

# QAA Response to the Office for Students’ ‘Consultation on Regulating Quality and Standards in Higher Education’

January 2021

## Introduction

The Quality Assurance Agency for Higher Education (QAA) welcomes the opportunity to respond to the Office for Students (OfS) consultation.

The consultation demonstrates a clear intention to evolve the regulation of quality and standards for English higher education providers. As the UK’s independent quality body for higher education, QAA is pleased to offer its expertise and views on this consultation, and would welcome the opportunity to advise on the development of additional future consultations proposed in the document.

QAA is a membership body with 272 higher education providers as members across the UK, of whom 41 are in Scotland, Wales and Northern Ireland. We work with our member institutions in developing sector agreed standards across the UK and in enhancing the quality of UK higher education provision, to give students the best possible experience.

Our response to the consultation is primarily based on the implications the proposals have for QAA Members. While the consultation formally only affects English providers, some of the proposals have a wider bearing on UK higher education and its international reputation, and this is reflected in our response.

Following recommendation by the OfS, in 2018 QAA was also designated by the Secretary of State under Schedule 4 of the *Higher Education and Research Act 2017* (HERA) as the Designated Quality Body (DQB). One of QAA’s roles as DQB is to enable the OfS to assess the quality of, and standards applied to, higher education provided by English higher education institutions. Some proposals do impact upon QAA’s operation as DQB in England and we highlight these where they arise. We look forward to discussing these with the OfS in greater detail as part of the evolving consultation process.

This document replicates the text of QAA’s submission to the consultation, but for ease of reading has been formatted into a single document with some amendment to the text to avoid repetition. It covers the four proposals set out in the consultation document.

## **Proposal 1: Define ‘quality’ and ‘standards’ more clearly for the purpose of setting the minimum baseline requirements for all providers**

QAA supports the OfS’s stated intention to ‘provide assurance for students and other stakeholders about how the OfS defines and regulates ‘quality’ and ‘standards’ across the higher education sector’ (para 51).

### **Transnational education**

Proposal 1 sets out an intention to continue to include non-UK based students in the assessment of quality and standards, pointing out that transnational education (TNE) is a substantial and important part of activity in the sector (para 36). The consultation also acknowledges that during the initial registration process, transnational data indicators of outcomes were not possible to construct, but this should now be possible at aggregate level and included in the assessment of registration condition B3 (Annex B para 33).

QAA supports this proposal. We work with agencies, governments and institutions across the globe. From our discussions with international partners, it is clear that having publicly available data to indicate the effectiveness of English higher education providers operating in their jurisdiction will be extremely helpful, both at national and institutional levels, in promoting higher education as a global export.

The UK Government has explicitly expressed interest in supporting the growth of TNE by higher education institutions, recognising its economic benefits and soft power returns. The *International Education Strategy: global potential, global growth*, published in March 2019, aims at ‘supporting TNE as a key growth area’. QAA has also been commissioned by Universities UK International and GuildHE to develop a new approach to reviewing and enhancing the quality of UK TNE. Following consultation with the higher education sector, we are now developing a UK-wide system of enhancement-led and country-specific activity.

As the consultation makes clear, the proposals relate solely to regulation at the baseline and states that ‘above these minimum baselines, providers, as autonomous institutions, are free to pursue innovation and excellence as they see fit’ (para 17). QAA’s TNE work relates to enhancement above the baseline and has no regulatory remit. We would, however, hope to work in collaboration with the OfS, as with other UK bodies, to ensure that our TNE enhancement activity operates effectively with regulatory and quality frameworks for the benefit of the sector and of UK higher education’s global reputation.

### **Grade descriptors**

We welcome the grade descriptors developed by QAA, Universities UK and GuildHE, and adopted by the UK Standing Committee for Quality Assessment (para 39). These set out the agreed general criteria that students across the UK should meet in order to achieve the different classes of qualification at bachelor’s honours degree level. These criteria provide a vital reference for providers in promoting the comparability and reliability of higher education qualifications and will allow for the description of achievement above the English regulatory baseline. Their use as a sector standard will also help respond to concerns regarding grade inflation.

There is, however, a difference between the use of grade descriptors incorporated as they currently are within the Frameworks for Higher Education Qualifications (FHEQ) and their proposed use to determine whether an absolute numerical baseline for quality has been met. Each higher education institution is unique and if grade descriptors were to be applied at provider level, we believe this would restrict providers’ ability to act with the inherent flexibility arising from institutional autonomy which the Regulatory Framework was designed to protect. If adopted as a standard to determine compliance with the regulatory baseline,

the grade descriptors may become a measure of absolute performance which will be difficult to effectively and fairly quantify at individual provider level.

### **The UK Quality Code for Higher Education**

We are concerned by the proposal to remove references to the UK Quality Code for Higher Education from the guidance in their Regulatory Framework (para 46). The Quality Code sets out the expectations that all providers of higher education in the UK are required to meet in order for students to have a high-quality learning experience. The core expectations of the Quality Code provide a common reference point for higher education providers across the UK. The revised Quality Code was published in 2018, following extensive consultation with English and other UK higher education providers and stakeholders. The rationale in the consultation document for the decoupling of the Quality Code from their Regulatory Framework is that it uses 'slightly different language' from the new proposed definitions of quality and standards set out in Annex A, and that the proposal will provide 'greater clarity about the requirements we place on providers' (paras 45 and 46). We believe that the creation of additional criteria relating to quality and standards in the registration conditions that differ from the sector-recognised criteria contained in the Quality Code is more likely to reduce consistency and clarity.

The consultation document suggests that the differences between the Quality Code and the new proposed definitions are marginal. It also states that 'The regulatory requirements expressed in the regulatory framework would continue to broadly cover the issues expressed in the expectations...and core practices of the Quality Code' (para 46). We agree that there is similarity between the Quality Code and the proposed definitions, but we believe that there are areas in the Code's expectations and core practices that have not been covered by the proposed definitions. These include partnership working, work-based learning, student complaints, and the need to include the collective student voice.

We are concerned by the removal of the collective student voice from the proposed definitions. This is currently expressed through the core practice in the Quality Code that 'The provider actively engages students, individually and collectively, in the quality of their educational experience.' The proposed definitions instead refer to the 'effective' engagement of students. In QAA's experience, engagement with the collective student voice is central to the aim set out in the consultation that 'all students...can have confidence that they will receive a high-quality higher education and successful outcomes' (para 3). The importance of student engagement is recognised in the OfS regulatory framework, which states in the public interest principle (applicable to all registered providers) relating to student engagement: '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' (*Securing student success: Regulatory framework for higher education in England*, page 145).

The most significant impact of the removal of reference to the Quality Code, however, is the potential damage to the brand and reputation of UK higher education. As the then Universities Minister Chris Skidmore stated in a speech at the Universities UK International Education Forum in March 2019, 'The key to maintaining a strong brand for UK higher education is the UK Quality Code, which sets the core quality standards that providers must adhere to'. This recognition of the UK-wide benefit of the Quality Code is reflected in the Independent Review of the Teaching Excellence and Student Outcomes Framework published in January 2021, which states in relation to the Quality Code, 'Ideally, quality assurance and enhancement processes across...different regulatory regimes should be developed with each other's needs in mind so as to maximise opportunities for complementarity and alignment. This is important for the way in which UK HE is seen across the world' (page 27).

QAA Members have expressed serious concerns that the proposal to remove the Quality Code from the English regulatory framework will lead to fragmentation of the UK-wide brand. We have frequent conversations with international partners who never refer to the nations individually, but rather to UK higher education, adding reputational benefit across the nations. If this were to be perceived as a departure, by England, from agreed UK-wide arrangements this is likely to have unintended consequences for UK higher education and its reputation globally. In a wider political context, at a time where there are genuine risks of nations exiting the UK as a political entity, it is critical to maintain policy frameworks in areas where there is a clear benefit to all parts of the UK.

We note that Annex G, 'Matters to which the OfS has had regard in developing these proposals', does not include the potential impact on the coherence of the UK-wide higher education system and the interest in this of the devolved nations. QAA therefore proposes that this matter is added to Annex G, and that the proposals are then analysed for their impact across the UK and on the UK internationally. It is also essential to build consultation with regulators and funders in the devolved nations into the process before new models are introduced.

The UK Standing Committee for Quality Assessment (UKSCQA) has skillfully steered a UK-wide consensus on the UK Quality Code, grade inflation and grade descriptors for bachelor's degrees. Uncoupling the English definitions of quality and standards from the UK Quality Code without sector support risks misinterpretation about England's commitment to UK-wide arrangements.

QAA Members are also concerned that the proposal could impact upon the desirability of the UK as a destination for international students if the Quality Code, which is widely regarded as providing coherence to the quality arrangements operating in the different parts of the UK, was seen to be reduced in importance. QAA is aware that in some jurisdictions, notably China, satisfaction with quality assurance arrangements on a national scale, as well as satisfactory outcomes at provider level, are an important element of state sponsorship for overseas students.

Under Section 23 HERA, all 'arrangements for the assessment of, the quality of, and the standards applied to, higher education provided by English higher education providers' must assess those standards 'against sector-recognised standards only', so the definitions set out in Annex A must be sector-recognised standards. Section 13 HERA sets out a definition of what constitutes sector-recognised standards which includes a requirement that a standard 'commands the confidence of registered higher education providers'. Because of this, the proposal in the consultation will need to be positively received to meet the definition of a 'sector-recognised standard'.

In summary, we suggest - for the reasons outlined above - that explicit reference to the UK Quality Code for Higher Education is retained and, as necessary, map any clarifications of the requirements of the OfS against the Quality Code. This would enable the benefits of the Quality Code and the additional requirements of the OfS to be realised.

### **Changes to initial registration requirements**

QAA agrees that the proposal to express initial registration requirements for providers seeking registration differently from the equivalent ongoing requirements for providers is a positive development. The consultation highlights current issues arising from outcomes-focused formulations with new providers, and that there would be merit in an approach which is instead focused on the credibility of an institution's plans. We believe this will achieve a good balance of placing realistic expectations on providers, while allowing for protection of the student interest.

We agree with the proposal to disapply the initial registration condition relating to student outcomes proposed in paragraph 43, since there has not been a submission to the designated data body covering any of the data points. We look forward to discussing with the OfS how this will be approached when undertaking quality and standards reviews of new entrants to the Register in our role as DQB.

## **Proposal 2: Set numerical baselines for student outcomes and assess a provider's absolute performance in relation to these**

QAA supports any proposal that will improve the student experience and the quality of higher education provision. There are elements of the proposed change in approach, however, that merit further careful consideration, not least because of their potential to raise conflicts with other policy proposals from the current government relating to flexible and lifelong learning.

We appreciate that the OfS rationale for all providers to be required to meet the same absolute numerical baselines for performance is that 'all students, regardless of background, are entitled to the same minimum level of quality, including outcomes' (para 69). However, QAA Members have expressed concerns regarding the focus on baseline thresholds. There are potential drawbacks to removing benchmarking, when coupled with a general raising of the baseline, particularly in relation to progression as an outcome metric.

While we understand the reasoning for a shift towards a quantitative measurement of quality, QAA believes that data alone is not sufficient to capture all elements of quality. Numerical outcome metrics are, of course, related to quality and performance, but they provide only one part of the picture and it is likely that a narrow focus based on an absolute numerical baseline would negatively impact on access and participation for underrepresented student groups.

Each institution will have widening participation (WP) objectives, and many will have submitted Access and Participation Plans (APP) as set out in Section 29 HERA. It is important that providers are able to demonstrate their commitment to widening participation, which may be undermined if they are also concerned about jeopardising their registration. The danger is that, as a consequence of removing benchmarking, institutions will become risk averse in their recruitment and, for example, be less willing to offer contextualised admissions. This is more likely to be an issue for institutions that have the largest cohorts of students from underrepresented groups.

Many universities with large numbers of students in widening participation categories are located in parts of England which the Government is committed to supporting as part of its 'levelling up' agenda. We suggest that the proposals be assessed to ensure they do not inadvertently undermine the Government's 'levelling up' policies, since widening participation institutions located in disadvantaged areas will be in danger of falling below the numerical baseline thresholds.

We believe further careful consideration should be given to the impact on equality of the removal of benchmarking, including in relation to the OfS statutory duty in Section 2 HERA to have regard to the need to 'promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers'.

The consultation does state that the assessment of condition B3 will 'heavily rely on provider's absolute performance shown in the proposed indicators'. It adds 'that we also propose to continue to consider the context in which a provider operates, along with any other relevant factors, as a way of ensuring that we have properly interpreted its absolute performance' (Annex B para 8). Similarly, the consultation states an intention to 'take into account the characteristics of a provider's students, and the comparative performance of different demographic groups of students within the provider, when its performance is

assessed in relation to numerical baselines' (Annex B para 65). We hope to see this explored further in future consultations, setting out where flexibility about a provider's student characteristics may be more fully articulated.

The consultation goes on to propose the application of numerical baselines in relation to continuation, completion and progression. We support in principle the application of numerical baselines in relation to the first two outcomes relating to continuation and completion. Continuation and completion can have value as indicators of quality in relation to areas such as appropriate recruitment and student support, although there is recent evidence to suggest they should not be given excessive weight (see *A short guide to non-continuation rates in UK universities*, HEPI, January 2021). We are also conscious that these proposals are being made in the context of a government policy agenda aimed at encouraging flexible and lifelong learning, allowing students greater freedom to accumulate credit and move in and out of higher education over a period of time. There is the potential for this government-led policy driver for greater flexibility in lifelong learning to sit at odds with numerical baselines relating to continuation and completion. To militate against the potential for conflict, any impact on continuation and completion arising from flexible learning arrangements could be incorporated into the contextual factors proposed in Annex B paragraph 67.

For example, QAA's view is that providers should recruit students on the basis of their potential to succeed. Where those students have challenges, efforts should be made to support them, but there is a greater risk that they may not complete. In these circumstances, providers should design courses which enable credit that has been achieved to be recorded, allowing a student who does not complete a full degree to have their achievements recognised. This may be helpful for the student when seeking employment and could potentially facilitate a return to learning at a later date. The proposal as it stands risks driving behaviour whereby providers make admissions judgements based on certainty of completion.

We question whether it is justified to apply the third numerical baseline in relation to progression to managerial and professional jobs, including the use of data from the longitudinal educational outcomes (LEO) dataset. While a graduate's employment outcome might provide an indicator of the quality of education provided by a higher education institution, it is also affected by a range of other factors. Some providers, such as specialist institutions, those offering vocational courses, further education colleges offering higher education, or institutions with high recruitment from low representation demographics may struggle to meet the required absolute baseline.

Ultimately, the employment destination of a graduate is not in the control of the institution, happens many years after the institution can influence their decisions, and there are many reasons why graduates who have received a high-quality education might not be interested in a managerial or professional career path. Some courses, such as the creative arts or art and design, are not designed to produce graduates entering professional roles. Others can be geared towards graduate start-ups, which will bring benefit to the economy, but not in terms of generating professional or managerial roles in the short to medium term. Others may choose to have career breaks for children or have caring responsibilities, which could have equality implications for these indicators.

An absolute baseline based on progression to managerial or professional jobs could be seen to conflate quality with, for example, value for money for the taxpayer.

The longer-term economic consequences of the COVID-19 pandemic are likely to impact the graduate market for years. This is not a question of quality of higher education provision but of wider, and as yet unclear, socio-economic factors arising from the pandemic.

We believe that a one-size-fits-all approach to outcome indicators, particularly in relation to progression, could have considerable unintended consequence and that an approach offering greater flexibility in meeting baseline requirements would be more equitable. Otherwise, there is a significant danger that institutional behaviours might be excessively influenced by concerns over meeting an absolute baseline.

We agree that the suggested use of aggregated data for all indicators (Annex B para 20) may address some of the concerns arising from the disproportionate impact on data at institutions with small student cohorts.

### **The proposed levels of study at which indicators should be constructed**

We agree that the list at Annex B paragraph 23 is appropriate, although the proposal to show performance for subjects within each level and mode of study (Annex B para 28) in relation to meeting the baseline indicators would add significant regulatory burden to institutions. Concern over regulatory burden is an issue frequently raised by QAA Members, particularly further education colleges offering higher education. While there is value in providers being familiar with their data so as to identify their strengths and areas for improvement, the added resource required to gather and analyse the range of information outlined will reduce the resource available for teaching, student support and research.

### **The appropriate balance between the volume and complexity of indicators and a method identifying 'pockets' of performance that are below a numerical baseline**

There is merit in assessing student outcomes at subject level to ensure that any poorly performing area of study within an institution does not get overlooked if the aggregate is acceptable. Students are entitled to reassurance that they will receive a quality education at subject, as well as institutional, level.

There are, however, implications for what this might mean at institutional level. For example, if a provider is concerned that a particular subject within the institution might pose a risk to meeting registration conditions, that study course might be put at risk of closure rather than seeking to improve the quality of provision. This could, of course, be considered to be a positive step to ensure quality provision through the institution. However, in the context of our earlier comments regarding the introduction of an absolute numerical baseline relating to progression as an indicator, it could also mean courses that do not obviously lead to professional or management roles find themselves at risk of closure.

In addition, the combination of subject-level granularity at each level of study could again add significant regulatory burden to providers - particularly smaller ones. Subject-level granularity may also lead to reduced reliability and validity of data, especially where student cohorts are small.

### **The use of the longitudinal educational outcomes dataset**

The longitudinal educational outcomes dataset provides useful information regarding employment outcomes, but is not itself a performance indicator and is of limited value as an indicator of quality of provision at subject or provider level. Use of the dataset as an indicator of outcomes, in the absence of additional qualitative data to provide context, would compromise quality assessment.

### **Taking into account the range of sector-level performance in setting numerical baselines**

QAA Members have expressed concerns regarding the focus on baseline thresholds. It is not the use of numeric baselines in themselves that is the cause for concern. It is the

perceived assumption, reflected in the consultation, that a percentage of existing providers are unsatisfactory. We are aware that providers are concerned about a starting assumption that 10-20% of providers are below what would be considered the acceptable baseline (as indicated in Annex B paragraph 57), which could present serious reputational ramifications for UK higher education.

Furthermore, such an assumption would pre-empt the fine-tuning of the data definitions for the outcomes, and of course an arbitrary line of 10-20% of the total provider pool would be a relative measure, and therefore not compatible with the principle of introducing an absolute numerical baseline.

### **The proposed use of contextual factors that should be taken into account**

The proposed contextual factors listed at Annex B paragraph 67 relate to specific internal or external factors (for example, ceasing to deliver a course, and the impact of COVID-19) and of an institution providing evidence to support improvement. As indicated in our comments above, there might also be scope for what could be seen as 'negative' outcomes in relation to continuation and completion indicators, to be considered in the context of forthcoming policy drivers allowing for more flexible approaches to higher education provision.

### **Proposal 3: Clarify the indicators and approach used for risk-based monitoring of quality and standards**

QAA agrees in principle with the proposals in Annex C in relation to monitoring ongoing compliance with regulatory requirements for quality and standards, which we see as a positive development. We agree that the emphasis of the current process on lag indicators is more indicative of past, rather than present or likely future, performance.

The consultation makes clear that there will be a need for future consultation, and that greater clarity of approach will be possible following the publication of the independent Pearce Review into the Teaching Excellence Framework (TEF) and the Government's response to that review. It will, for example, be necessary to assess in greater detail the process that will see the TEF being used as an indicator, where providers achieving the lowest TEF rating 'will know that additional scrutiny of their continued compliance with the B conditions was likely to take place' (para 78). This is because compliance with B conditions will be judged against an absolute numerical baseline, while TEF outcomes are benchmarked against expected performance.

In addition, and as set out in the 2017 DfE publication, *Teaching Excellence and Student Outcomes Framework Specification*, the TEF is intended to measure performance above the baseline. It states 'The TEF will build on this, providing an additional judgement on performance above the baseline, in the area of teaching and learning quality'. If only performance above the baseline is being measured through the TEF, then its use to indicate potential non-compliance with baseline B conditions would be limited.

An area which we believe will also require additional consideration relates to the suggestion to disapply one or more of the B conditions for providers that have demonstrated performance above the baseline as set out in paragraph 82. We agree that a proportionate risk-based approach to quality assurance will see a focus on providers that are perceived at risk of breaching registration conditions. However, disapplying registration conditions could create an uneven playing field for providers, potentially inviting legal challenge.

The consultation acknowledges that extension of the list of reportable events has the potential to create regulatory burden for providers, and states an intention to find an appropriate balance between such burden and the need to identify in advance likely breaches of conditions. As indicated above, concern over regulatory burden is an issue that



has been raised by QAA Members, and we are pleased to see that this will be a key consideration.

#### **Proposal 4: Clarify our approach to intervention and our approach to gathering further information about concerns about quality and standards**

As the DQB, QAA has worked closely with the OfS to support their statutory role in the assessment of the quality and standards of English higher education providers. We agree with the principles set out in the consultation that there should be a reduced need for intervention in cases simply due to a judgement of increased risk, with a corresponding increased likelihood of intervention following judgement that a breach is likely to have occurred. We also agree that the new proposed indicators should reduce the need to use enhanced monitoring to prevent possible further breaches.

We welcome the stated intention that, when commissioning the Designated Quality Body to collect further evidence, the OfS will set out the issues that are of concern and the type of evidence it requires.

We also welcome the proposal to publish information about decisions relating to a breach (para 96), as this will help ensure compliance with the requirements of The Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG), which sets out expectations around publication of reports at ESG Standard 2.6.

We would be interested in further clarification in relation to ensuring that the proposals in Principle 4 are consistent with HERA. In particular, the consultation states that the use of formal powers to gather evidence or information might be carried out by the OfS, the DQB or 'another appropriate body'. Sections 23, 27 and Schedule 4 of HERA set out the processes which allow the OfS to carry out the assessment of quality and standards, or for a body to be designated to carry out these functions. HERA does not contain provisions allowing other bodies to carry out assessment functions. Similarly, we would welcome clarification on the proposed separation of standards (registration conditions B5 and elements of B4 where the consultation says the DQB must be consulted) and quality (registration conditions B1, B2 and elements of B4 where the consultation indicates this is not a requirement).

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