would be judged to be 'so serious' to merit revocation. A suggestion was made to require that the quality and standards conditions of Registration were met and this would be assessed on an ongoing basis.



Response	Total	Percent
Strongly disagree	6	5%
Slightly disagree	5	5%
Neutral	18	16%
Slightly agree	49	45%
Strongly agree	32	29%
	110	

Government Response

Having considered these responses, we do not believe a change in the overall approach is necessary. The OfS has taken account of these responses in developing the implementation of the statutory provisions as part of its regulatory framework.

Question 18

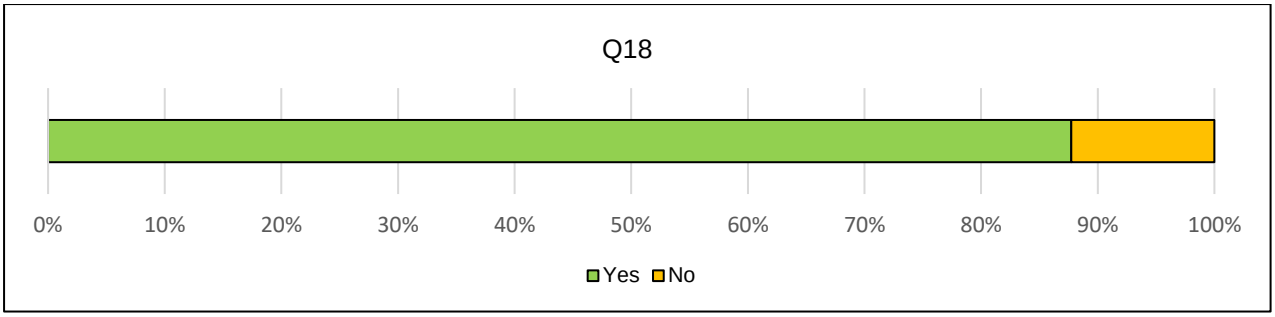
Do you consider the above proposals regarding a change in circumstances to be sufficiently robust to safeguard the meaning and value of DAPs and University Title?

88% considered that the change in circumstances proposals were sufficiently robust.

All respondents agreed that it was an important safeguard that DAPs/University Title were not transferable from one institution to another.

The following points were raised:

- The proposals do not make the circumstances that amount to 'change' sufficiently clear, so it would be helpful to have a defined list of 'triggers'
- There needs to be recognition that mergers and acquisitions of institutions should not put the DAPs status at risk
- Some simultaneous senior management changes, such as a new Vice-Chancellor and changes in the Board of Governors, could also mark a change in circumstances sufficient to cause a risk
- There may be situations where a change occurs that will be of benefit to students. Rather than revocation of a title/award, there were suggestions that a probationary period with close monitoring of impact could be implemented.



Response	Total	Percent
Yes	93	88%
No	13	12%
	106	

Government Response

Having considered these responses, we do not believe a change in the overall approach is necessary. As this is an area of importance to the Department, we have included our views on this matter in the Secretary of State guidance to the OfS.

The OfS has taken account of these responses in developing the detailed implementation of the statutory provisions as part of its regulatory framework.

The detailed DAPs criteria

For this section, we asked the following three questions:

Question 19: Do you have any comments on the proposed DAPs criteria as set out in Annex A? Are there specific aspects of the criteria that you feel should be adjusted in light of the OfS's overall regulatory approach, in particular ongoing registration conditions?

Question 20: Do you have any comments on the proposals for the assessment of applications for subject specific and Bachelor's only DAPs? Are there specific aspects of the criteria that you feel would either be particularly relevant or not relevant for either of these types of DAPs?

Question 21: Do you have any comments on how a subject should be defined for the purpose of subject specific DAPs?

Although there were fewer responses to these questions as compared to the other ones, around two thirds of respondents did provide substantive comments.

Some made more general points, either welcoming the fact that a broader range of DAPs could be applied for, or expressing concerns over how the new powers would work; for example how a subject would be defined for the purposes of subject specific DAPs, or how the specific criteria for Bachelor DAPs/Subject Specific DAPs would differ from the main DAPs criteria.

Other respondents came up with specific suggestions about how the detailed, technical DAPs criteria might be refined.

Government Response

It is for the OfS and the new Designated Quality Body to determine the revised detailed criteria.

The comments and suggestions received are being taken into account as part of the OfS's and DQB's work to develop the revised detailed criteria and the accompanying criteria for Bachelor DAPs and Subject Specific DAPs.