

Building a new federal regulatory environment for UK higher education

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While not front and centre in most party manifestos, the government that emerges following the May 2015 UK general election will need to confront the increasingly complex and confusing regulatory architecture for higher education. Higher education providers are themselves becoming more vocal in their displeasure with the existing regulatory arrangements (UUK 2015) as is the UK's Competition and Markets Authority (CMA). Something will have to be done to address emerging gaps in the existing systems.

Important considerations for the future of UK higher education regulation

I would suggest there are five key areas, or principles, which should guide policymakers constructing a new regulatory architecture for UK higher education:

- (1) Regulation needs to respond to complexity at three levels:
 - a. Institutional differentiation (including institutional mission, programmatic focus and corporate form);
 - b. Regional differentiation; and
 - c. The needs and motives of students to pursue higher education.
- (2) Regulatory frameworks should retain some consistency across the UK;
- (3) Regulation should respect institutional autonomy;
- (4) It should pursue *equitable*, not necessarily *equal*, regulation; and
- (5) It should focus on uncertainty-based regulation, by which I mean the resilience of providers: their ability to adapt and respond to knocks, scrapes and disruptions in the higher education market.

This short article will focus on the first two points under the complexity of the higher education regulation: institutional and regional differentiations.

Institutional differentiation

The increasing complexity of higher education provision in England has led to distortions in the regulation of higher education institutions and created blind spots in the regulatory environment. For example – it is theoretically possible for new higher education providers to exist ‘off-grid’ – that is, have no direct interactions with regulatory protection for students and the public. The CMA (2015) most recently identified this issue in a policy paper.

Different institutions have different missions, varying track records and varying levels of performance (which can be measured using many different metrics). It stands to reason that the regulatory architecture designed to help manage a growing higher education marketplace should take into account some factors of institutional operations, drawing on points raised in the other principles, including:

- An institution's *management of risk* and evidence of sound management;
- An institution's *track record*; and
- An institution's *outputs*, including student engagement, degree completion rates and successful quality reviews in their many forms.

It makes sense for regulatory resources to be directed to those areas of greater uncertainty, to protect both the student and public interest in higher education. This translates into equitable, rather than equal, application of regulation. The application of regulation should reflect the nature, behaviour and performance of individual providers. Equal application of regulatory requirements translates into costly and unnecessary intrusion into the operations of some providers or misses threats to the health of the sector by not having the right kind of oversight.

Equitable regulation allows regulators to consider the necessary level of oversight of a provider's operations based on factors such as the strength of its institutional governance processes, demonstration of forward planning, and meaningfulness and sophistication of an institution's performance indicators. Regulation can ensure expectations are being met without treating all institutions the same. For example, one could see the introduction of a 'probationary' period of greater regulatory oversight until such time as institutions have 'earned autonomy' for fewer regulatory interventions except when there is an identified problem or question of performance.

Furthermore, differing institutional missions could be reflected in regulatory expectations. For example, one expects much higher degree completion rates among highly selective institutions compared to institutions employing a more 'open access' policy.¹ Regulators could fine-tune the key indicators for institutional success based on articulated institutional goals in a way that supports institutional differentiation while ensuring the student and public interests are still being protected. We see some semblance of this approach in the Government of Ontario's strategic mandate agreements with universities in Canada (HEQCO 2013) and in Scotland's university outcome agreements (SFC 2014).

Regional differentiation

UK higher education is increasingly awake to the reality that the UK is, as far as higher education is concerned, a federal system (Constitution Committee 2015). I

¹ There is considerable evidence in the United States for a direct correlation between university admissions selectivity and degree completion rates. For example, see NCES (2014) and Bowen et al. (2009).

have some experience with federal systems having been a policy advisor on higher education to the Government of Ontario in Canada. In that capacity I often looked to the United States for policy lessons drawn from another federal system where higher education is largely a devolved responsibility.

As one may imagine, federalism brings challenges and an additional layer of complexity to regulation. In the Canadian context, inter-provincial university relations and student mobility can be hampered by differing regulatory and financial arrangements. To combat this, governments undertake lengthy and costly negotiations over harmonisation of policies across or between provinces.

Unlike Canada and the United States – where the starting point was many differentiated systems – there is still considerable consistency in the underpinning policy structures for higher education across the UK (notwithstanding some historical elements). The English, Welsh, Scottish and Northern Irish higher education ‘environments’ can speak to each other fairly easily. This is a strength that should not be abandoned lightly – it is something American and Canadian higher education jurisdictions struggle to create.

There are a number of ongoing developments that may pose challenges for UK higher education maintaining some coherence across the UK:

- The new Higher Education (Wales) Act 2015 points towards an increasingly centralised and directed regulatory regime. Furthermore, the funding Welsh students receive to study in England supports student mobility but means Welsh higher education funding may be diverted from Welsh universities.
- Scotland maintains a policy of no upfront fees for Scottish students (and by extension, European students) but assesses potential ‘fee refugees’ from other home nations’ student fees comparable to England (not unlike Canadian and American out-of-state fee regimes).
- Northern Ireland, Wales and Scotland have not expressed the same desire for expansion of new, independent providers as seen in England. This may create problems with collaborative provision and the management of public funding flowing between home nations and between institutions. Furthermore, once approved for operations in England, what real controls will Northern Ireland, Scotland and Wales have over new providers in England?²

The UK does have the means of ensuring that the underlying quality of higher education is consistent across the country. In fact, it is important that the UK retain a semblance of a UK higher education brand, anchored in a reputation for inventive, engaging student experiences and influential research. For the international higher education community, including overseas students, there is little reputational distinction between the home nations. Failure of proper regulation in one nation will

² On 19 January 2015 the Welsh Government launched a consultation on the designation of courses offered by alternative providers for student support (Welsh Government 2015).

threaten the reputation of all. Higher education providers in each home nation have a vested interest in the effective management of providers across the UK.

At the moment, the UK benefits from having data collection through the Higher Education Statistics Agency, university applications through the University and College Admissions Service, and quality assurance (for the time being through the Quality Assurance Agency)³ managed by organisations that have a UK-wide reach. While there may be legitimate criticisms of how these agencies operate, the benefit of a UK-wide approach should not be underestimated. Policymakers in Canada and the United States have laboured to create some consistency across their federal systems that the UK already enjoys.

However, differing policy initiatives arising from federalism do offer an opportunity to learn from natural experiments. One such example is quality assurance. The Scottish approach to quality assurance – enhancement-led and considered to be more collegial than elsewhere in the UK – has been floated as an exportable model for other parts of the UK. While laudable, it may be very difficult to implement the Scottish quality assurance approach in the increasingly large and complex English higher education environment. However, one could imagine the application of enhancement-led quality assurance in the other home nations, Wales and Northern Ireland. Given their relative size and comparatively speaking, homogenous systems, Wales and Northern Ireland could be well suited to an adapted enhancement-led approach borrowed from Scotland rather than assuming the approach taken by England. While there would be many details and challenges to address, such an approach could see the growth of a ‘Celtic’, enhancement-led quality assurance system across Northern Ireland and Wales, borrowing from the policies developed in Scotland, complementing a tiered, targeted approach in England.

Although the result would be two different approaches to quality assurance, there could still be core values and principles tying UK higher education quality assurance together, protecting the UK higher education ‘brand’ internationally and assuring students and the public of their value of higher education across the four nations of the UK.

Supporting differentiation

The UK does not have a single, homogenous higher education sector. Consequently, the future regulation of higher education needs to reflect increased nuance and differentiation to protect the integrity of UK higher education while supporting the strength of its world-leading institutions.

³ The Higher Education Funding Council for England (HEFCE 2014), in collaboration with the Higher Education Funding Council for Wales and the Department for Employment and Learning of Northern Ireland, is leading a review of higher education quality assurance in each of England, Wales and Northern Ireland (the Scottish Funding Council for higher education is observing but not taking part in the review). The result of this consultation could be different arrangements for quality assurance of higher education effective September 2017.

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