

The operating framework for higher education in England

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In September 2014 the Higher Education Funding Council for England (HEFCE) published the first Register of English higher education providers that have one or more of four powers, such as the power to award degrees, and about whom a range of assurances can be given (HEFCEa). At the same time it published a revised operating or regulatory framework that describes the various accountability and regulatory arrangements in English higher education and the bodies and stakeholder groups that are associated with these arrangements (HEFCEb).

HEFCE's role in English higher education has evolved over the years. It has always been involved in aspects of regulation but this has often been more implicit than explicit because historically it has been our funding role that has tended to dominate discussion. It is frequently because of our funding role that we have exercised other responsibilities.

Since its creation HEFCE has had a statutory duty to assess the quality of provision it funds or is considering funding. The arrangements for how we carry out this statutory duty have changed over time and are currently being reviewed. As part of our role in public accountability we have also been involved in annual and five yearly accountability and assurance activities for those providers for whom we are their lead regulator. Our assurance activities enable us to understand the financial sustainability and governance situation of the higher education institutions (HEIs) we fund and to engage in enhanced activity with those in weak positions. For much of the recent period we have also, operating to government guidance, used various forms of student number controls in the HEFCE funded part of the sector to ensure student support finance is affordable to the government.

More recently, in 2010, we became principal regulator for HEIs we fund who are exempt charities. Since 2013 we have been increasingly also involved in conducting checks and collating information about financial sustainability, governance and management and course checks that the Department for Business, Innovation and Skills (BIS) use to make decisions about designating courses at alternative providers so that students can gain access to student support. These activities and functions are part of what form the operating framework, with many other organisations, not least government, being part of this regulatory environment.

The White Paper, 'Students at the heart of the system' (BIS 2011)) looked forward to legislation that would place various regulatory arrangements on a footing more suited to the contemporary environment. That legislation was not forthcoming and since then various bodies, including HEFCE, have sought to use administrative means to bring improvements. Much in higher education has changed in the last five years. Some arrangements can still be improved without legislation; others look too hard to tackle in

this way. So there is still an ongoing need to ensure the operating framework is fit for and truly does support a world leading higher education (HE) sector into the 2020s.

With or without new legislation the operating framework for higher education should continue to be built on institutional autonomy and co-regulation, and also to recognise diversity of provider type and purpose. Many commentators now support the need for a more equitable HE regulatory framework with scrutiny placed where and when it is most needed, and which through a risk-based approach, can become lighter burden for providers that demonstrate their worth and longevity. At the same time the regulatory framework needs to provide assurance and accountability for public funds. It needs too to enable entry access by new providers and have means to deal with those who fall below expected performance. In a more marketised environment there has to be orderly exit arrangements which protects students and the reputation of the whole sector.

There are some areas where there is still a need for enhancement of arrangements, be this in the student interest, to protect reputation, to lower burden, to be more equitable or reduce duplication. These include:

- Ensuring better protection for students in the event of course/institutional closure/disorderly exit from the higher education sector.
- Partnership arrangements between institutions that relate to courses and students' need to operate with greater clarity and transparency so that all students are clear about which provider is responsible for them.
- An improved succession of 'gateways' that give 'admission' into the sector or particular powers within it, for example becoming HEFCE funded. Gateways into the sector can be conceived as giving access to types of funding or 'licence', or particular levels of higher education, such as having research degree-awarding powers. Each gateway needs to test key aspects and provide sufficient assurance in relation to that aspect. Improving the management of entry would enable lighter regulation to be exercised, on a risk-based approach, to those who have passed through a gateway and who could pass into a monitoring phase.
- Currently we have limited provision for preventing disorderly exit; exit may need to happen but it should be managed to minimise damage to students and the reputation of higher education more broadly. Much more attention needs to be paid to this aspect across the diversity of provision.
- The data landscape would benefit from improvement to ensure a sensible data set is collected from all providers, that duplication of collection is avoided and that data is collected once and used multiple times, thus creating an equitable approach and also reducing burden.
- In any operating system sanctions need to be available for infringements, but these need to be proportionate, predictable within a limited range and take an

escalatory approach if early warnings are ignored. Currently such an approach is not always available across the diversity of the sector.

- Regulation must not stifle innovation. It is uncertain if it could or should actually incentivise it, but it is another aspect of the current operating framework that might bear further consideration.
- Any operating framework must be clear as a whole (i.e. understandable) but not reduced to check box compliance.

Above all any operating framework needs to be true to its core purposes and principles. Our system is not broken, but neither is it incapable of improvement.

References

Department for Business, Innovation and Skills [BIS] (2011) 'Higher education: students at the heart of the system', London: BIS.

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31384/11-944-higher-education-students-at-heart-of-system.pdf>

Higher Education Funding Council for England [HEFCEa] 'Register of HE providers', <<http://www.hefce.ac.uk/reg/register/>>

Higher Education Funding Council for England [HEFCEb]. 'Operating framework for higher education', <<http://www.hefce.ac.uk/reg/of/>>

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