

Better regulation for higher education

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Better regulation of higher education is such an important issue that one cannot possibly do it full justice in a short piece. Yet there are a number of crucial and connected points that bring the topic into focus.

It is widely accepted the system is a mess. I worked as the special advisor to the Universities and Science Minister (David Willetts) in the Department for Business, Innovation and Skills (BIS) from 2010 to 2013. We failed to pass new primary legislation alongside the increase in the tuition fee cap for full-time undergraduates for two reasons. Firstly, the Treasury wanted the fee cap to change as quickly as possible so that any savings would accrue as early as possible. Secondly, there was the political risk that some Liberal Democrat MPs would peel away from supporting the change (or shift from abstention to opposition) the longer it took.

The easiest and quickest way to make the fee change was to alter the numbers in Blair's system but to leave the rest of it alone. That meant one afternoon of pain in the House of Commons, which played out to the backdrop of rioting students, and another in the House of Lords. That seemed preferable to the months it would have taken to get a new Higher Education Bill through. In the Commons, the votes were close but predictable – I won the sweepstake among the civil servants in the Officials' Box but no one was far off. In the Lords, the votes were more easily won but the margin of victory was less predictable. Peers, particularly on the cross benches, had let it be known that pressure to vote in support of the change would go down badly and might prove counterproductive.

We did, nonetheless, try incredibly hard to follow the increase in the fee cap, which meant more money following the student and less coming via the Higher Education Funding Council for England (HEFCE), with a new legal framework. Indeed, for a while, that seemed a necessary and inevitable part of the then coalition government's reforms: the law needed to catch up with the fact that HEFCE was losing the power of the purse. That is perhaps the key reason why we produced the 2011 higher education White Paper, 'Students at the heart of the system', plus a detailed underlying technical consultation document.

But legislation slipped down the coalition government's agenda. An interim sticking-plaster approach, co-ordinated by HEFCE and based on the Regulatory Partnership Group, was followed instead. Our arguments in BIS on the need for financial control over higher education institutions then had the rug pulled from underneath them when the Treasury announced in late 2013 that it would remove student number controls, leaving universities to recruit as many students as they like.

I once asked my BIS civil servant colleagues how the ad hoc system was meant to work. It took a long time for them to rustle up the answer because they could not find a printer that could print on sufficiently large paper. Eventually, they delivered a poster-sized diagram with tiny fonts that showed how it was all meant to work, including the powers of the various regulatory bodies and how they all fitted together. In many ways, it was a useful document that displayed the civil service make-do-and-mend attitude at its best. But the complexity of the diagram also encapsulated the problems we still face.

Many excellent and important papers have picked up on the challenge, such as: the Higher Education Commission's 'Regulating higher education' (October 2013); HEPI's 'The future regulation of higher education in England' (Brown and Bekhradnia 2013); and more than one paper by the Competition and Markets Authority (CMA).

My first Higher Education Policy Institute (HEPI) report, 'Unfinished business: higher education legislation', from February 2014, listed a number of 'pinch points' where the rules have differed in important ways for different sorts of higher education institutions – for example, the mix of degree-awarding powers that are held in perpetuity and those that are only held on a six-yearly renewable basis. My conclusion was that we have an unkempt meadow rather than the long promised level playing field for higher education providers of all types.

While all these papers include thorough analyses of the problems, they include different ideas on how to tackle them. This is a question on which rational men and women may reasonably differ. In my paper, I argued there is still a case for having the same rules for different sorts of providers, as in the White Paper (BIS 2011). But I also found there is probably an even stronger case for having an equitable, rather than a wholly equal system. In other words, there is room for sensible risk-based differences.

On the specifics, it is unlikely one super quango is the answer. If the quango killer that was the coalition government in its early days could not find a way to reduce the number of regulatory bodies in higher education, it is unlikely to be easy for anyone else to do so. Even the Higher Education Commission's relatively modest proposition, of putting HEFCE and the Student Loans Company together in a new Council for Higher Education (CHEE), ignores that fact that HEFCE is an England-only body whereas the Student Loans Company is not.

It also seems clear that we need to resolve the position of alternative providers, not least because of the threat of wider reputational damage to the whole sector. The Higher Education Commission sensibly proposed a new Office for Competition and Institutional Diversity within the new CHEE. That is worthy of further consideration.

We need a clearer exit regime too, including for non-HEFCE funded providers. Since 2010, private colleges have shut up shop, sometimes under the pressure of Home Office changes, leaving legitimate students high and dry. The new freedoms for HEFCE-funded providers are creating turbulence for more traditional providers as well. Yet progress on delivering an 'orderly exit' regime (in the language of the old Office of Fair

Trading) has been close to non-existent so far. This could be the next higher education scandal waiting to happen: in politics, issues can shift from moving at glacial pace to incredibly fast overnight. Ideally, a better exit regime would be complemented by a clearer entry regime in place of the current obstacle course with ever changing rules for new providers.

To convince the political parties to legislate, the sector may need to propose some more clearly populist things alongside the boring-but-important regulatory stuff. I would advocate changing the funding rules to encourage two-year degrees. Another idea is to improve further the information available to prospective students. Proposals to assess the quality of teaching in universities should also be considered.

Universities UK have said, ‘a new higher education bill is not the goal *per se*, and poorly considered provisions, however well intentioned, may be damaging.’ That is right. But it is also true that a new Higher Education Bill that is limited to red tape and regulation would be a missed opportunity.

References

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