



Office for Students subcontractual arrangements consultation – QAA response

Proposal 1: Introduce a new general ongoing condition of registration (Condition E8)

Are there aspects of the proposals you found unclear? If so, please specify which, and tell us why.

The new general ongoing condition of registration (Condition E8) is clear and includes welcome agility to accommodate a provider's context. We welcome the regulator addressing concerns about subcontractual provision and outlining explicit expectations of providers with regards to their arrangements.

It is less clear how the regulator intends to monitor compliance with the condition and identify and address areas of potential concern. There is a distinct lack of clarity regarding what will prompt regulatory action and how monitoring will incorporate reportable events. We recognise that the regulator requires a degree of agility to respond to evolving circumstances. This does, however, present a risk that future action will be taken that is not included in the consultation.

It is also unclear how the condition will work alongside the Department for Education's (DfE) proposals requiring OfS registration for delivery partners of a certain size to deliver a cohesive regulatory approach to subcontractual arrangements. For example, the consultation cites unregistered delivery providers as a risk, however the DfE proposals seek to change this. It is important that OfS and DfE are aligned on the risks of subcontractual arrangements, what criteria increases risk and how regulatory levers can mitigate these risks. Otherwise, it remains unclear to the sector which proposals take precedence, and what activity is deemed higher risk and subject to greater oversight.

The condition reiterates existing expectations of lead providers, albeit more explicitly, but does not include any measures to strengthen regulatory oversight. While we understand the rationale for being more explicit, that alone is not sufficient for the regulator to identify weaknesses and consequent risks to quality. The consultation itself recognises (in Paragraph 17) that it is unlikely existing regulatory obligations would be met without already having in place the expectations set out in Condition E8. It is not clear how Condition E8 will achieve its aims without additional measures to monitor compliance.

In your view, is the proposed definition of subcontractual arrangements clear and does it correctly capture the nature of these arrangements?

The definition used is clear and correctly captures the nature of subcontracted arrangements.

Do you have any comments on the scope of providers that will have obligations under the proposed condition?

We agree with the scope set out in the consultation but recommend that any metrics and

thresholds used align with the DfE proposals. It would be beneficial for both the sector's operations and the broader perception of, and trust in, the sector's activity for both bodies to use the same metrics and thresholds to determine risk.

Do you have any comments on the impact of these proposals for particular groups of students?

We encourage the regulator to consider the implications for access to higher education in their oversight of subcontractual arrangements. QAA analysis demonstrates a link between subcontractual arrangements and increasing numbers of students from IMD quintile one and two accessing higher education and therefore this particular group of students and their experience should be an area of focus.

Do you have any alternative suggestions to the approach we have proposed?

Our main concern with the proposals is the lack of a robust monitoring approach to enable the regulator to identify and act on evidence of non-compliance. We have therefore included below additional mechanisms which could operate alongside the condition to strengthen regulatory oversight of this area of provision.

Strengthened monitoring and oversight of partnership provision

Oversight via the lead provider can be strengthened by a regulatory framework which includes periodic quality reviews which incorporate partnership provision, as QAA's activity does in Scotland, Wales and Northern Ireland.

The regulator has existing powers to identify and intervene where provision is poor, or the student experience is at risk, as demonstrated by its ongoing assessments into subcontracted provision. The periodic assessment element of proposals for an integrated quality model should include a provider's ability to manage its own quality and standards, including in relation to its partnership provision. The new integrated quality model is an opportunity to achieve this.

Varying degree awarding powers

At the more severe end of concerns, the regulator could vary degree awarding powers for lead providers with poor sub contractual provision. The regulator has the authority to determine which bodies have degree awarding powers and how they can exercise them. This authority has been exercised recently with limits placed on the [degree awarding powers at Warwickshire College](#), which restricted the college using those powers to award qualifications at other institutions through a validation or subcontracted partnership. S.44 and 45 of the Higher Education and Research Act 2017 give the OfS power in this regard.

QAA recommends OfS consider circumstances where it may be appropriate to make use of the regulator's ability to vary degree awarding powers, as evidenced in the Warwickshire College case, to deal with the most serious regulatory concerns at lead providers.

Proposal 2: A governance and control environment for subcontractual provision

Do you have any comments on the nature of the risks that we have included in our draft guidance that we are proposing providers mitigate?

We welcome the acknowledgement of the risks to quality and academic standards posed by subcontractual arrangements.

For completeness, we would like to reiterate that while quality may look different in different contexts, academic standards should be absolute, and the awards conferred to students wherever they are taught must be comparable.

Do you agree or disagree with the minimum content requirements we have proposed for the single document we propose a provider should maintain? Please give reasons for your answer.

Yes.

The minimum content requirements proposed are broadly aligned with what is required of the condition and meeting those expectations.

We welcome the requirements around rationale in as much as it encourages providers to think strategically about the student experience they are offering to those taught via subcontractual arrangements. There are, however, implications that financial rationale will not be considered sufficient by the regulator. It is a reductionist approach to assume that subcontractual arrangements cannot be both be financially beneficial and deliver high-quality provision. If the OfS conducts thorough monitoring and is therefore satisfied that a provider is meeting the expectations outlined in Condition E8, publication of financial returns is unnecessary in assessing the quality of provision.

Do you have any views on any challenges that you anticipate with the implementation of this proposal?

The minimum content requirements involve policies and procedures that are a fair expectation for providers to be using. However, without a requirement to publish, or any clear triggers for action on this, it remains unclear how impactful this requirement will be.

Proposal 3: A provider to operate in accordance with the comprehensive source of information

In your view, are there any barriers to implementing the measures in this proposal, which require providers to operate in accordance with their comprehensive source of information? If so, please specify which, and tell us why.

It is a fair regulatory expectation that providers will act in accordance with the policies and procedures they include in their comprehensive source of information. What remains unclear is how, without a routine review of this information and activity, the regulator will be able to monitor these operations and act accordingly where they are not met. For providers, this approach also means that it would be difficult for them to ascertain if they have met the condition's obligations unless they were subject to regulatory action.

Proposal 4: Power of direction

Do you have any comments on the proportionality and effectiveness of our proposed approach to using subcontractual arrangement directions?

The risk posed by certain aspects of subcontractual arrangements to both the student and taxpayer interest have similar tenets to those posed by market exit. We therefore recognise the need for a similar direction power to enable the regulator to intervene where the risk is highest.

However, failing to require a formal investigation and the lack of clarity around what may

trigger the direction do cause concern. If the regulator wishes to intervene so extensively in a provider's operations, they must be clear about the criteria through which they will make such a decision.

Proposal 5: Requirements for providers to provide specified information relating to subcontractual provision

In your view, are there any barriers to implementation of this proposal?

It is a reductionist approach to assume that subcontractual arrangements cannot be both be financially beneficial and deliver high-quality provision. If the OfS conducts thorough monitoring and is therefore satisfied that a provider is meeting the expectations outlined in Condition E8, publication of financial returns is unnecessary in assessing the quality of provision.

For as long as higher education providers continue to struggle financially, financial rationale will continue to feature as a primary driver of commercial initiatives, including subcontractual arrangements. We believe, within this environment, OfS' bandwidth is better utilised focusing on the quality of this provision regardless of the level of financial benefit.

Proposal 6: Monitoring compliance

Do you have any comments on the appropriateness and effectiveness of our proposed approach to monitoring compliance with the proposed condition?

The condition reiterates existing expectations of lead providers, albeit more explicitly, but does not include any changes to the approach to monitoring compliance or measures to strengthen regulatory oversight. While we understand the rationale for being more explicit about expectations for subcontractual arrangements, that alone is not sufficient for the regulator to identify weaknesses in oversight and consequent risks to quality. It is not clear how the condition reiterating existing expectations will achieve its aims without additional measures. The consultation itself recognises (in Paragraph 17) that it is unlikely existing regulatory obligations would be met without already having in place the expectations set out in Condition E8. We recommend the alternative, additional mechanisms we have outlined in question 5 are used alongside Condition E8 to address this.

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