

QAA response to the Department for Education's consultation on franchising in higher education

Question 14: Do you agree with our proposal to require franchise delivery partners with more than a specified number of students to register with the OfS?

Yes.

Question 15: Do you agree that a threshold of 300 students is appropriate?

Yes.

Question 16: If you have answered 'No' in the previous question, at what level do you think this threshold should be set?

QAA recognises the need to set a threshold, and the reasoning behind the limit of 300 students is sensible when considering the risk attached to student loan funding. However, the Government should note that size of a franchised provider does not necessarily equate to the level of risk associated with its operations and provision when considering quality. Some large providers are often more established and have been operating for longer, which normally correlates to lower risk, while others that have grown rapidly may represent higher risk if their processes are not mature or effective enough to handle the volume. Setting out clear, additional risk criteria would enable a more nuanced approach.

Question 18: What positive impact might there be on providers or students as a result of these changes?

QAA welcomes Government's acknowledgement of the need for greater oversight and a proportionate approach to franchised provision, protecting the student experience. Government and parliamentary scrutiny in the past year has already increased attention on the issue and led to welcome changes in sector behaviour. There are inherent risks in franchised provision that are most evident in the growth of business and management courses and recruitment agent activity. In Scotland, Wales and Northern Ireland, QAA's regular review activity includes oversight of partnership provision. While the sectors are

different, particularly in this respect, we find the greater level of oversight to be effective in mitigating risk.

Question 20: What, if any, risks might there be from these changes?

QAA understands and welcomes the proposals from the perspective of protecting public money; it is right that Government action focuses on that. That said, it is also important for us as the UK's expert quality body to highlight the limits these proposals have on addressing the risks to quality and standards within franchised provision or correcting the mechanisms that have allowed franchised provision to flourish with minimal regulatory oversight. It should be noted that significant steps were taken in the middle of the previous decade to address similar issues in England with risks related to "alternative providers" and these proved to be successful in rooting out poor provision and improving regulatory compliance (for example the joint HEFCE/DfE-led Alternative Providers Intelligence Unit).

QAA welcomes DfE's acknowledgement of the need for greater oversight and a proportionate approach. However there is a significant and highly probable risk that any increase in oversight or regulation isn't matched with support for the sector on how to identify and address risks in their own provision, which could have the effect of both increasing regulatory burden and decreasing the potential efficacy of the approach. In effect, the approach could be seen as treating the symptom without addressing the underlying cause.

QAA's current development of the [UK Quality Code Advice and Guidance](#) on Principle 8 – Operating Partnerships with other Organisations – is an important part of supporting the sector to act, mitigating this potential risk. The guidance is co-created with sector experts, internationally recognised, and comprehensive. QAA has engaged DfE to ensure this guidance is aligned with broader government and regulatory activity. The Quality Code principles, and accompanying Advice and Guidance, are used in Scotland, Wales and Northern Ireland's regulatory systems. In England, the Quality Code remains a respected and embedded reference point in many providers. QAA is therefore best placed to deliver this guidance. Other approaches that may duplicate such extensive work would be unnecessary and unhelpful.

Impact on quality

Our principal concern with the proposals is the limited impact they will have on the oversight of quality in franchised provision. Action on franchised provision can focus on either the lead or franchised provider, the partnership arrangements, the provision itself,

or a combination of the four. These proposals address the franchised provider through their access to public funding. But the partnership arrangements and the provision delivered within them are not in scope, meaning that students remain at risk of poor quality without proper oversight.

Identifying quality concerns may become easier when a franchised partner is registered, but does not necessarily resolve the challenges where individual partnership arrangements will have different roles and responsibilities related to the quality of education in practice (as opposed to within overarching regulatory requirements). In a partnership where many aspects of the student experience, and therefore adherence to regulatory conditions, are determined by the lead partner, will the franchised provider face consequences if regulatory requirements are not met? Or will action be taken with the lead partner instead? This remains unclear in the current proposals.

Indirect regulation – where partnership provision is regulated through the lead provider – is cited in the consultation impact assessment as insufficient because it provides only limited powers to monitor and intervene in franchised provision. QAA has a different view. Oversight via the lead provider can be robust if such oversight includes periodic quality reviews which incorporate partnership provision, as QAA's activity does in Scotland, Wales and Northern Ireland.

Existing regulatory powers should be sufficient to regulate this type of provision well. The risk with the English system is not necessarily that the oversight is occurring through the lead provider, but rather that the current mechanisms are not implemented efficiently or effectively to deliver robust oversight of provider provision. The OfS already has the 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 regulator also has the authority to determine which bodies have degree awarding powers and the means by which 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.

We were therefore encouraged to see the Secretary of State's Ministerial Statement in which she set out that the OfS has been asked to urgently strengthen the requirements on the providers which subcontract provision and believe this should be possible within the OfS's existing powers, but would perhaps require its regulatory approach to be altered.

In particular, to more effectively address concerns about quality and standards in franchised provision, the OfS could:

1. Embed quality periodic review into its integrated quality model, which would include looking at all types of partnership arrangements in its scope.
2. Consider circumstances where it may be appropriate to make use of its ability to vary degree awarding powers, as evidenced in the Warwickshire College case, to deal with the most serious regulatory concerns at lead providers.

Question 21: Do you agree with our proposal that state-funded schools, the statutory further education sector, NHS Trusts, Councils, and Police and Crime Commissioners should be exempt from the requirement to register with the OfS?

Yes.

Question 22: Do you agree that providers should not be exempt from registering with the OfS if their provision is regulated by an appropriate PSRB?

Yes.

Question 30: Do you agree that there should be consequences for providers who exceed the threshold without being registered with the OfS?

Yes.

Question 35: Do you agree that no action is needed in relation to provision delivered by franchise providers operating in devolved government areas?

Yes. Should there be specific cases of concern where this might apply, DfE and the English regulator should hold discussions with Devolved Administrations, relevant funder/regulators and QAA to identify any action required.

