



Select Committee Evidence

Education Select Committee: Inquiry into Value for Money in Higher Education

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Summary

1. Which? welcomes this opportunity to submit evidence to the Education Select Committee Inquiry into Value for Money in Higher Education. We support the reforms to regulation and oversight of the higher education sector through introducing the OfS. These reforms have the potential to help to address many of the key issues in the higher education sector that Which? has campaigned on for many years.
2. Higher education is not a traditional consumer market. For example, students play an important role in creating the value of a university education, including being responsible for self-study as part of their courses. However the regulatory system must change to reflect how the market for higher education has evolved. The current regulatory system was designed for a more homogenous sector and one in which students shouldered less of the financial cost. The new regulatory system must be fit for purpose to effectively protect students.
3. Ensuring students get value for money is a crucially important part of these reforms. The financial cost of university means that making the right choice has taken on much greater importance than for previous generations of students. Without reform, it will be increasingly difficult to guard against students' feeling that they have had a poor value experience.
4. Which? believes there are four key principles that should guide creation of the OfS and its regulatory framework. Firstly, the OfS's primary aim should be to serve students. The Government has outlined that students' interests are at the core of the OfS's work but the OfS has seven statutory duties which could potentially conflict. The government should

make clear that in its interpretation of the OfS's general statutory duties that its primary role is to further the interests of students.

5. Secondly, the OfS should have sufficient powers to meet its duty to students. The Government should ensure that the new regulator is able to address consumer detriment. This should include the ability to enforce consumer law, and to accept super-complaints from designated bodies on behalf of students.
6. Thirdly, OfS must develop a comprehensive set of measures of value for money to help students when choosing which university to apply to.
7. Fourthly, the OfS should be independent from government and higher education providers if it is to perform its duty to students. The OfS should set its own priorities to meet its statutory duties and determine how best to meet any strategic policy goals set by Government.
8. Finally, for the OfS to improve outcomes for consumers, it should ensure that the views and experiences of students are represented and that its decision-making processes and proposed interventions are tested and challenged. The OfS must set out a broad range of methods to directly engage with students.

Introduction

9. Value for money in higher education is complex and while overall satisfaction is high, many students also report concerns. The financial cost of university means that making the right choice has taken on much greater importance than for previous generations of students. But without reform, it will be increasingly difficult to guard against students' feeling that they have had a poor value experience.
10. What students get for the money can vary significantly by their choice of subject and provider. Choosing the right course will always be a complex decision. Individuals may never know if they've made the correct decision until they commence their studies, or perhaps later.
11. With reforms to the student finance system in recent years, the need for a strong regulator to protect students is ever more important. Our research in 2014 found that three in ten students thought that their academic experience was poor value, and a quarter of students said that higher education had not helped them to develop the skills needed for work. This situation remains unchanged three years on, as the Higher Education Policy Institute's Student Academic Experience Survey in 2017 shows that a third of higher education students (34%) still think they are receiving poor value for money across the UK.
12. Which? is pleased to see the reforms to the regulation and oversight of the higher education sector through the establishment of a new student-focused regulator. Regulation should not be seen as a threat to institutions but as a means to strengthen and

secure the reputation of UK higher education, as well as ensure individual students receive a quality academic experience.

13. Our evidence focuses on the Committee's questions that are of most relevance for Which?.

The role of the Office for Students

The OfS's primary aim should be to further the interests of students

14. It is vital that the OfS is primarily there to serve the interests of students. Therefore we welcome the Government's commitment to ensure that the OfS has the primary aim to deliver positive outcomes for students and that the Government's recently published consultation includes four stated objectives that are all focused on students. However we have concerns that the OfS has seven statutory duties and that some of these duties, particularly "to protect the institutional autonomy of English higher education providers", could give rise to conflict with the interests of students in some circumstances. For example, the Government consultation states:

"Certain elements of the OfS's activity, such as the imposition of individual ongoing registration conditions, may focus in particular on one or more of these. Equally important, however, is that the OfS will consider all of these in the decisions it makes across its functions. While an initiative or process may focus on one of these outcomes in particular, the OfS must nevertheless take the others into account when making decisions."¹

15. This direction could confuse the regulator's decision-making process, and in some cases lead to poorer outcomes for students. The regulatory framework must reflect student outcomes as its core priority throughout in order to guide its deliberations and ensure it delivers consistent decisions to achieve this aim. The government should make clear that in its interpretation of the OfS's general statutory duties that its primary role is indeed to further the interests of students.
16. Having a clear consumer-focused duty has proven to result in positive consumer outcomes in other sectors. A 2007 House of Lords inquiry into UK economic regulators found that a clear remit for economic regulators – including fewer duties and the clear identification of primary duty(ies) – brings benefits. It also concluded that in the rail sector, a lack of focus in the statutory duties of the Office for Road and Rail (ORR): "In taking its decisions, ORR has to reconcile a raft of statutory duties which do not have a hierarchy of priority and may pull in different directions."
17. Competition should be a means to improve outcomes for students by driving improvements in what higher education providers offer students. Although one of the

¹Department for Education, Oct 2017: Securing student success: risk-based regulation for teaching excellence, social mobility and informed choice in higher education, p22

OfS's seven statutory duties covers competition, it states that this is "*where that competition is in the interests of students and employers*". However, in order for the new regulator to deliver on its intended aim to further the interests of students, the Government must clarify that this is the primary aim of encouraging competition first and foremost. As previously stated, a confused duty in this respect could lead to perverse outcomes for students.

The OfS should have sufficient powers to effectively protect students

18. The Government should designate the OfS as an enforcer of consumer law (under Part 8 of the Enterprise Act 2002). Compliance with consumer law will be a requirement for any provider to be included on the OfS's higher education register. However, unlike many other market regulators, the OfS will not have the powers to enforce consumer law, which will instead continue to sit with the Competition and Markets Authority.
19. In addition to the CMA's powers, the OfS should have powers to enforce consumer law so that it is fully equipped to address sources of detriment for students. These enforcement powers would include giving the OfS the powers to apply to court for an enforcement order, requiring a provider to comply or to accept undertakings so that the provider will not continue or repeat the conduct. We welcome the Government's consideration for the new regulator to take on enforcement responsibilities. It rightly states that "*there is not an equal power balance in relationships between students and providers*"². Therefore it is critical that students have a strong regulator with sufficient powers to effectively protect them when providers treat students unfairly, or fail to deliver the academic experience they promised.
20. In recent years the higher education market has come under much scrutiny due to concerns that higher education providers were not fulfilling their obligations under consumer protection regulations. In 2015, a Which? investigation found wide-scale use of potentially unfair terms that allowed institutions to vary courses, and a number of cases where providers' terms permitted them to prevent a student from graduating where they had outstanding non-tuition fee debt. Overall, we found that one in five providers (19%) used terms that we consider to be unlawful, and in contravention of the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs).
21. Our review of 50 university websites in 2015 found that nearly two-thirds (64%) of providers failed to provide updated information about tuition fees on their website; 38 providers (76%) were breaching the law by failing to provide at least one piece of material information; and no provider was uniformly adopting good practice in relation to information provision across all categories of information.
22. Across the CMA's three-year review which concluded in early 2017³, higher education

² Department for Education, Oct 2017: Securing student success: risk-based regulation for teaching excellence, social mobility and informed choice in higher education, p35

³ Competition and Markets Authority, Consumer Protection Review of Higher Education, www.gov.uk/cma-cases/consumer-protection-review-of-higher-education

providers were found to be failing students through the use of unfair terms, and the information they provided to support student decision-making on institutions and courses. As a result, the CMA took enforcement action against a number of higher education providers by securing changes in student contracts and getting a fairer deal for students. However the regulator noted that the sector still had a need to improve in some areas of compliance, and raised concerns about the length of time it took providers to implement changes for the benefit of students.⁴

23. Given these recent findings, we believe it is imperative that the new regulator be given enforcement powers so that problems can be tackled swiftly, and students are protected where there is evidence of providers' unfair treatment and/or non-compliance with consumer law. Poor provider behaviour should not be allowed to become systemic problems before action is taken, and students should not be expected to take private actions in order to gain redress under consumer protection legislation. Due to its wider regulatory role, the OfS would likely be able to spot enforcement issues more quickly using its sector expertise and through regular monitoring than the current regime allows.
24. In addition, the Government should grant the OfS the power to accept super-complaints on behalf of students. Designated bodies should be able to bring major sources of student harm to the attention of the OfS and hold it to account for its response, including where they have identified breaches of consumer law.
25. Which? and other organisations have super-complaint powers in relation to a range of regulators, including the Competition and Markets Authority, the Office for Rail and Road and the Financial Conduct Authority. This enables public interest bodies to hold regulators to account and ensure that where there is evidence of consumer detriment that a regulator is not responding to, there is an effective route to ensure that it must investigate.
26. For example, in 2015 Which? issued a super-complaint to the Competition and Markets Authority on pricing practices in grocery retailing. This prompted the CMA to investigate issues around misleading supermarket special offers and unclear unit pricing, which it had previously failed to prioritise. This led to enforcement action and the revision of guidance on pricing practices.

The OfS should develop "value for money" measures

27. The Government should make clear that the OfS is responsible for developing a meaningful set of measures of value for money to help consumers when choosing which university to apply to.
28. Our research in 2014 found that three in 10 students thought that their academic experience was poor value, and a quarter of students said that higher education had not helped them to develop the skills needed for work. In order to address this issue, the

⁴ Competition and Markets Authority, July 2016, Consumer law compliance review: Higher Education undergraduate sector findings report, p4

availability of more information will not necessarily lead to better outcomes for students in their choice of subjects and providers. However, measures which could help prospective students to assess value for money could help them to make better choices, if tested properly with students. It could also help to ensure providers focus on the issues that matter most to students.

29. While the OfS is required to designate a body to compile information on higher education providers, the regulator must have the right powers to reform the full range of existing measures of value for money. This should include measures such as the Teaching Excellence Framework and Longitudinal Employment Outcomes data, as well as other information requirements such as the Key Information Set.
30. The OfS should work closely with government, providers and students to define the set of measures that would best enable students and parents to assess value for money. The recent Government consultation on the OfS's regulatory framework states that providers should allow students to see how their money is spent. A set of measures such as this should be developed and tested to see how new interventions or offers from providers can best improve outcomes for students.

The OfS should be independent

31. It is crucial that the OfS can set its own priorities if it is to effectively deliver on its primary aim, which should be to further the interests of students.
32. The OfS should determine how best to meet any strategic policy goals set by Government. In sectors such as water, energy and aviation, the Government issues strategic-direction statements or statutory social and environmental guidance that sets out its high-level policy goals. This approach would preserve the OfS's independence, which would ensure that the Government fulfils its policy goals, while benefitting from the expertise of the regulator in determining how best to meet these aims.

The OfS should meaningfully engage with students

33. The OfS should set out a broad range of methods to directly engage with students and to understand how best to improve outcomes for them. We welcome the announcement that the student representative on the board of the OfS will bring together a group of students via a panel. However, this should form part of a wide-ranging programme of meaningful student engagement which the OfS should lead, with students directly and with organisations that represent their interests. The OfS should set out a programme of research to understand the key areas of detriment for students and the best approaches to addressing them, including testing these with students.

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