centre for analysis of risk and regulation

The regulation of higher education

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DISCUSSION PAPER NO: **77**
DATE: **May 2015**

THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE

The regulation of higher education

Edited by Martin Lodge

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Published by the Centre for Analysis of Risk and Regulation at the
London School of Economics and Political Science
Houghton Street
London WC2A 2AE
UK

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ISSN 2049-2718

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Regulating higher education
A comparative perspective

Martin Lodge[1]

To say that higher education is in a state of flux is stating the obvious. The past decade has witnessed a further expansion in student enrolment, growing internationalisation in academic as well as in student recruitment, and considerable funding cuts, at least in those countries most affected by austerity-related public expenditure cutbacks. In the UK, so-called alternative providers (for example, BPP) have emerged that offer not just professional qualifications in accounting and law, but are vying to enter other disciplines. There has also been growing interest in the potential impact of digital learning technologies, most of all so-called 'Moocs' (massive open online courses), on the viability of traditional forms of teaching delivery. Finally, private international ranking exercises have received considerable attention, such as the QS World University Rankings or the more subject-specific *Financial Times* ranking of international business school programmes.

The UK offers a particularly interesting case for the study of higher education and its regulation. One key challenge has been the growing diversity across the different countries that form the UK, not just in terms of tuition fee regimes. In England, the past five years have brought about changes in the funding regime, with the elimination of teaching grants paid to universities for all but some select disciplines (the so-called STEM subjects covering science, technology, engineering and mathematics). Instead, funding was to be provided through a considerable rise in student tuition fees that, in turn, were backed by the taxpayer. Revised calculations by the Institute of Fiscal Studies in 2014 suggested that the new funding regime was unlikely to reduce taxpayers' involvement as up to 43 per cent of all fees would never be fully re-paid (original calculations had put this figure at 28 per cent) (*Daily Telegraph*, 24 April 2014). Scotland was, at the time of writing, engaged in consultations about government-imposed changes in university governance requirements (*Financial Times*, 3 April 2015). Furthermore, the existing system of capping student places was abolished, allowing universities to expand student places. On the (UK-wide) research side, the latest round of the Research Excellence Framework (previously known as the Research Assessment Exercise) included changes in emphasis, especially with the addition of 'impact' as an assessment criterion.

These developments placed considerable strains on the existing institutions of higher education regulation. However, how do these developments, especially those in

[1] I am immensely grateful for the information on the various national experiences provided by Philippe Bezes, Arjen Boin, Julia Fleischer, Arie Freiberg, Nao Kodate, David E. Lewis and Christine Musselin.

England, compare with those elsewhere? There is dearth of research into the regulation of higher education, especially in comparative perspective (Dodds 2009; Capano 2011; Frølich 2011; Dobbins and Knill 2014; Teelken 2015). Existing studies have focused on the Bologna process and on aspects of managerial performance management (Curaj et al. 2012; Hoareau 2012, 2011). This short article offers a brief introductory comparison of regulatory developments.

Different modes of regulation

The regulation of higher education involves different objectives and is, traditionally, associated with a number of different regulatory modes or styles (Hood et al. 2004). For example, conventionally universities are seen as places of considerable competition or rivalry when it comes to access for students, as they present gateways to social mobility. Similarly, they are also places of rivalry in that academics seek recognition and status through findings, publications and research grants. At the same time, there have been dominant themes regarding 'academic freedom' (granting academics the right not be muzzled and autonomy in their work) as well as institutional autonomy from government, even where appointments and curricula may require *ex ante* vetting by ministries. This limited hierarchical oversight is matched by a strong emphasis on mutuality, be it in collegiate decision making at the university level or the wide-ranging peer review convention that guides the worlds of research in particular. Finally, there have also been elements of unpredictability in the allocation of peer reviewers and in opportunities for job openings and promotion. These different modes of regulating higher education are summarised in the table 1 below which builds on Christopher Hood and colleagues' comparative studies of regulatory regimes (Hood et al 1999; 2004).

Table 1: Different ways of organising regulation in higher education

Contrived randomness Anonymity of reviewing process, circulation of staff, changing evaluation/assessment criteria	**Oversight** Reporting to ministries/agencies; growing inspection and evaluation systems; curriculum setting; appointment by ministries
Rivalry League tables, competition over grant funding and student recruitment.	**Mutuality** Academic peer-review, collegiate decision-making, emphasis on decision making by committee

These four ways of regulating have their benefits – mutuality with its stress on professionalism, rivalry with its stress on 'competitive spirits', contrived randomness with its stress on gaming-avoidance, and oversight with its emphasis on rules and consistency. All four modes also come with their disadvantages: mutuality with its potential for unaccountable 'clubbiness', oversight with its tendency to juridify and centralise, rivalry with its tendency to reduce solidarity, and contrived randomness with its tendency to destroy trust. Whether it is helpful to advocate 'hybrid' solutions consisting of one or more combinations of these has been a matter for considerable

controversy. Some, such as Hood (1998) and Verweij and colleagues (2006) suggest that hybrids or 'clumsy solutions' may offer a way of reducing potential side effects; others note the inherent contradictions and conflicts that such attempts involve (Lodge and Wegrich 2005).

There are a number of key themes in the study of regulation that can be used to explore the changing character of regulation in higher education and its direction of travel. One is whether there has been a wider shift towards an 'audit explosion', as diagnosed by Michael Power (1997) in the late 1990s, using experiences in the UK as an illustration. Accordingly, we would expect to witness a an explosive growth in 'audit' to assess higher education institutions. This growth in audit may therefore be seen as a rise in oversight – but may also be seen to bring its own increase in contrived randomness as assessment criteria are continuously being shuffled around.

Furthermore, the supposed shift towards an increasingly international and marketised form of higher education also implies a growing move towards more competition and rivalry, whether in terms of international and national ranking exercises, or competition for students, staff and research money. In other words, positional competition may be said to have increased considerably.

Taking these trends together, one might expect the past two decades to have witnessed a decline in mutuality and a growth in both oversight – given demands for audit, evaluation and other procedural regulatory instruments – and rivalry. This in turn might be expected to have consequences for the nature of higher education institutions themselves, namely a shifting of organisational resources away from the front lines of teaching and research towards a ballooning of armies of university-based internal quality checkers and other administrators.

Where were we then?

Over ten years ago, Christopher Hood and colleagues conducted one of the few comparative studies into the regulation of higher education within the context of a broader interest in changing patterns in the control, or regulation of, modern government (Hood et al. 2004). The overall direction of change pointed to the rise of an 'oversight explosion' (with the remarkable exception of the US), especially with the already noticeable Bologna-related changes which had given rise to the 'European Network of Quality Assurance in Higher Education, ENQA. The rise of oversight was, however, largely of an indirect kind, namely by relying on league tables and peer-led evaluations.[2]

Among the broad trends, the national constitutional differences between the higher education systems of the US, England and Wales, Germany, Japan, France, and the Netherlands remained remarkable. These differences were particularly prominent in

[2] This section is a summary of the findings presented in Hood et al. (2004).

view of how universities have been embedded in the institutions of the state, their closeness to ministries (in those systems where professors were full-blown civil servants, appointed by ministers) and how far the logic of marketisation had already started to creep into their higher education sectors.

In England and Wales, funding and therefore central control. was exercised by HEFCE on the basis of certain criteria. However, oversight was accompanied by a high degree of rivalry for students, and league tables and other benchmarking exercises, especially relating to research, were already highly prominent. The regulation of teaching quality reflected a mixture of mutuality and oversight in that centralised oversight by the QAA was exercised by fellow academics rather than 'independent' inspectors. In the assessment of research, regulation reflected more a combination of mutuality and rivalry as fellow academics judged the work of their colleagues which then resulted in judgements that were widely used to benchmark universities. On its own, therefore, the regulation of England's higher education sector displayed many features that were noted above, namely a growing emphasis on markets and on audit, accompanied by a growth in internal university management to manage teaching and research aspects within institutions (Scott 2004a).

In contrast, in the US, there was comparatively very low interest by federal and state level institutions in the performance of higher education institutions. Instead, an important role was played by accreditation bodies whose assessment was critical for access to federal support for student loans and research funding. Competition for research grants and students was high. Whether or not recipients of research grants were audited at the end of their grant was, however, a matter of chance (Peters 2004). In Japan, a trend towards reduced ministerial oversight for national universities featured prominently in the early 2000s. This oversight was absent in the case of the large number of private universities. Accreditation bodies played a significant role, and the state had become involved in centralising and harmonising accreditation requirements. Finally, there was considerable competition for research funding and students (Hirose 2004). Australia, often seen as a 'natural leader' by UK-based observers had, over the years, witnessed the move of the higher education sector to the level of the Commonwealth, and was characterised by centralised reporting and auditing towards the relevant ministry which, in turn, decided on research grants and funding levels. Unlike New Zealand, no shift towards a competitive research assessment and other league-tabling exercises had taken place (Scott 2004b).

France was characterised by non-public inspections and close relationships to the central government ministry. Appointments and selection were on the basis of peer assessment and formal examinations. Very little rivalry existed across institutions in comparison to other national examples (de Montricher 2004). Germany was, at the turn of the century, witnessing a continuation of tripartism which granted students considerable representation in university management. There was, however, a diagnosed decline in the status of the 'professor' as reflected in the slight increase in mandatory teaching requirements and the reduction of other perks (such as private bathrooms). In turn, this encouraged a greater degree of collegiate decision making at

the departmental level. There was also a change in the relationship to the sub-national (Land) ministry, with tendencies towards a growing managerial autonomy being granted to universities. Appointments nevertheless needed to be approved by the ministers responsible. While research grants were allocated on a limited competitive basis, there was very little emphasis on rivalry in terms of student recruitment or other benchmarking activities, especially concerning research output (Derlien 2004). Similarly, the Netherlands were seen to witness only limited rivalry when it came to research funding. There was a move towards growing university self-management and thus also a rise in emphasis on ex-post quality control. Activities such as accreditation and evaluation were mutuality-based (Huisman and Toonen 2004).

Where are we now?

By 2015, the UK had witnessed increasing diversification in its higher education policies due to devolution. Universities in England witnessed a change in funding regime (from grant to state-backed tuition fee-based income), the assessment of teaching quality had moved to a 'regulated self-regulation' model (THE 2001), a change in research-oriented assessment that emphasised 'exceptional' research output as well as 'impact', and a separate regime that sought to encourage 'fair access'.

How then does the UK fare in comparative perspective? Based on a small survey, what can be said about changes in higher education regulation? One country that was said to have witnessed hardly any changes was the Netherlands, although discussions about changes in the regime were said to be well-advanced at the time of writing. In the US, growing concerns emerged regarding student loans. This triggered federal and state government attention regarding the proliferation of private, for-profit organisations, many of which were deemed to be of dubious quality. In addition, there was a growth in procedural regulation that applied in particular to medicine, and the importance of (private) ranking exercises had grown even further. Similarly, rivalry over research funding had increased.

In Japan, concern about international competitiveness and demography resulted ina growing governmental interest in the higher education sector. This meant, on the one hand, a continued decentralisation of managerial tasks from the ministry to the national university level. National universities had been turned into independent administrative bodies with more discretion in terms of hiring and salaries. However, there was also a parallel centralising trend in terms of managing student numbers in a highly diverse sector of about 800 universities. The central ministry (MEXT, the Ministry for Education, Culture, Sport, Science and Technology) cut subsidies to private universities in metropolitan areas where actual student intake exceeded their quota by more than 20 per cent. The government's central objective was to create a number of world-leading 'Type-A' institutions, partly by enhancing international academic recruitment and collaboration, changing the teaching year to facilitate international exchanges, reducing professors' autonomy vis-à-vis university management, and introducing performance-related components in the reward system while reducing tenure.

Similar concerns about global competitiveness, as expressed in international rankings, were in evidence in France and Germany. In France, there was a continued, and growing, move towards granting universities further autonomy, such as in terms of managing their payroll. This, in turn, generated a number of financial problems in the sector. There was also a degree of control specialisation as funding decisions moved towards a degree of performance-based budgeting, based on a centralised national agency that was concerned with funding allocations (HCERES, *Haut conseil de l'évaluation de la recherche et de l'enseignement supérieur*, created in 2006). Similarly, the government also required the regional coming together of universities, research organisations and *grandes écoles* (Comue). There was also more rivalry in terms of research funding as funding became increasingly project-based under the auspices of a national research council (the ANR, *L'Agence nationale de la recherche*), while teaching quality witnessed a rise in evaluative oversight. Overall, there was a growing bifurcation between institutions identified as 'national champions' (*grand emprunt*) and others.

While rivalry over student recruitment was arguably still limited in France, it had become increasingly prominent in Germany. The idea of identifying 'national excellence' emerged in the context of competition for federal funding under the so-called 'excellence initiative' (although funding decisions were accused of accommodating federal sensitivities). This was a further move towards granting universities managerial autonomy, and growing rivalry when it came to the recruitment of students. The latter was also in evidence when it came to seeking international students by organising English-language programmes. More generally, there was a rise in *ex post* evaluation and audit, especially due to reforms inspired by the Bologna process and changes to the German degree-type structure. This in turn, facilitated changes in the way university courses were regulated and evaluated so as to be 'Bologna compatible'. This process had, in the late 1990s, started as a largely peer review process, but this decentralised accreditations system led to the creation in 2002 of a centralised 'standard-setter', the *Stiftung zur Akkreditierung von Studiengängen in Deutschland*. The goal of this body was to set standards that individual accreditation organisations were to maintain, both in terms of programme- and institution-specific evaluations. In other words, the German world of teaching quality evaluation had already moved towards a scenario that was being considered in the context of the English QAA (Quality Assurance Agency for Higher Education) in late 2014 (*Times Higher Education* 2014).

Finally, developments in Australia foreshadowed to some extent developments in England. However, they were also characterised by ongoing uncertainty about the future of the regulatory framework. In 2008, the *Review of Australian Higher Education* (the Bradley Review) marked a shift towards a regime that subsequently moved towards student-place uncapping, tied to fixed pricing. There was an overall reduction in the government contribution per place that was compensated by uncapping prices and therefore making 'users' contribute further to their education. As regulator, the Tertiary Quality and Standards Agency (TESQA) was established in 2011 to replace the Australian Universities Quality Agency. TESQA was to address

criticism that earlier attempts at auditing quality had not led to robust assessments. Instead, a focus on targets and threshold standards was to ensure quality assurance, undertaken on a 'risk based' basis. TESQA's subsequent attempts at establishing higher education providers' risk profiles ended in concerns about regulatory burdens. Complaints by higher education institutions led to a further review of TESQA's activities and attempts at reducing documentation requirements.

Conclusions

This overview points to a number of commonalities. One is that there has been a continued oversight explosion in the higher education sector across countries. As in the case of the diagnoses from over a decade ago, these changes were mostly of an indirect kind, namely, by granting universities the 'discretion` to develop their own institutional self-assessment regimes, which in turn were then evaluated. In other areas, such as the US with its student loans crisis, Japan with its declining population numbers and France with its mandatory reorganisations, interventions could take on a somewhat more direct form. Australia's change in funding regime and its subsequent battles over risk-based regulation, institutional profiles and standards provides for further evidence of the dual dynamic of growing marketisation and competition that is coupled with growing hierarchical oversight and reduced discretionary professional judgement.

The oversight explosion continued to be associated with variation over assessment criteria, and therefore a degree of contrived randomness. Mutuality remained central in terms of academic peer assessment, but arguably came increasingly under pressure in a world of professionalised university management. Most prominent, however, was the growing internationalised nature of positional competition among universities that went increasingly beyond national boundaries. This, in turn, raised further questions as to the purpose and scope of national regulation of higher education.

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Reforming quality assurance in higher education
Putting students at the centre

Simeon Underwood

The purpose of this article is to offer some insights on higher education regulation from the viewpoint of a senior university administrator. I will take as my main example the form of regulation known as Teaching Quality Assurance(TQA), because it is the one of which I have the greatest and most sustained experience. At the time of writing the architecture of the regulatory system in this area is once again under discussion, and my hope is that this short note might inform those discussions.

To set this in a personal context, TQA has until recently been an important, often the dominant focus of my professional life. At York University from the mid-1980s I was closely involved as the University responded to some of the early stages of the quality assurance movement. At Lancaster University from the mid-1990s I ran a unit which offered courses and consultancy on TQA, and especially on preparing for Quality Assurance Agency (QAA) Subject Review visits. And at the LSE since 2000 my work has included mediating between the School and the QAA and leading the School's efforts to gain degree-awarding powers independent of the University of London.

This article is written from an 'old' university perspective. I have had little direct experience of the work of the Council for National Academic Awards in the 'new' universities. But it is clear that that work was impressive, and critical to establishing the credibility of the ex-polytechnics when the binary line was abolished in 1992.

For the old universities, quality assurance as a distinct area of activity began between 1984 and 1989, when the then Committee of Vice-Chancellors and Principals (CVCP) issued a series of reports on 'Universities' methods and procedures for maintaining and monitoring academic standards in the content of their courses and in the quality of their teaching'. At the time, they were called the Reynolds Reports after their main author, Professor Philip Reynolds, Vice-Chancellor of Lancaster University.[3]

It is interesting to look back at the areas Reynolds chose to address in his Reports. These were:

- the external examiner system;

[3] The various sections were issued in draft form for comment by universities between 1984 and 1986; the main report itself was published July 1986 and it was followed by three reports on universities' implementation of its proposals, in July 1987, 1988 and 1989.

- external involvement in the maintenance and monitoring of academic standards – this is mainly about accreditation by professional external bodies;
- postgraduate training and research – in spite of its title, this was about research degrees;
- appeals procedures at research degree level; and
- as a last catch-all, universities' own internal procedures – this covered scrutiny of new courses or degree programmes, or revisions to them; monitoring existing courses and degree programmes; monitoring 'the effectiveness of teaching by members of the academic staff'; and monitoring student progression.

Re-reading the Reports, what is most striking in retrospect is their clarity and brevity. Thus the topic of external examining is dealt with in 23 paragraphs on 3 sides of an A4 sheet. The catch-all collection, even though it covers at least four discrete areas, is only 26 paragraphs long. The whole document, including a seven-side foreword and a three-side introduction, runs to 36 sides in total. The prose is uncomplicated. As an example, the first paragraph of the Foreword reads, in its entirety:

> Quality and standards are words in constant use. Few stop to think what precisely they mean, and many could give no precise definition if they did (CVCP 1986: 3)

In my view, clarity and brevity were lost in what followed, and one of the aims of any new architecture should be to retrieve them.

So what reception did the Reynolds Reports receive at the time? My recollection is that, once it was recognised that this was not an attempt to impose a CNAA-type[4] quality assurance infrastructure on the older universities, it was largely felt to be harmless. For most of the proposals outlined in the Reports, the universities could plausibly say 'we do this or something like it already'. The only major point of controversy was the proposal that external examiners should make annual written reports to the Vice-Chancellor. Reynolds offered no rationale for this, only a characteristically crisp account of how it was to work:

> External examiners should make written annual reports as well as a written report at the end of their period of office. They should be free to make any comments they wish, including observations on teaching and course structure and content. Such observations are of particular importance in the final written report. A copy of the report made by an external examiner at the conclusion of his (sic)[5] term of office might be

[4] Council for National Academic Awards (1965–93).
[5] It is striking that the 14 members of the Academic Standards Group which produced these reports are all male.

> copied to the incoming external examiner after the examinations at the end of his first year (CVCP 1986: 15, para. 22).

In view of the universities, this was going to mean that people would be unwilling to act as external examiners because of the extra work these reports would entail. This in turn would damage the university examining system as a whole. In the event these fears were not borne out; external examiner reports, produced to the outline set out in Reynolds, are now a well-established and important part of the quality assurance apparatus in all universities.

But the recommendations in the Reynolds Reports were voluntary, and the universities took the view that they could choose which of the proposals to disregard. So, for example, the third follow-up report states that six universities were not following the recommendation on external examiners reports (CVCP 1989: 4, para. 4). In all the discussions today about the future shape of teaching quality assurance arrangements, it is important to remember that the voluntary code of good practice didn't take root.

The university sector did not give careful enough thought to the implications of not treating the Reynolds Reports with high seriousness. The consequences followed quickly in the emergence in the early 1990s of the institutional level Academic Audit. This was succeeded, very shortly by subject level Quality Assessment, later re-named Subject Review. It is though possible that the government might not have regarded the Reynolds Reports as strong enough for their intended purpose even if all universities had abided by them.

In my view, the one aspect of subject level quality assessment that made a real and direct difference to teaching quality in universities came in the first few rounds of subject reviews, when the auditors undertook teaching observations without announcing beforehand whose teaching they were going to observe. These were termed 'the observation of samples of all forms of teaching' (HEFCE 1993–95), though in practice they focused mainly on lectures. They were governed by a detailed protocol (HEFCE 1993–95: 35–6). The teaching observed was graded excellent, satisfactory or unsatisfactory. Because no one knew quite how these gradings would be put to use, this meant that everybody in a department had to get engaged: to think about how they did their teaching; to review and refresh their teaching materials.

This view, or something close to it, was also shared by Sir David Watson, a major participant in and commentator on quality assurance policy over the past 25 years. In a 2006 polemic *Who killed what in the quality wars?*, he enumerated the casualties from the disputes over the shape of the UK HE quality assurance model:

> A fourth casualty is the interests of our students. At one level, and at least initially, in the early days TQA did, indeed, ensure minimum

> standards, by driving out unacceptable practice: essays were returned, reading lists updated, tutorial absences monitored. If you want an example, look at the report of the very first TQA judgement of 'unsatisfactory' (on postgraduate English at Exeter): it describes a world which no longer exists (and a good thing too). … The [quality assurance] war itself distracted us from improving teaching as much as we could have done (Watson 2006: 6).

The decision to drop this from the later rounds was in my view the moment where the management of quality took over from the delivery of quality. In the later stages, when the visits were scored on a scale of 1 (bottom) to 4 (top) against six aspects of provision, three were cases where departments received scores of 4 for 'quality assurance and enhancement' having also obtained 2 or 3 under 'curriculum design, content and organisation', 'teaching, learning and assessment' and 'student progression and achievement'. In other words, quality assurance could be good even if teaching quality wasn't.

This rather cerebral and indirect approach took an even stronger grip with the various recommendations on quality in the Dearing Report (1997) and the development of the Quality Assurance Agency 'Quality Infrastructure'. This contained several different components. In roughly descending order these were:

- the Framework for Higher Education Qualifications, a typology of qualification titles designed to ensure that qualifications that share a common title are of a common level and nature;
- Subject Benchmark Statements, designed to set agreed national standards in each subject;
- Programme specifications, a proforma template intended to produce standard information on all degree programmes with a special focus on intended learning outcomes; and
- Codes of Practice 'to promulgate good practice in relation to support of student learning and maintenance of academic standards' – in effect, a direct successor to the Reynolds Reports.

Watson (2006: 4) termed this 'a mind-blowingly complex and inoperable descriptive mass'. The task of implementing it, within a relatively short period of three to five years, placed a sizeable management and administrative burden on universities. In my view the approach the QAA has taken both in this period and subsequently has been over elaborate and at least some of the effort has been unnecessary.

For example, it was never clear who or what the 'Programme Specifications' were for. There were, and still are, circumstances in which they might conceivably have a use. But the long-standing requirement that all institutions should produce them for all programmes was always very difficult to justify, especially to academic audiences, in terms of value for education or money. This

is especially so given that they have been largely superseded by other developments, such as the Key Information Sets which are now produced for prospective undergraduate applicants.

Similarly, in the early public presentations the QAA made about the Codes of Practice, it talked in terms of 16 sections which were going to be gathered together into an over-arching code to form the backbone of institutional audits. So the initial intention, though it was never fully realised, was to cover eight more topics than Reynolds had felt it necessary to cover. Also, the topics were covered in greater depth – in its latest iteration, the Code contains a chapter on external examining that runs to 35 pages with 18 indicators. Moreover, over the period since the sections of the Code were first issued, they have been refreshed through a cycle of near constant review and revision, supported by a cycle of frequent consultation and 'roundtable' meetings. Given that the sections are about broad principles – eternal verities rather than time-specific details – the reviews and revisions have been too frequent.

By 2015, and from my perspective as a senior manager, the high tide of the quality assurance movement has passed. The QAA is now less of a concern to institutions than it was. Universities are learning institutions, and we have learnt how to assimilate its requirements. This should have implications for revising the quality assurance architecture, in that institutional audits, which are now the main vehicle for interaction between the QAA and institutions, now lead to diminishing returns, on both sides. By contrast:

- Meeting Home Office regulatory requirements in relation to student visas are extremely serious. The risk of losing 'highly trusted sponsor' status is technically remote, but were it to happen, the impact in reputational and financial terms would be immense and immediate, even catastrophic.
- Even though the Office of the Independent Adjudicator (OIA) has been in existence for over ten years, the sector has not yet got its measure. The appropriate senior managers need to pay close attention to every public pronouncement and every individual case decision it makes. In its way, also, the OIA is contributing to quality enhancement as some of the recent decisions we at the LSE have had on complaints involving disabled students have shaped our thinking in this area far more than the corresponding material in the QAA Code.
- The Office for Fair Access has set up an intelligent engagement with institutions about the issues with which it is concerned. The Access Agreement is not just a paper exercise but the basis for a conversation (although its annual monitoring return is more problematic in terms of value to the institution or the issues).
- The Higher Education Statistics Agency (HESA) still makes large demands on institutions in terms of time and resource. The HESA student return becomes more technical and complicated year on year. Also, the scale of what institutions have to do is not widely known. Even the return for a relatively

> straightforward institution such as the LSE involves over a million items of data (Underwood 2012).

After about 30 years of exposure to varying models of TQA, institutions may finally be reaching a stage where they can make choices about managing teaching quality assurance – what to prioritise, where to put resource. For all the QAA's rhetoric about institutional autonomy over the years, it has never been the case that institutions have felt that it is safe to **not** do what the QAA has wanted them to do.

In re-designing the quality assurance architecture one possibility might be to go back to Reynolds. Just as the European philosophical tradition is said to consist 'of a series of footnotes to Plato' (Whitehead 1978: 39), most of what has followed in the TQA movement is a series of footnotes and commentaries on Reynolds. So why not return to the well-spring? But Reynolds didn't work, and the reasons why it didn't work are well documented and still apply. That is not an acceptable risk for anybody. But it is important that all the parties involved – government, its agencies, the sector, the individual institutions – should review all that has accreted along the way. They should ask themselves what can be made optional for institutions, especially those that have been through significant numbers of institutional audits; what can be streamlined; and, above all, what can be removed. These are proper management questions for any systems review, and the subject matter of TQA doesn't put it above them.

This leads on to an even more fundamental question: who are we trying to assure about what? My own hypothesis is that the major concerns of the public which still pays for most of what higher education does are to do with 'mickey mouse degrees', contact hours and grade inflation. For students the main concern is over the quality of feedback on formative and summative, which may be code for a cry for personal attention in ever expanding institutions. Students are not interested in the bureaucracy of risk and regulation. As an example of this, at the time I started preparing this paper, a group of students was in occupation of one of the LSE's main committee rooms. In keeping with the traditions attaching to occupations they had presented the School with a list of demands. These included:

> an end to the audit culture which makes academic output an object of assessment and measurement, which stifles free thinking and impoverishes innovation and student-staff relations (Occupy LSE: 2015).

The next Teaching Quality Assurance regime needs, in my view, to focus more intensely on practical matters around 'the student delivery', especially 'front end' teaching quality and institutional support for student learning – the areas of professional practice outlined in the earlier quotation from Sir David Watson. All of those involved in this area should do more to put students at the centre of teaching quality assurance.

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From higher education funding to higher education regulation

The transformation of the relationship between universities and the state

Julia Black

Higher education is not a significant area of analysis for regulation scholars, and indeed is usually excluded from discussions by government on regulation. If thought of at all, it fits in the category of 'regulation inside government', whereby government regulates a function or service (such as prisons or hospitals) that the state has taken responsibility for providing either itself or through others. If we think about the relationship of government and higher education at all, it has for much of the post-war period been that higher education is a predominantly state-funded sector, in which the state imposes conditions on the receipt and distribution of funding based on the quality of teaching, research and governance of each university. However, as direct state funding to universities recedes and is replaced in part by a fee-based system funded through state-supported loans to individual students, the requirements which used to be a condition of receiving state subsidy now take on the character of regulatory requirements that stand alone from funding. We have moved in practice from higher education funding to higher education regulation.

In analysing the rapidly developing nature of the university sector, its relationship to the state and thus its regulation, it is interesting to compare it to two other key professional sectors: healthcare and legal services. In terms of their funding, their changes in their sectors, and their role in the state's social and economic agenda, university academics sit somewhere between doctors and lawyers. All were key foundation stones of the post-war welfare state through, respectively, the creation of the NHS, the subsidisation of education and the funding of legal services to those in need through legal aid. All are facing considerable challenges as their funding models undergo rapid change, their markets globalise, and the state's use of them to deliver socially beneficial services constantly fluctuates in both manner and purpose. However, each has a quite different regulatory system.

Although the scale of state funding for each sector varies, being greatest in healthcare and least in legal services, in each area state funding has been either reduced or restructured, or both. In the healthcare sector, whilst medical services (other than dentistry) remain free at the point of use, in the social care sector state funding is increasingly limited. Marketisation of services has been introduced, with GPs acting as the key purchasers of services from different hospital providers. In the legal services sector, legal aid has been radically reduced in the last few years, with the former coalition government seeking to cut £2–3bn from the civil and criminal legal aid bills. Consumer choice is here being channelled to those firms which are authorised to receive legal aid contracts in a radical overhaul of the system. With respect to universities, whilst students have always been able to choose where to

‘spend’ their state funding to study, the switch in the last two or three years from direct block grant funding of institutions to the funding of loans to students has meant that universities have had to undergo rapid marketisation. The HEFCE teaching grant has declined by 40 per cent over the last three years, and is now only 25 per cent of income universities earn from teaching. Furthermore, overall state funding as a proportion of universities’ income has declined dramatically in the last 15 years (Universities UK, 2013).

The health care, higher education and legal services sectors are also characterised by concentration of resources or income into a few, large institutions: the large teaching hospitals, the Russell Group universities, and the top law firms. Each sector has also been undergoing increasing globalisation over the last decade, either by exporting their products and services or by attracting consumers of those services to the UK: international students contributed 12.5 per cent to university income in 2014. Each sector is also facing the challenges of dealing with disruptive technologies which are changing how services are delivered, notably the internet.

What of the regulation of each of these three professional sectors? Their regulatory systems vary considerably in their complexity. Regulation of healthcare is conducted through a myriad of organisations, some focusing on professional standards of individuals and their title, others on the organisations in which they work. Regulation of legal services is far more systematised and is conducted through non-state regulatory bodies who are authorised and overseen by a statutory regulator (the Legal Services Board) and exercise statutory powers. The authorised regulators include the professional representative bodies who regulate both the professional standards of individuals, their title, and the organisations in which they work. Whilst in all sectors there is a regulatory focus on the quality of services provided, in the university sector each individual university regulates its own professional standards and titles. In contrast to the medical and legal professions, there is no professional body setting the standards someone has to meet in order to have the title ‘professor’. However, universities have to be recognised under a statutory system order to award the qualification of a ‘degree’. The regulatory system is not as complex as that for healthcare, but it is far less structured than that for legal services. Like healthcare, the objectives that the state seeks to achieve through the regulation of the higher education sector are diffuse, with multiple bodies pursuing different objectives. In the higher education sector these include research quality, teaching quality, widening participation, and the assurance of governance and financial management.

Moreover, the state’s engagement with universities is still framed as one in which various state bodies are imposing conditions on universities for the receipt of state funding. As state funding recedes, we are left with conditions without (much) associated funding, which in any other sector would simply be described as regulation. The question is whether, in the light of the rapid transformations in the funding landscape, we need to re-frame the state’s relationship with universities and ask not, ‘What are the conditions on which we should give state funding?’, but instead, ‘What are the objectives that we seek to achieve in regulating higher

education institutions, and is government regulation the best way to achieve them?' These are bread and butter issues for any regulatory scholar. It's time that we engaged more seriously in debates on the future regulation of the sector in which we work.

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Regulating higher education
Risk-based approaches to quality assurance

Stephen Jackson

The year 2015 represents 25 years of institutional quality audits in the UK, introduced by the Academic Audit Unit in 1990. The Audit Unit was an initiative of the Committee of Vice-Chancellors and Principals and followed a report on quality assurance by Professor Stewart Sutherland, Vice-Chancellor of King's College London. Audits were designed to provide public confidence in higher education by reviewing '… universities' mechanisms for monitoring and promoting the academic standards which are necessary for achieving their stated aims and objectives'. The unit was funded by subscriptions from the universities and based on the principles of peer review. It established the notion that quality was a shared responsibility of higher education institutions (Williams 1992).

Since 1990 academic quality assurance has become an established component of higher education management. The Academic Audit Unit was succeeded by the Higher Education Quality Council in 1992, and then by Quality Assurance Agency (QAA) in 1997. Both organisations maintained institutional audit as the primary mechanism for reviewing institutional quality systems and procedures. Most higher education institutions have had at least five cycles of external audit, with variations and refinements in the methodology with each cycle. There is a question now about whether or not the approach remains fit for purpose.

It can be argued that there is a life cycle to quality assurance. Institutional audit had its greatest impact in the first cycle when institutions reviewed their own arrangements for quality assurance and put in place new systems and procedures. Over time the process of audit has become less effective as quality assurance has become embedded within institutional practice and the methodology became both familiar and predictable.

The government's White Paper (BIS 2011), 'Students at the heart of the system', signalled a new approach to quality assurance in England based on the principles of risk:

> We will introduce a risk-based quality regime that focuses regulatory effort where it will have the most impact and gives powers to students to hold universities to account. All institutions will continue to be monitored through a single framework but the need for, and frequency of, scheduled institutional reviews will depend on an objective set of criteria and triggers, including student satisfaction, and the recent track record of each institution (BIS 2011: 37)

QAA introduced a revised method in 2013–14 for the current cycle of institutional reviews in England, based on a specification defined by the Higher Education Funding Council for England. Called 'Higher Education Review' the method has attempted to reflect expectations of proportionality and risk by:

- Introducing differential interval between reviews. Four years for institutions without a long track record in quality assurance and six years for established institutions.

- Varying the size of the team and the duration of the review to reflect the evidence of sound quality management, although other factors are also taken into account including size and complexity of provision.

There is insufficient evidence of the impact of these changes at this point in time. In the first year of operation only two higher education institutions were involved. The reviews were mainly of further education colleges with higher education provision. Some have questioned whether the developments have gone far enough in addressing track record in quality assurance and the differences in the types of institutions.

There are, however, a number of challenges in designing a 'genuinely risk-based approach':

- A differential model of quality assurance necessitates the categorisation of institutions on an assessment of risk. Following the history of quality assurance in England most, if not all, institutions will expect to be in the low risk category. Anything else will impact on reputation and may influence their ability to recruit students. Decisions about categorisation taken by QAA, or any other organisation are likely to be controversial and may be open to challenge. By defining an institution as anything other than low risk implies a pre-judgment on an institution before a review is conducted. The specification of categories may also be problematic, particularly around the borders of each category, where marginal differences between institutions may result in different outcomes.

- Linked to this is the identification and selection of appropriate metrics that will be recognised as objective measures that allow for the assessment of risk. Quality audit has been a qualitative, rather than a quantitative assessment, based on the experience and knowledge of competent peer reviewers who have an understanding of academic standards and the quality of learning provision. It is notoriously difficult to represent quality in numerical terms, not least because there are no formal national assessments of student achievement which could represent output measures. Each degree-awarding institution is its own assessment body and sets its own standards. Attempts to use metrics in other countries have run into difficulties, most notably in Australia where the established institutions have had concerns about the assessment of risk. The use of surrogate measures, such as the National Student Survey and student withdrawal rates, only provide a partial view of standards and quality.

- The language of risk is also in itself a problem. The intention of risk-based models of regulation is to develop methods of assurance that are proportionate, that focus attention on institutions that may, through lack of track record or previous difficulties, represent more of a risk to quality and standards. However, for some the use of the term 'risk' implies that higher education in England is inherently 'risky', that there are problems that require investigation. The idea runs counter to the original intention of the Academic Audit Unit which was to promote public confidence in the security of academic standards.

- Existing methods of quality assurance identify both areas where improvements can be made as well as features of good practice that may be disseminated more widely across the higher education sector. Adopting a more proportionate methodology would offer less opportunity for publicising what institutions do well and demonstrating innovations in teaching and learning.

Applying the principles of risk-based quality assurance to higher education in England raises some questions and challenges, but the fundamental issue of developing a more appropriate methodology for a sector that has a well established track record in the management of quality, remains. Rather than looking at ways of amending existing approaches it may be necessary to go back to first principles and consider alternative models for addressing public confidence in higher education.

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Risk-based quality assurance in higher education

Roger King

Introduction

Although most regulators profess to using 'risk' informally, at least as a way of utilising their scarce resources to best effect, a highly formalised risk-based regulatory system is ill-suited to higher education. It tends to result in a very intensive process of data collection, more centralised and out-of-touch decision making within the regulator, and an approach based on synoptic legibility to the regulatory centre which is misplaced.

This synoptic legibility at the centre is an approach that is ontologically suspect (social processes are too messy and unpredictable for this) and epistemologically doubtful (we can never get enough data to predict the future that precisely). Even with all these tools and data, regulators remain unclear about predicting quite where risk is likely to crystallise.

The very formalised risk-based approach to external quality assurance in higher education (as has been practised by Tertiary Quality and Standards Agency [TEQSA], in Australia) also tends to alienate institutions by not living up to its claimed objective of de-escalating the demands on the most experienced institutions. Even 'moderate' interpretations of risk-based quality assurance (as found in the approach by the Quality Assurance Agency in England, using institutional 'track records' and compliance maturity as proxies for risk) underplay the risks that can emanate from well established, large and growing organisations. As these bodies become more structurally differentiated, managerial oversight tends to be weakened and inefficient as we saw with new financial instruments, such as collatorised debt obligations, in the recent Global Financial Crisis, which escaped managerial understanding never mind control.

In a higher education sector in England that is increasingly characterised by uncertainty and disruption, conventional planning and predictive instruments within organisations and regulators become less useful.

Alternatives

Rather, higher education regulators should recognise that external quality assurance (and quality enhancement) is best secured at local and departmental level – where course teams act, and should be encouraged to act, collegially. Quality agencies and institutional managers should focus on ensuring that such local processes are effective and accountable. The National Student Survey (NSS) is a useful instrument here for producers, although intended primarily for consumers. Its competition and gradings help to spur course and departmental teams into improving quality.

The digital revolution

The digital revolution in higher education, including the arrival of Big Data, will also act as a major incentive to course-based, departmental quality enhancement and raised standards. These transformations in learning processes are making such processes much more transparent and accountable than ever before.

The rather closed and secretive world of the university classroom with the expert professor as performer and craftsperson, thus justifying the notion of the importance of academic governance in universities – will slowly give away – outside the elite universities, at least. Properly accountable and transparent collegiality at local level is the way forward for risk reduction in higher education quality assurance.

Learning processes are increasingly recordable online – they are team produced, and focused on student outcomes rather than evaluations of comparative individual teacher performance (which are too difficult, anyway). The 'fingerprints' of student learning are beginning to be seen all over the classroom scene and available for all to compare.

Big data and online

Previously we have not had the tools to determine if a class was well taught in a university. Many teachers have never entered the classrooms of their colleagues and many professors teach in isolation from their peers. Recently, encouraged further by the Research Excellence Framework (REF) in the UK, teaching has remained an individual, and for some, a subordinated-to-research matter. As such, classrooms interactions are not recorded. Moreover the rules relating to academic freedom make it difficult to assess a professor's impact.

As a consequence it has always been difficult to say what constitutes good teaching. It makes more sense to focus at the other end, on student learning outcomes, and to measure whether or not students are learning as intended.

In fully online but also blended courses, every keystroke is being recorded. Whereas words can disappear into the ether – living and dying in the moment and context of a class – keystrokes are legible. It becomes more difficult for a professor to claim, like an actor, that each performance, offered live each time, is not replicable and, importantly, comparable. As such, unlike the REF it is argued, it is not capable of being authentically evaluated, or at least it is claimed. Big Data is beginning to change all of this.

The way in which such data from online learning are used for quality improvement at the local level should increasingly become the focus for external quality assurance and institutional managers, not an un-needed diversion into the statistical complexities of risk-based regulation. It is likely, however, that system architectures will gradually change as a consequence. Traditionally, universities tend to consist of subgroups that correspond to the component academic services (courses) on offer. Such systems work well as long as the courses' fundamental building blocks do not require change. Yet component-based structures

are bound to impede the learning and teaching innovations that require people and groups to communicate and work together in the new ways enabled by the digital revolution.

It will be important nevertheless, to recognise that the patterns and correlations that emerge from Big Data sets are properly understood and linked to credible pedagogic theory – that patterns are causal and sustainable. Even more crucially, regulators and managers will need to engage more dialogistically and hermeneutically with staff to understand and learn from the processes emerging from technologically aided learning. Statistical probabilities are no substitute for the real thing and nor is risk-based quality assurance.

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Building a new federal regulatory environment for UK higher education

Andrew M. Boggs

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.[6] 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

[6] 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).

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 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?[7]

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

[7] 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).

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 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)[8] 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

[8] 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.

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.

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Better regulation for higher education

Nick Hillman

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 governement'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.

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The operating framework for higher education in England

Heather Fry

In September 2014 the Higher Education Funding Council for England (HEFCE) published the first Register of English higher education providers that have one or more of four powers, such as the power to award degrees, and about whom a range of assurances can be given (HEFCEa). At the same time it published a revised operating or regulatory framework that describes the various accountability and regulatory arrangements in English higher education and the bodies and stakeholder groups that are associated with these arrangements (HEFCEb).

HEFCE's role in English higher education has evolved over the years. It has always been involved in aspects of regulation but this has often been more implicit than explicit because historically it has been our funding role that has tended to dominate discussion. It is frequently because of our funding role that we have exercised other responsibilities.

Since its creation HEFCE has had a statutory duty to assess the quality of provision it funds or is considering funding. The arrangements for how we carry out this statutory duty have changed over time and are currently being reviewed. As part of our role in public accountability we have also been involved in annual and five yearly accountability and assurance activities for those providers for whom we are their lead regulator. Our assurance activities enable us to understand the financial sustainability and governance situation of the higher education institutions (HEIs) we fund and to engage in enhanced activity with those in weak positions. For much of the recent period we have also, operating to government guidance, used various forms of student number controls in the HEFCE funded part of the sector to ensure student support finance is affordable to the government.

More recently, in 2010, we became principal regulator for HEIs we fund who are exempt charities. Since 2013 we have been increasingly also involved in conducting checks and collating information about financial sustainability, governance and management and course checks that the Department for Business, Innovation and Skills (BIS) use to make decisions about designating courses at alternative providers so that students can gain access to student support. These activities and functions are part of what form the operating framework, with many other organisations, not least government, being part of this regulatory environment.

The White Paper, 'Students at the heart of the system' (BIS 2011)) looked forward to legislation that would place various regulatory arrangements on a footing more suited to the contemporary environment. That legislation was not forthcoming and since then various bodies, including HEFCE, have sought to use administrative means to bring improvements. Much in higher education has changed in the last five years. Some arrangements can still be improved without legislation; others look too hard to tackle in this way. So there is still an ongoing need to ensure the operating framework is fit for and truly does support a world leading higher education (HE) sector into the 2020s.

With or without new legislation the operating framework for higher education should continue to be built on institutional autonomy and co-regulation, and also to recognise diversity of provider type and purpose. Many commentators now support the need for a more equitable HE regulatory framework with scrutiny placed where and when it is most needed, and which through a risk-based approach, can become lighter burden for providers that demonstrate their worth and longevity. At the same time the regulatory framework needs to provide assurance and accountability for public funds. It needs too to enable entry access by new providers and have means to deal with those who fall below expected performance. In a more marketised environment there has to be orderly exit arrangements which protects students and the reputation of the whole sector.

There are some areas where there is still a need for enhancement of arrangements, be this in the student interest, to protect reputation, to lower burden, to be more equitable or reduce duplication. These include:

- Ensuring better protection for students in the event of course/institutional closure/disorderly exit from the higher education sector.

- Partnership arrangements between institutions that relate to courses and students' need to operate with greater clarity and transparency so that all students are clear about which provider is responsible for them.

- An improved succession of 'gateways' that give 'admission' into the sector or particular powers within it, for example becoming HEFCE funded. Gateways into the sector can be conceived as giving access to types of funding or 'licence', or particular levels of higher education, such as having research degree-awarding powers. Each gateway needs to test key aspects and provide sufficient assurance in relation to that aspect. Improving the management of entry would enable lighter regulation to be exercised, on a risk-based approach, to those who have passed through a gateway and who could pass into a monitoring phase.

- Currently we have limited provision for preventing disorderly exit; exit may need to happen but it should be managed to minimise damage to students and the reputation of higher education more broadly. Much more attention needs to be paid to this aspect across the diversity of provision.

- The data landscape would benefit from improvement to ensure a sensible data set is collected from all providers, that duplication of collection is avoided and that data is collected once and used multiple times, thus creating an equitable approach and also reducing burden.

- In any operating system sanctions need to be available for infringements, but these need to be proportionate, predictable within a limited range and take an escalatory approach if early warnings are ignored. Currently such an approach is not always available across the diversity of the sector.

- Regulation must not stifle innovation. It is uncertain if it could or should actually incentivise it, but it is another aspect of the current operating framework that might bear further consideration.

- Any operating framework must be clear as a whole (i.e. understandable) but not reduced to check box compliance.

Above all any operating framework needs to be true to its core purposes and principles. Our system is not broken, but neither is it incapable of improvement.

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