

# A new approach to regulating student outcomes

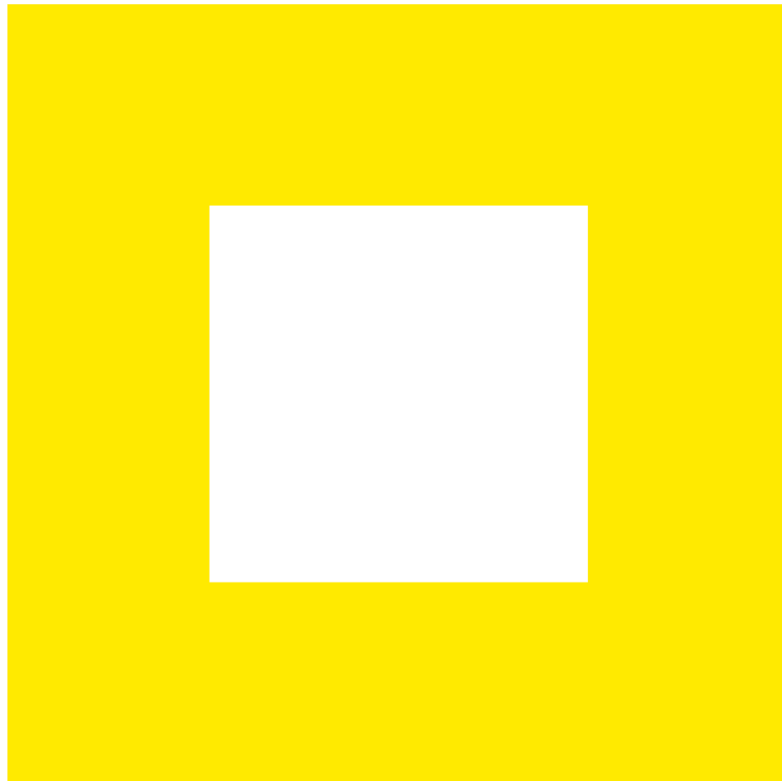
## Analysis of consultation responses

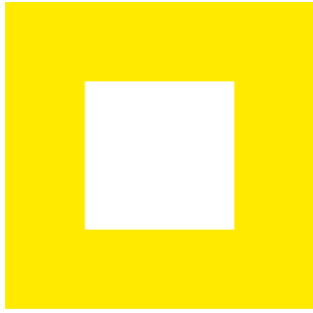
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Report by Alma Economics to the OfS

July 2022

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### About the authors



Alma Economics combines unparalleled analytical expertise with the ability to communicate complex ideas clearly.

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### About the commissioning organisation



This independent analysis was commissioned by the Office for Students (OfS). The OfS is the independent regulator of higher education in England. The analysis and findings are those of the authors and do not represent the views of the OfS.

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# Executive summary

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## Background

In January 2022, the Office for Students (OfS) published a consultation to revise the OfS current approach to regulating student outcomes, to better achieve their regulatory objectives.<sup>1</sup> The consultation sought views from anyone interested in the regulation of the higher education sector. It received a total of 244 responses, 97% of which were submitted through an online portal. Out of those who responded through the online portal, 90% responded on behalf of an organisation and 80% described themselves as employees of a higher education provider.

Alma Economics was commissioned by the OfS to analyse all responses to the consultation and produce a comprehensive summary of respondents' views. Responses were analysed using a mix of quantitative analysis (where summary statistics were calculated for closed questions) and qualitative analysis (where open-text responses were read in full and analysed using thematic analysis). This report describes the outcomes of the quantitative and qualitative analysis of responses.

## Key findings

Most of the questions of the consultation initially asked whether the respondent agreed with the proposal in question or specific aspects of it. The available options for respondents to choose from were: agree, disagree and do not know. In some questions there was slightly higher agreement than disagreement or vice versa, while in other questions there was a strong preference, where a large proportion of respondents agreed or disagreed. Overall, there were more proposals in which the majority of respondents agreed than disagreed.

The aspects in which respondents showed the greatest support were:

- the proposal to consider the context of an individual provider when assessing compliance with condition B3,
- the proposal to take into account a provider's compliance history in relation to condition B3 when determining eligibility for other benefits of OfS registration,
- the proposal to impose an improvement notice where a breach of condition B3 is found,
- the proposed approach to using statistical measures when considering a provider's performance in relation to numerical thresholds, and
- the proposed approach to assessing compliance with condition B3.

On the other hand, there was strong disagreement among respondents with the proposed implementation of the proposed approach to regulating student outcomes, including the timing of the implementation, and the approach to constructing the student outcome indicators.

## Overarching themes

The qualitative analysis of open-ended responses revealed a set of overarching themes, which were common across a number of questions, including: (i) a request for further clarification, particularly on

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<sup>1</sup> The consultation document can be accessed here: <https://www.officeforstudents.org.uk/media/c46cb18a-7826-4ed9-9739-1e785e24519a/consultation-on-a-new-approach-to-regulating-student-outcomes-ofs-2022-01.pdf>

the OfS approach to considering a provider's context and to the prioritisation of compliance assessment, (ii) concerns about the indicators to assess student outcomes, particularly a perception that the proposed indicators are out of providers' control and that there is a need for a broader view of successful outcomes, particularly in terms of the progression indicator (iii) concerns about unintended consequences of proposed indicators, especially about a potential reinforcement of inequality among students and young people, (iv) concerns about the complexity of the proposed indicators and the number of split indicators, and (v) concerns about the effect of some proposals on smaller providers. A description of each of these themes is provided below.

The results of the qualitative analysis are focused on areas of improvement, as suggested by respondents. This is because respondents' comments were disproportionately related to aspects of the proposals that they disagreed with or had concerns about, even when they broadly or partly agreed with the proposals.

## **Request for further clarification**

A request for additional clarity on the proposals was the most repetitive theme identified across questions, although even the most repeated theme appeared in only a minority of responses. Additional clarifications were discussed and suggested for several aspects of the consultation, with the proposed approaches to contextualisation and prioritisation being the most common topics discussed under this theme. Regarding the OfS approach to considering a provider's context, there were requests for additional information on how the OfS will consider this context and how it will be evaluated (for example, what weight will be given to context), as well as which factors will be considered by the OfS (such as institutional benchmarks, local area characteristics). Some comments further highlighted the need for a consistent and transparent use of context across providers, to ensure fair judgements. Regarding the OfS approach to prioritisation of compliance assessments, respondents expressed concerns over the uncertainty around the different approaches that the OfS can use to select providers for compliance assessment and how these approaches would operate in practice. They also suggested a transparent and clear decision-making process around the alternative approaches that would be used each year.

## **Concern about indicators to assess student outcomes**

Some respondents argued that the proposed student outcomes are not delivered by providers and thus they are out of their control. This concern was more prevalent for the progression to professional and managerial jobs. There was also a concern that the proposed approach may not promote excellence across higher education providers, as they would be incentivised to prioritise securing positive outcomes over quality, target the threshold instead of considering it as a lower bound, or even try to 'game' the system (for example, through grade inflation). Some respondents also argued in favour of using a wider definition of successful outcomes reflecting broader social benefits of education such as self-fulfilment and non-professional contributions to social needs.

## **Concern over proposals leading to increased inequality**

In line with the previous overarching theme, there was a concern about unintended consequences that could result from the proposed outcome measures. More specifically, some respondents argued that providers would be disincentivised from recruiting students from disadvantaged backgrounds in an effort to meet the suggested numerical thresholds, and thus inequalities would not only be overlooked but would also be reinforced. Within the same topic, some respondents expressed their concern about the impact of the proposed indicators of student outcomes on the availability of

alternative provision. More specifically, those respondents argued that providers may reconsider their course portfolio aiming to focus on matching and succeeding in continuation and completion measures, limiting the availability of specific types of course or provision. Incorporating contextual information in the assessment was seen as a promising approach to minimising the consequences discussed above, but some respondents suggested including this information earlier in the process.

## **Complexity of indicators and large number of split indicators**

Some respondents argued that the proposed indicators would necessitate a very large volume of data, which would put human and financial resource pressures on providers. Additional resources would be needed both to allow enough time to analyse the data, but also to train staff members who will undertake this analysis, which is more complex than before. In addition, respondents argued that the volume and complexity of data that would be required would not allow the providers and the OfS to focus on priority areas, while this amount of information would not be informative for students.

## **Concern over impact of various proposals on small providers**

Some respondents had concerns over disproportionate impacts on small providers across many proposals. Firstly, respondents expressed worry over the increased regulatory burden for small providers who are more likely to require contextualisation. There were also concerns related to small providers' limited data size leading to inaccurate judgements of negative outcomes. Additionally, there was a link between this theme and the previous overarching theme, as some respondents argued that the additional complexity of indicators will affect—to a larger extent—small providers with a smaller team undertaking the analysis and preparing the documentation. Finally, respondents highlighted the adverse impacts of an improvement notice on small providers who were argued to be particularly vulnerable to the effects of reputational damage.

# Introduction

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In January 2022, the Office for Students (OfS) published a consultation to revise the OfS current approach to regulating student outcomes to better achieve their regulatory objectives.<sup>2</sup> The consultation was open until March 2022 and sought views from anyone interested in the regulation of the higher education sector. In parallel to this consultation, two other OfS consultations were taking place focusing on the Teaching Excellence Framework (TEF) and on data indicators.<sup>3</sup>

## Approach to analysis

Alma Economics was commissioned by the OfS to analyse all responses to the consultation and produce a comprehensive summary of respondent views. The consultation comprises 17 questions, of which the majority has the format of Likert scale 'do you agree?' questions followed by a free text field for respondents to provide reasons and context for their answers.

Closed questions were analysed using quantitative analysis, where summary statistics were calculated by obtaining frequencies and proportions of each option in the Likert scale. These statistics provide a first understanding of the broad views of respondents.

For open-text responses, a qualitative analysis was undertaken, where all responses were read in full and analysed using a thematic analysis. The latter identifies, analyses and reports patterns in qualitative data (Braun and Clarke 2006). In addition to capturing key opinions of respondents, the focus of the thematic analysis was to understand the reasoning behind the answers.

Before reviewing the sample of open-text responses, following the approach developed by Fereday and Muir-Cochrane (2007), researchers developed an initial set of themes and ideas based on the consultation document, our understanding of the policy context and wording of specific questions (the deductive phase), with further themes added as part of the review process (the inductive phase). The review prioritised themes that recurred over multiple responses. During the analysis of open-ended questions, exact duplicates were detected and removed when the same answer was provided multiple times by the same organisation.

This report summarises the themes which researchers identified during the analysis. This means we have focused on the most frequent themes in this summary report and made available analysis of all the points raised by respondents to the OfS. The complete set of themes identified by researchers per question was collected in a final codebook, which was shared with the OfS.

The present report shows the outcome of the quantitative and qualitative analysis, with themes emerging from responses presented by order of frequency. It also includes a selection of quotes from respondents, some of which have been edited to correct spelling or grammatical errors and to keep respondent identities anonymous, although the meaning of the comments has not been altered.

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<sup>2</sup> The consultation document can be accessed here: <https://www.officeforstudents.org.uk/media/c46cb18a-7826-4ed9-9739-1e785e24519a/consultation-on-a-new-approach-to-regulating-student-outcomes-ofs-2022-01.pdf>

<sup>3</sup> All consultations are available here: <https://www.officeforstudents.org.uk/outcomes-and-excellence/>



## Profile of respondents

Responses to the consultation were submitted through the online portal or sent via email, all of which were reviewed and analysed.<sup>4</sup> In total, 244 responses to the consultation were received, 97% of which were submitted through the online portal. Around 90% of respondents who submitted their response through the online portal declared responding on behalf of an organisation, with the remaining declaring responding on behalf of an individual. In addition, around 80% of those respondents described themselves as employees of a higher education provider and 6% as employees of charities or third-sector organisations. Remaining respondents provided a wide range of descriptions of their functions (23 different descriptions in total), with each description having a low frequency.<sup>5</sup>

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<sup>4</sup> Some of the email responses did not follow the structure of the consultation (that is, they consisted of a consolidated response to the consultation rather than providing a response for each question in the consultation). In these cases, themes were identified and discussed in the most relevant section of the consultation.

<sup>5</sup> These descriptions included, among others: employee of a student representation body, representative group responder and employee of a professional regulatory statutory body.

# General questions

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## Question 1

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

### Thematic analysis

The most frequently mentioned theme in responses is that proposals are clear. However, most respondents raised a range of questions and concerns, which taken collectively, outnumber respondents who believed the proposals are clear. The key themes identified from the qualitative analysis of responses are presented below in order of how often they were raised by respondents.

### Length, complexity and timeframe of the consultation

The next most prevalent themes among respondents are their difficulty engaging with the material presented in the consultation owing to its length and technicality, as well as the timeframe of the consultation. Respondents frequently mentioned the challenge of having to respond to three concurrent consultations and expressed concerns about the tight timeframe given to respond to all consultations together.<sup>6</sup> These concerns were particularly voiced by small providers and third sector organisations, with respondents arguing that the relatively short period of time given to respond to the consultation made it difficult to fully comprehend the consultation documents. Some respondents also mentioned that there was additional complexity faced by further education colleges (FECs), as those providers are not experienced in higher education data submissions, the illustrative data provided was unfamiliar to their data teams, and the overall information was more difficult for them to interpret. A very small number of responses also highlighted the challenge for students, families and non-academic audiences in general. On the other hand, many respondents highlighted that, although the complexity, timeframe and length of the consultations made the exercise challenging, the events organised by the OfS and the illustrative data were helpful in improving their understanding of the proposals.

*I know myself and colleagues at other institutions with small teams have found it a challenge to provide a robust and considered response to these critical consultations when they have been released at the same time and are both large and complex. Some of the additional documentation is extremely technical and, while we appreciated the webinars delivered by the OfS, they did not go into the detail of these which has made it difficult to fully understand and interpret all the proposals within the timescale, especially within the short period allowed for the consultation. (An employee of a higher education provider)*

*The AoC events that the OfS participated in were helpful. However, the complexity of the data shared directly with us and the technical nature of the proposals made some information challenging to interpret for colleges without specialist data teams. (An employee of a higher education provider)*

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<sup>6</sup> The OfS published three consultations in January 2022: a consultation on a new approach to regulating student outcomes, a consultation on the Teaching Excellence Framework, and a consultation on constructing outcomes and experience indicators for use in OfS regulation.

*Given that this consultation is aiming for responses from not only academics, but also students, their families and the interested public, the entire language of the consultation reads as jargon-ridden, with references back and forth in ways that makes understanding any changes, and responding to any questions impossibly difficult. (An employee of a higher education provider)*

### Additional information on approach to considering provider context

The next most prevalent theme was the provision of more details on the approach to considering a provider's context, including how an acceptable context is defined and the process that is followed to evaluate it. This concern was repeatedly expressed by respondents who identified themselves as small providers. Those respondents argued that the lack of guidance on how context is defined is a challenge given their limited capacity. Some respondents also argued that more details on the approach to considering a provider's context would help ensure fairness, consistency and transparency in the sector. Some questions raised by respondents regarding context included: i) what contextual factors will be considered and how will they be weighted; ii) how will the impact of the COVID-19 pandemic affect judgement on a provider's context; iii) how context will be determined when the provider's data is unreliable; and iv) how contextual evidence will be presented alongside providers' data.

*We do believe there needs to be more detail provided on the kind of evidence that would be considered as part of this process. It is important that this contextual information is considered alongside the data, rather than being seen as an afterthought and not given due consideration when forming the judgement. There should be transparency in the process of how this occurs, [...] should be considered through processes—such as the OfS QAC—that include academic experts and peers. We would also want clarity on how context will be presented alongside the publishing of data workbooks. (An employee of a higher education provider)*

*While the OfS has provided a list of contextual factors it intends to take into account, in the absence of a definitive [...] guidance as to how these externalities will be factored in priority [...], the determination of whether or not B3 is met will seemingly be a subjective judgement call on the part of the assessor of the provider's application for registration. (Solicitors)*

### More clarity on prioritisation process and decision to intervene

The next most prevalent theme is the need for more details on the approach to prioritisation and decision from the OfS to intervene. Respondents requested more details on how prioritisation would operate in practice (for example, the process and timing of communicating to providers the prioritisation process and whether the same prioritisation process would be used each year) and the decision-making process behind decisions to intervene (including how the criteria for prioritisation will be identified, and any mechanism put in place to ensure judgements about breaches of B3 are fair and consistent); with some arguing that proposals on prioritisation should have been more precise. There were also requests for more clarity on the intervention steps that will be taken by the OfS and how decisions on regulatory sanctions will be made.

*The approach to prioritisation could have been laid out a little more clearly, especially as this is quite a pivotal part of the regulatory process that is being proposed. (An employee of a university mission group)*

*However, in particular, the OfS's method of prioritising those chosen for investigation needs to be clarified, for reasons of transparency as does the information about how context will be used by the OfS in making consistent judgements. (An employee of a higher education provider)*

## More clarity on interaction across different consultations

The next most prevalent theme is a request for more clarity on the interaction between proposals in the three OfS consultations that were published at the same time. A smaller number of respondents further requested clarity on the links between the three OfS consultations and the Department for Education consultation on higher education reform. Some respondents argued that these interactions made the consequences of these proposals unclear and difficult to predict. Within this theme, the most commonly raised question is on the impact of breaches of the B3 condition (particularly when they concern relatively small areas of provision) on participation in the TEF.

*This consultation was published alongside two other consultations (TEF and Constructing Indicators) on major and interconnected changes to the sector. It followed several other consultations (including Data Futures, Approach to World-Leading Specialist Provider Funding) and was then proceeded by a further two DfE consultations (LLE<sup>7</sup> and HE<sup>8</sup> Reform). The ways in which these consultations interact and the implications (foreseen and unforeseen) make many of the potential consequences of these proposals unclear to providers and difficult to predict. (An employee of a charity or third sector organisation)*

## Question 2

**In your view, are there ways in which the objectives of this consultation (as set out in paragraph 7) could be delivered more efficiently or effectively than proposed here?**

### Thematic analysis

The key themes identified from the qualitative analysis of responses are discussed in detail below and presented in order of how often they were raised by respondents.

### Additional clarification and transparency

The most frequent response was that the objectives of the consultation would be achieved more efficiently if providers received additional clarification. Most of the clarification requests concerned the benchmarking process and the data provided by the OfS, with respondents feeling that if they understood these factors in greater depth, they would save significant time. The second most common comment on clarification requests regarded the prioritisation of compliance assessments. Specifically, some were concerned that the method used would be inconsistent across years. A few respondents offered suggestions about a prioritisation approach that would increase process efficiency. The suggestions included: focusing on the most severe breaches and where there is high statistical confidence, focusing where the risk to students is highest, and publishing the prioritisation approach as soon as possible. The third most common clarification request was about the use and extent of contextual information.

*We feel, however, that a robust and transparent process of benchmarking providers would create a healthy sense of competition between similar providers that could lead to more positive engagement with these exercises. A greater and more transparent benchmarking process would also avoid the significant regulatory burden that analysing not just the three proposed indicators but the potentially unlimited set of split indicators below them, provider by provider, will bring for the OfS, should these proposals be implemented. (An employee of a private company)*

<sup>7</sup> Lifelong Loan Entitlement (LLE)

<sup>8</sup> Higher Education (HE)

*We welcome the OfS's acknowledgement of the importance of context; we would welcome more information on how contextual information will be consistently drawn upon, and what weight it will be given alongside the absolute indicators. (An employee of a higher education provider)*

*We strongly believe that the OfS's focus should be on the most severe breaches where the risk to students is greatest and that it should commit to clearly articulating its approach to prioritisation (and the rationale underpinning it) at an early stage. (An employee of a higher education provider)*

## Use of a broader definition and measures of successful outcomes

The second most frequently mentioned way to deliver the desired objectives more effectively was to extend the definition of successful outcomes to include wider societal benefits of education that may not be immediately evident. According to these respondents, using a narrow measure of positive outcomes would incentivise providers to try to 'game' the system (for example, grade inflation) and to recruit students that are more likely to achieve these outcomes, thus adversely impacting students from disadvantaged socioeconomic backgrounds. A few answers also included suggestions on how to increase the efficiency and effectiveness of the progression indicator. For instance, one proposal was to create a list of professional and managerial jobs which facilitate the development of career skills, complementing the formal SOC codes<sup>9</sup>. Furthermore, there was a suggestion to use the additional graduate outcomes questions along with the SOC metric to ensure a more comprehensive and rounded consideration of positive outcomes that would also capture the expectations of the individuals. Lastly, a couple of responses requested the use of graduate outcomes, similarly to the National Student Survey (NSS) data, only when there is at least a 50% response rate.

*The chosen measures are not necessarily a good measure of student outcomes. Completion is a proxy, and progression is unreliable where response rates are low. And some institutions may be encouraged to make it easier for students to continue and complete (through a lower standard of assessment) in order to inflate their measures, so defeating the object of the process. (An employee of a higher education provider)*

*The OfS should also monitor levels of admission for underrepresented groups when evaluating providers in relation to the new thresholds to ensure those who are performing well are not doing so at the expense of widening participation and that those who are perhaps underperforming do not course correct with changes to admissions. (An employee of a charity or third sector organisation)*

## Reduce the number of split indicators and data points

The third most common theme was requests to reduce the number of split indicators and data points as many providers believed that the proposed numbers would create a significant regulatory burden that might prove unmanageable for small providers.

*In particular, the emphasis on measuring such a wide range of data may lead to a mass of data easily able to be misrepresented or misunderstood. In addition, the range of indicators involved is likely to have a disproportionate impact on smaller institutions with less internal capacity to effectively communicate the contextual side of the picture to a wide range of stakeholders. The*

<sup>9</sup> The Standard Occupational Classification (SOC) is a coding framework used to classify occupations. It assigns all jobs a four-digit code based on the skills and qualifications needed for the job. <https://www.ons.gov.uk/methodology/classificationsandstandards/standardoccupationalclassificationsoc/soc2020>

*focus on a smaller number of key outcomes would, we feel, be a more proportionate and effective option. (An employee of a higher education provider)*

## Greater consideration of contextual factors

The fourth main theme was the importance of considering contextual factors that affect provider performance. Respondents in this theme highlighted that the proposed measures of outcomes can be affected by external factors that are not in providers' control. As a result, respondents believed that a wider range of demographic, regional, social and economic factors should be taken into account and, if possible, integrated in the thresholds. Finally, some proposed that the relevant context should be published by the OfS alongside the respective indicators, so all stakeholders have an accurate representation of the providers' state.

*National datasets show that progression from agriculture and food courses are lower due to the classification of relevant destinations. [...] In addition, progression from university is affected by conditions beyond providers' control; most notably regional variations in labour markets and economic circumstances, which is only addressed in part through the geographic employment measures. We ask that the OfS is explicit about what evidence will be used to ensure they consider appropriately the context of the trends suggested through quantitative datasets. (An employee of a higher education provider)*

## Additional suggestions to increase efficiency and effectiveness of proposals

Some interesting insights discussed by only a few respondents included developing progress measures that appraise skills both at entry and after degree attainment, allowing for an accurate measurement of distance travelled, sometimes referred to as learning gain. Another suggestion was using existing regulatory frameworks (such as, Ofsted) and data already collected as part of other regulatory requirements. This would also partially address another issue raised—that is, aligning the goals and processes of different governmental policies. Lastly, some respondents proposed using individualised benchmarks for each provider.

*Furthermore, with the intention for efficient delivery there should be recognition that there are existing mechanisms that support meeting the objectives. All institutions have internal quality assurance processes, structured around the expectations in the QAA<sup>10</sup> quality code, and making use of employers, external examiners and other independent views. [...] Universities UK has also released a new framework for programme review that institutions are currently aligning with, and the new admissions code. Internal audit processes also cover academic quality assurance. In this context any OfS regulations should be risk-based and proportionate. (An employee of a higher education provider)*

*We recommend developing progress measures that appraise skills on entry to higher education, and reassessment at the end. This would both quantify learning gain and help identify gaps in understanding on a personal level to support a lifelong learning approach. (Higher education representative body)*

*The use of context is to ensure that decisions are not made purely on the data, and that, where appropriate, key considerations are considered. An alternative to this approach could be to measure positive student outcomes in relation to an individual provider's benchmark, which would reduce/remove the need to apply context. (Awarding body)*

<sup>10</sup> Quality Assurance Agency (QAA)

# Questions related to each proposal

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## Proposal 1: Revising condition B3 and associated guidance

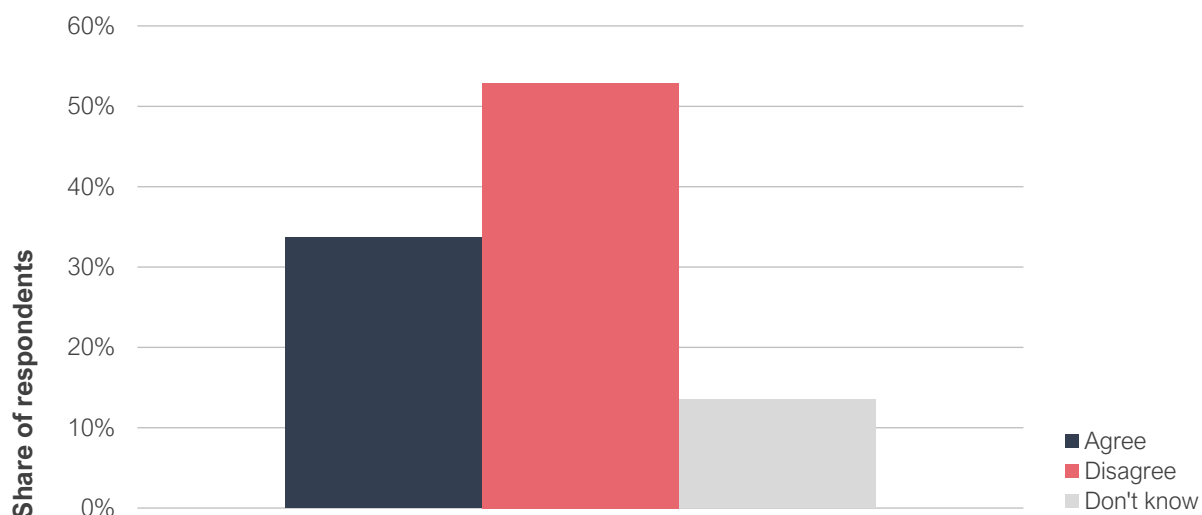
### Question covered in this section

Proposal 1 of the consultation refers to the OfS's proposal to revise condition B3 and associated guidance. Under the revised condition, providers will deliver positive outcomes if student outcomes are above the relevant numerical thresholds. If student outcomes fall below these numerical thresholds, the OfS may judge that the providers are nonetheless delivering positive outcomes if the context of the providers justifies such outcomes. The OfS will also consider whether there is insufficient data or data refers to fewer than the minimum number of students.

### Question 3

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**Do you agree or disagree that the proposed wording of condition B3 will enable the OfS to meet its policy objectives? If you disagree, what changes do you think are necessary to do so?**



Over half of respondents (53%) disagreed that the proposed wording of condition B3 will enable the OfS to meet its policy objectives, while around one third (34%) of respondents agreed with that and 13% declared that they don't know.

### Thematic analysis

The responses received and analysed were focused mostly on how the B3 condition can meet its policy objectives in broader terms rather than the proposed wording per se. The key themes identified from the qualitative analysis of responses are discussed in detail below and presented in order of how often they were raised by respondents.



## Measures of successful outcomes are narrow and out of provider control

The most frequently expressed view in responses was that the proposed B3 condition would not enable the OfS to meet policy objectives as these are out of provider control. Respondents argued that successful outcomes are not *delivered* by providers. This was especially the case for the progression to professional and managerial jobs. According to these respondents, many students do not commit to seeking a job within 15 months after graduation as it currently stands in the proposal.

To a lesser extent, respondents argued that the proposed set of metrics and the scope of the consultation implies a narrow understanding of success and delivering positive outcomes for students, with this issue being more prominent for specific courses or providers. Within this context, the need to reflect student experience and satisfaction within these metrics was also discussed. Finally, respondents also mentioned that this approach does not promote excellence and may instead threaten academic standards, as providers may prioritise securing positive outcomes over quality or target the threshold instead of looking at it as a lower band.

*Providers are not in a position to 'deliver positive outcomes for students' in respect of progression to professional and managerial jobs [...]. This applies equally to continuation and completion as indicators [...] as there are aspects which are outside its control [...], 'providing opportunities to enable' successful outcomes recognises the responsibilities of providers in respect of their students while also acknowledging these external factors. (An employee of a higher education provider)*

*It is unclear to me that the purposes of education and successful outcomes are measured solely by employer satisfaction or further study. Education can be mind-expanding; it can produce skills and views [...] encourage artistic work, creative labour and public service. (An employee of a higher education provider)*

## Proposed indicators may affect policy objectives and increase burden

The next most frequent theme discussed by respondents was the increased complexity of the indicators that will be examined. According to these responses, the large number of split indicators will lead to an excessive amount of data and will not enable a focus on key priorities, making it challenging for the OfS to successfully assess providers and achieve its policy objectives. Based on responses received, these indicators entail an additional administrative and managerial burden for big providers, while for small providers they lead to very small samples that won't be informative without contextualisation. Data for these providers also seems more likely to be limited and to make data analysis problematic; small providers raised concerns about being penalised for not meeting the minimum student number requirement. Respondents were also concerned about the human and financial resources that small and specialist providers would need to create the proposed indicators.

*We believe the number of split indicators proposed will create an inability to focus on the overarching priorities and could potentially lead to quantities of data remaining unanalysed, particularly at small providers with smaller data teams. (An employee of a higher education provider)*

*It's likely to increase administration activity across HE<sup>11</sup> which means less funding focused directly back on learners unless this proposal is accompanied by structural support for providers or a reduction in administration elsewhere; this is an acute risk for small providers. (An employee of a higher education provider)*

<sup>11</sup> Higher Education (HE)



*Data for smaller providers can be limited/unreliable once the different split indicators are applied. It is important that the inability to meet the minimum student number requirement is not treated unfavourably when assessing a provider. (An employee of a higher education provider)*

### **Additional clarity on considering provider context and in decision making**

The current proposal suggests the consideration of the context of each provider when assessing whether it is delivering positive outcomes for its students or not. In relation to this part of the condition, the next most common theme touched on the need for additional clarity about how the OfS will consider this context and which features will be taken into account—for example, institutional benchmarks, rapid changes in local areas, local area characteristics, the providers' historical performance and their contributions to the local environment.

Similarly, respondents argued that further decision making and steps within the policy implementation are not clear or transparent enough. Namely, respondents argued that current wording leaves too much room for change in the set of indicators without due consultation or control from the relevant stakeholders. Finally, a few responses mentioned that the condition B3 relies on content in the technical documents, which are not strictly subject to the consultation, and that the process to amend or challenge them is unclear.

*The lack of specificity regarding how a 'context' will be judged to justify the outcome position will certainly be open to challenge. (An employee of a higher education provider)*

*We have a worry that within the wording of condition B3 much relies on content within the 'technical documents' and we are not clear on the process for changing the 'technical documents.' (An employee of a higher education provider)*

*We are concerned by the inclusion of 'any other areas as determined by the OfS' (B3.5). We believe this provision sits uneasily with the OfS's commitment to 'transparency and regulatory certainty.' (An employee of a higher education provider)*

### **OfS should further consider how to approach different types of courses**

The next most frequent theme raised by respondents was that different types of course should be approached and considered in a different manner. Namely, many respondents argued that non-prescribed higher education (NPHE)—those that are not eligible for OfS funding—should be measured and evaluated separately, instead of being merged within the 'other UG' category (other undergraduate). Also, these respondents argued that the inclusion of courses such as non-prescribed courses, part-time courses, and higher-level apprenticeships (HLAs) should wait until full information and data is available, since full datasets for the Graduate Outcomes (GO) survey and National Student Survey (NSS) are not yet available. Furthermore, a few respondents argued that the current wording falls outside the OfS's regulatory scope and remit, unduly overlapping with other regulatory bodies and unnecessarily increasing the burden on both the regulator and providers.

*The inclusion of part-time HE, non-prescribed and HLAs<sup>12</sup> should be staggered and introduced when full datasets for these courses (namely, NSS and GO) are made available. Within many FECs,<sup>13</sup> non-prescribed and HLAs do not come fully under the remit of HE offices and a period of reorganisation will be required to align these within a regulatory context. At this point, these categories should be treated as a separate mode and level of study and not bulked together under 'other UG.' (An employee of a higher education provider)*

<sup>12</sup> Higher Level Apprenticeship (HLA)

<sup>13</sup> Further Education Colleges (FEC)

*We do not agree that this condition should be extended to all provision that the provider delivers (such as, NPHE courses, transnational education and further education qualifications). We remain concerned that this would result in a massive expansion in the OfS and regulatory burden, as well as regulatory overlap with other regulators, and question how this provision would be monitored. We would therefore propose limiting the condition to just the provision that is funded by the OfS/public funding. If the OfS does decide to include non-prescribed HE in the dataset, this should be a separate dataset (either as mode or level of study) and not simply included in 'other UG.' (An employee of a higher education provider)*

## **Proposed condition may reinforce inequality**

Lastly, a few responses argued that the proposed approach could reinforce the existing inequality among students, by favouring the recruitment and the outcome of already advantaged students. Several responses mentioned that the proposed regulation could incentivise recruitment campaigns focused on low-risk students. A few respondents argued that resolving this risk through the access and participation plans (APPs) wouldn't be an adequate solution and that regulatory action and messages should be aligned. A similar approach may also be followed when planning provision, leading to some providers rejecting alternative provisions and focusing on how to meet and match continuation and completion measures.

*This proposal risks reversing progress made in increasing access and participation for underrepresented student groups; there is a distinct risk that students from the most disadvantaged areas [...] will be denied the opportunity of engaging in life-changing higher education opportunities. (An employee of a higher education provider)*

*The proposals for absolute minimum thresholds create perverse incentives for providers to reduce risk by moving away from key areas of provision—such as, underrepresented students; flexible provision; and diverse and innovative provision (which may lack a clear or well-established progression pathway). Academic standards could also be lowered to meet continuation and completion targets. (Higher education representative body)*

*The proposals do seem at odds with other OfS objectives and principles—for example, through APPs institutions are being asked to eliminate gaps in progression. However, through B3 institutions have to meet a minimum threshold. There needs to be clearer messaging around OfS priorities and objectives. (An employee of a higher education provider)*

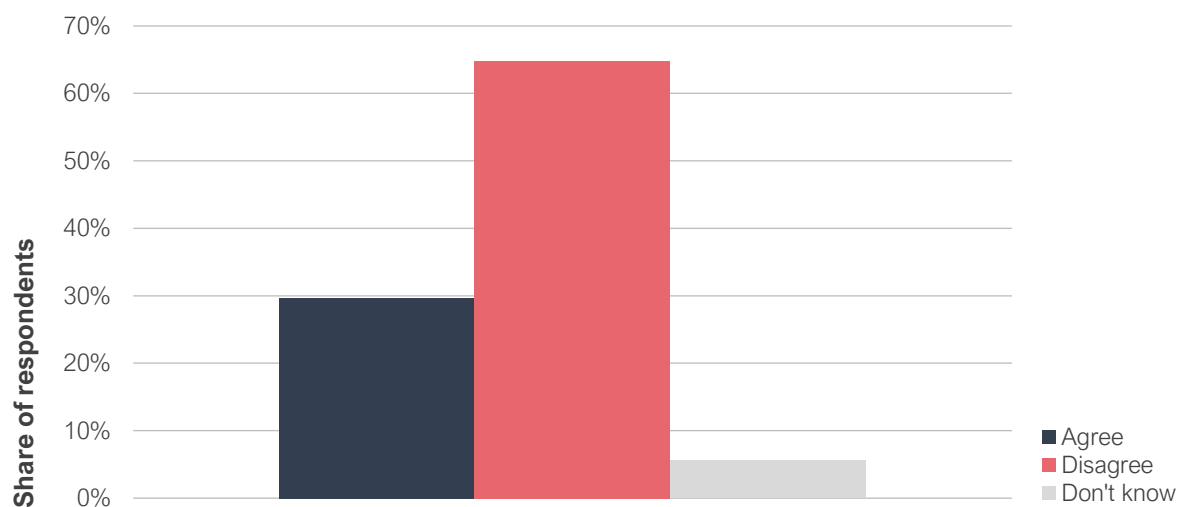
# Proposal 2: Constructing indicators to assess student outcomes

## Question covered in this section

Proposal 2 refers to the OfS proposal to construct student outcome indicators for continuation, completion and progression to managerial and professional employment of higher level study. It also covers the proposal to break down indicators to show performance across several categories.

### Question 4

**Do you agree or disagree with the proposals for how we will construct student outcome measures? Do you have any alternative suggestions?**



Almost two-thirds (65%) of respondents disagreed with the proposals for how the OfS will construct student outcome measures, while 30% agreed with them and 6% declared that they don't know.

### Thematic analysis

The key themes identified from the qualitative analysis of responses are discussed in detail below and presented in order of how often they were raised by respondents.

#### Measures of successful outcomes are narrow and out of provider control

The most frequent theme raised in this question was that the proposed indicators represent a narrow view of what valuable student outcomes and successful achievements are. These respondents mentioned that positive outcomes for students would be better represented by a wider understanding of success—including self-fulfilment, personal development or non-professional contributions to social needs.

Among others, respondents mentioned the following issues related to the progression measures: many professional careers develop differently from what is captured in the proposed metrics, the Standard Occupation Classification (SOC) major groupings do not capture the rapidly changing professional environment as they are updated every 10 years, and there is a threat of increasing

adaptation of metric-satisfying approaches rather than more innovative career support and development. Regarding completion, respondents believed that students withdrawing from courses that happened not to be for them and deciding to enrol elsewhere should not be penalised in the same way as non-completion owing to inadequate academic support.

Lastly, in terms of both continuation and progression, respondents expressed concern that the indicators would be affected by a wide range of external factors that providers could not always control and that this would penalise providers that have sensible approaches to student needs and career prospects.

*We would urge the OfS to consider a broader definition of positive outcomes which takes into account other definitions of student outcomes and student 'success.' These should include becoming an entrepreneur, moving outside the UK and/or raising the aspirations and opportunities of members of their respective communities. (An employee of a higher education provider)*

*There is concern about the definitions of professional and managerial jobs as defined by SOC codes in some creative disciplines [...]. Taking contextual factors into consideration is welcomed, but it would seem fairer to use a methodology that takes this into account within the data, particularly as so much data is published. (An employee of a higher education provider)*

### **Proposed indicator complexity adds regulatory and administrative burden**

The next most frequent theme raised by respondents was that the set of proposed indicators to assess student outcomes is too large. According to these views, the indicators proposed add great complexity to the process and entail a huge burden for providers.

Respondents argued that such a large volume of data would not be informative for students, would make it difficult for providers to know where best to focus efforts on improvement and would hinder effective regulation as relevant data may be overlooked. Many respondents suggested setting out a more focused set of indicators with higher risk or greater public interest. Some of them referred to the Tertiary Education Quality and Standards Agency (TEQSA Australia) as an example of such prioritisation to avoid current complexity and workload.

*The proposed range of split metrics will result in several thousand data points per provider. For an institution, this can make it difficult to know where best to focus efforts on improvement. [...]. For the OfS, this poses the challenge of having too much data to make focused assessments and to know efficiently where intervention is required. (An employee of a higher education provider)*

*It is noteworthy that in Australia TEQSA initially developed 48 risk metrics before deciding that, because of complexity and burden, this did not represent effective regulation and reduced this to 11 key indicators. We would encourage the OfS to be similarly focused on the greatest areas of risk and public interest. (An employee of a higher education provider)*

### **Courses with alternative structures need separate evaluation strategy**

The third most common theme discussed by respondents in this question was that some courses would not be adequately evaluated under the current proposal; based on the current proposal, courses would be benchmarked against non-comparable course structures, resulting in abnormally poorer outcomes. In general, this would be the case for courses whose structures do not fit into the standard or most common pathways in higher education. Respondents argued that these courses should be considered separately and with differentiated quantitative thresholds.

The courses discussed by respondents are mostly part-time studies, full-time degrees with foundation years, online courses and NPHE courses. According to respondents, these courses target students who require a higher degree of flexibility, students with different socioeconomic characteristics (age, familial situation, professional career, life experiences) and thus potentially have different outcomes.

Several respondents argued that full-time degrees with foundation years usually recruit students from disadvantaged backgrounds and aim to widen access and higher education participation. Consequently, students are unlikely to meet the proposed thresholds if merged with 'other UG.' Instead, respondents mentioned that data on NPHE would be incomplete. It was argued that this issue could lead to the misinterpretation of missing information as lower standards of quality. This would harm people's perception of NPHE, and so would its intention to widen participation for people who otherwise may not have accessed higher education.

*Current indicators largely favour traditional three-year degree programmes and become less relevant to part-time, flexible and transferable higher education. (An employee of a higher education provider)*

*We are also concerned that the simple split between full-time and part-time does not recognise the significant difference between students who may be undertaking a part-time course on campus and one studying at a distance while working. (An employee of a higher education provider)*

*We would be concerned about the proposal to set the same numerical threshold for a first degree and for a first degree with an integrated foundation year. [...]. The continuation threshold for these students should be more in line with that proposed for 'other UG' students. (An employee of a higher education provider)*

Lastly, respondents seem content with the temporary exclusion of modular study funded through Lifelong Learning Entitlement (LLE) given the absence of adequate approach to measuring student outcomes. However, as LLE is gaining importance in the educational landscape, respondents were interested in future approaches. In fact, some argued that, if not tackled adequately, the regulation would soon become irrelevant. Several respondents supported the exclusion of transnational education. Respondents suggested that the OfS carefully consider potential challenges (for example, related to data collection and quality) before (and if) including those courses into the regulation and to consult further before any thresholds are set at provider level.

*We would also like to seek any information about whether the OfS has any indicative timelines in reference to probable future consultations on HTQs,<sup>14</sup> modular/flexible provisions that may be funded by lifelong learning entitlement (LLE), and transnational education (TNE) courses. (An employee of a higher education provider)*

*We agree that TNE data quality is not yet sufficiently robust to be used for this regulatory purpose and significant improvements will be required. Consideration should be given to whether there are other ways in which the scrutiny of TNE can be carried out, as the data collection for this will be a considerable burden on providers. (An employee of a higher education provider)*

<sup>14</sup> Higher Technical Qualifications (HTQ)

## Proposed timescales may lead to inaccurate evaluation of outcomes

The next most frequent theme discussed was that the proposed timescales to evaluate student outcomes would not provide an accurate picture. Respondents discussed a few specific issues, which are listed below.

- Four-year time series was considered too long, resulting in indicators failing to provide an up-to-date picture of the quality of the provision as well as reflect recent successful interventions.
- On progression, respondents mentioned that outcomes would be measured too soon after their studies and, hence, underestimate student success in their professional career.
- On continuation, the timespan to consider dropping out and, hence, negative outcomes, was also considered too short as it was argued that student reincorporation in different education settings may take a bit longer.

Related to the above discussion, a few responses argued that issues with these measures are likely to become larger over time, as studying and employment patterns are changing.

*We believe that constructing indicators using four years of data is undesirable because it introduces too much lag into the data and does not place sufficient emphasis on providers' most recent performance which should be of greatest interest in regulatory assessment. (An employee of a higher education provider)*

*We do have an overarching concern about the sustainability of the proposals in the face of fundamental [...] changes to higher education. [...] The continuation and completion indicators are at odds with government plans to increase modular and flexible provision, [...] non-completion will become an increasingly difficult concept to measure if more students undertake higher education programmes in a flexible way, over a long period of time. (Higher education representative body)*

## The proposal adds unnecessary complexity and disincentivises partnerships

The next most common theme is related to additional complexity that may have, according to respondents, a negative impact on partnerships. According to these views, making providers accountable not only for the teaching quality of a partner organisation, but also for the outcomes of its learners entails a significant administrative burden in terms of monitoring. Additionally, according to those respondents, it creates a strong incentive to discontinue partnership arrangements.

Some respondents also argued that the proposal confounds the accountability between teaching and awarding providers and risks double-counting students. Some respondents, for instance, required clarity around who would receive the improvement or regulatory notices.

Lastly, one of these respondents argued that the disincentive to set up new partnerships could create educational cold spots. The respondent noted that there are some areas across the country in which students can only access higher education through partnership arrangements between local colleges and external higher education providers.

*We remain concerned that the proposals disincentivise partnerships by confusing the accountability between teaching and awarding providers, the differences between 'validation' and 'franchise' arrangements, as well as the double counting of students. (An employee of a charity or third sector organisation)*

*This could exacerbate educational cold spots (for example, in coastal areas) where the only access to higher education for prospective learners is through a partnership arrangement between their local college and an HE provider. (An employee of a higher education provider)*

## Concerns about reliance on the Graduate Outcomes survey

The next most common theme was a discussion on the role and quality of the Graduate Outcomes (GO) survey data. Mostly, respondents argued that the survey is not well-established yet, but still experimental, and potentially weak given its low response rates. Respondents argued that this data would not give an accurate picture of a graduate's outcome prospects.

Some respondents argued that the survey may still overlook relevant points, such as a stronger weight on student satisfaction and valuation. Similarly, they argued it could skip relevant progression by considering only a snapshot 15 months after graduation, such as completing a master's level programme, which would be a positive outcome. Respondents suggested linking other datasets, such as the HESA (Higher Education Statistics Agency) student record to avoid high reliance on the GO survey. Finally, potential biases of the survey data were discussed by a few respondents. For instance, less confident students could underestimate their role in graduate jobs and be classified as a lower SOC category. Similarly, questions on a person's own business or self-employment do not necessarily capture those developing a creative portfolio.

*The Graduate Outcomes dataset was described as an experimental dataset in 2020 and we believe it still has significant flaws. A relatively low response rate persists; there is concern about whether the census-based nature of the survey is the most appropriate way to gather critically important data [...] and whether the question of most important occupation is useful in the survey. (An employee of a higher education provider)*

*Furthermore, incorporating graduate reflection into what counts as a positive employment outcome for a graduate should be one of the main building blocks in the construction of this measure [...] and would reduce concerns over the validity and consistency of how the data attempts to measure the value of higher education. (An employee of a higher education provider)*

## Different sectors may need different approaches

Other respondents raised concerns about the need for sector-specific approaches and indicators. Those respondents argued that the current proposal could artificially create negative outcomes on some sectors owing to the characteristics of the labour market, the expectations and life decisions of students or simply owing to the nature of the subject. This idea was related to some of the themes discussed previously, such as:

- the weaknesses of the Graduate Outcomes survey, as it may not capture adequate outcomes in some sectors,
- the narrow views of success, as creative industries may not follow standard understandings of professional growth, and
- the proposed timelines to measure successful careers, as it may take a bit longer in some fields.

*There is a huge variation in the outcomes between different subjects which is seen at all types of provider across the entire sector. [...] Including subject level as one of the indicators—but not including separate thresholds for different subjects—could be seen as the OfS being biased towards vocational subjects. (An employee of a higher education provider)*



*To ensure fairness, the thresholds must be set at such a level as to not disincentivise students from taking some courses (or universities offering them) which may have comparably 'poorer' outcomes but which are beneficial to society, and to recognise the mix of subjects that the provider offers. (An employee of a charity or third sector organisation)*

## **Reinforcing background inequality among students and regional imbalance among providers**

A smaller but considerable number of respondents argued that these indicators are affected by the student and area characteristics—such as, family income, social capital and regional imbalances. For example, students from areas with fewer managerial opportunities may want to remain in their communities and help them grow. According to these respondents, incorporating contextual analysis within quantitative measures does not suffice because initial quantitative insights would still harm views on the provider.

The key idea was that the current approach could not only overlook background inequalities, but even reinforce them. According to these respondents, the current proposal could encourage providers to focus recruitment campaigns on low-risk prospective students. This means targeting better-off communities and individuals, while excluding deprived regions and students from disadvantaged backgrounds, as they are more likely to perform worse in the proposed metrics.

*Students from disadvantaged backgrounds are much more susceptible to non-continuation and non-completion for reasons that are nothing to do with the quality of the learning experience. The indicators proposed would absolutely disincentivise HEIs<sup>15</sup> from attracting such students. (An employee of a higher education provider)*

*The proposed measure on progression [...] disadvantages providers outside London and the SE<sup>16</sup> of England and may disincentivise development of new provision in poorer regions. Failure to recognise the inherent regionality in the UK economy appears to be in direct opposition to the government's own 'levelling up' policy agenda. (An employee of a higher education provider)*

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<sup>15</sup> Higher Education Institutions (HEI)

<sup>16</sup> South East (SE)



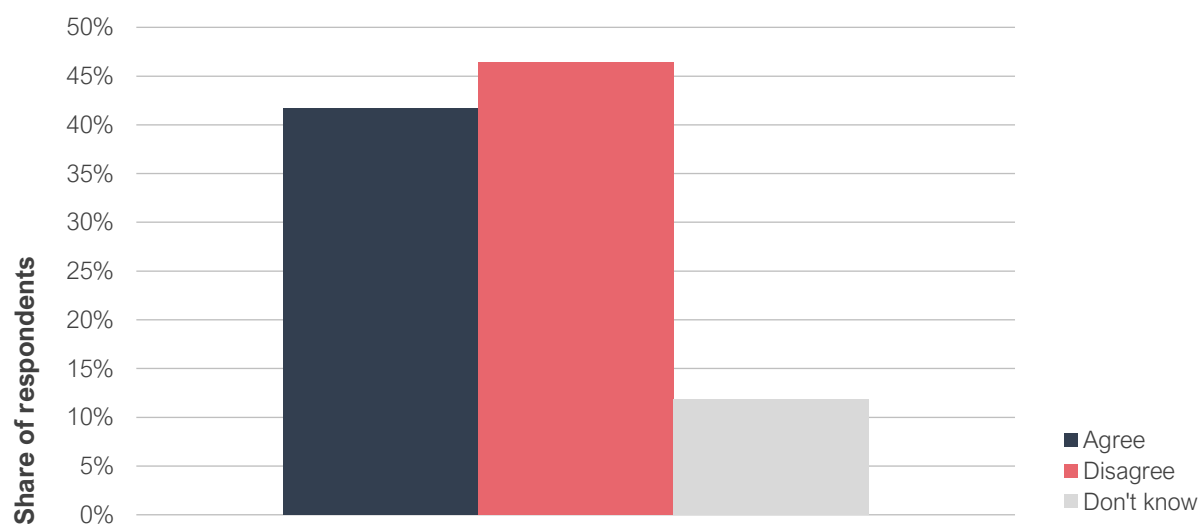
# Proposal 3: Setting numerical thresholds for student outcome indicators

## Questions covered in this section

Proposal 3 describes the OfS proposal to set numerical thresholds for student outcome indicators, including what these thresholds will be and how they will be used during the assessment by the OfS.

### Question 5

**Do you agree or disagree with our proposed approach to setting numerical thresholds set out in Annex E? If you disagree, please provide reasons and any alternative suggestions.**



Almost half of respondents (46%) disagreed with the proposed approach to setting numerical thresholds for student outcome indicators, while 42% of respondents agreed with it and 12% did not know.

### Thematic analysis

Many respondents were in favour of the contextualisation of the thresholds as well as considering the historical performance of groups of students with certain characteristics. However, even if respondents broadly agreed with the proposal, they still expressed concern about different aspects of the approach. The key concerns identified from the qualitative analysis of responses are discussed in detail below and presented in order of how often they were raised by respondents.

### Need for further consideration of context in numerical thresholds

The most frequent theme was respondent concern that the OfS approach does not adequately consider the situation and context of providers or other factors—for example, student characteristics, geographic factors or even major incidents, such as the COVID-19 pandemic. Some argued that the approach should be flexible considering the specific characteristics of some students, such as disabled people, part-time students or mature learners. A few respondents argued that the OfS approach is based on the assumption that student performance should be entirely attributed to higher education providers, while there are wider societal issues that could affect student outcomes.

*It is important that the wider context in which institutions operate is always borne in mind, including, for example, the impact from the COVID-19 pandemic in cases where a provider's results have suddenly fallen below the numerical threshold in recent years. (An employee of a charity or third sector organisation)*

*The impact of socioeconomic factors on student outcomes cannot be underestimated. It is crucial that providers that recruit students from disadvantaged backgrounds are not disincentivised from pursuing their mission to make HE more accessible to those who would otherwise not pursue it. (Higher education representative body)*

## Concerns about proposed progression indicators

The second most frequent theme was respondent concern about the challenges in using progression indicators to measure the impact of higher education providers on student career paths. Many respondents argued that progression indicators are not appropriate to measure student success and provider quality, as they do not consider provider context and individual student aspirations and ambitions. A lot of the subthemes discussed within this wider topic are in line with the considerations mentioned in Question 4, related to the proposals on how to construct indicators to assess student outcomes. In other words, many respondents focused on the appropriateness of the indicator in general rather than on the process of setting a threshold.

Many respondents expressed their opposition to linking the progression metrics to the SOC codes as there are challenges in the SOC definitions of professional and managerial jobs. The successful careers of people progressing to specific occupations—such as jobs in the creative industry—might not be recognised under the current SOC codes. Some respondents were concerned about underestimating the positive outcomes of people who take graduate level jobs that are not recognised under the current SOC system, which was also considered to be outdated as it is reviewed every 10 years. Another issue raised was the use of the GO dataset to measure progression, as this dataset has a low response rate and information was collected during the pandemic. Others argued that using evidence on the employment outcomes of students only 15 months after the completion of their studies would lead to misleading conclusions on assessing the impact of higher education institutions on student career paths.

*We propose that the progression measure should relate to employment and further study, rather than being tied to SOC codes for the following reasons: graduate outcomes 15 months after graduation is problematic because it does not truly evaluate the impact of the higher education provided; [...] it does not work for students who have completed a one-year postgraduate qualification and are only just entering the job market [...]. Other technical challenges relate the coding of graduate roles according to the correct SOC code because we understand that there can be a significant margin of error. (An employee of a higher education provider)*

## Numerical thresholds might lead to misleading conclusions for smaller providers

Concerns that using numerical thresholds might lead to misleading conclusions for specific types of provider or student population groups was the third most frequent theme. Some respondents were concerned that numerical thresholds might not be appropriate for smaller providers and might lead to misleading conclusions owing to challenges flowing from small samples of students.

*The 'Setting numerical thresholds for condition B3' document is comprehensive in its explanation of how the numerical thresholds have been arrived at. A balance appears to have been struck between the number of providers and the number of students that would be below particular*

*thresholds; however, it would appear that particular types of provider will be affected—for example, the 60% threshold for first degree progression results in 22.8% of providers falling below this threshold, but only 2.3% of all first degree students will be affected. This means that small providers are disproportionately affected. (An employee of a higher education provider)*

*As a small provider who will return a small sample of students in these datasets, it needs to be acknowledged that the data has the potential to be skewed in a particular year due to fluctuations in student outcomes. (An employee of a higher education provider)*

#### Four-year review of thresholds should be done in consultation with sector

Many respondents requested further explanation and clarity on the four-year review and revision of the thresholds and suggested that this review should be done in consultation with the sector. A few respondents queried the transparency and objectivity of the OfS approach; they expressed concern that the numerical thresholds will be set (or adjusted in the future) arbitrarily following political imperatives. Along the same lines, some respondents required assurance that the threshold will not change wildly in the future—for example, the threshold will not be set above the sector average.

*Thresholds will also be reviewed every four years in line with the TEF—we believe it is important to ensure that thresholds do not continuously creep up in a way that could cause unnecessary regulatory intervention [...]. We believe that a mechanism should be put in place to ensure this is avoided, and that sector consultation should be required when reassessing thresholds. (An employee of a higher education provider)*

*The reference to the review of numerical thresholds made in paragraph 140 ('We do not expect to set numerical thresholds that would automatically rise over time. Instead, we propose to review them every four years to correspond with the assessment cycle for TEF') lacks clarity and we would therefore welcome further information regarding the mechanism that will be used for review of the numerical thresholds and recommend that any future changes to the mechanism be the subject of sector consultation. (An employee of a higher education provider)*

#### Concerns about impact of OfS approach on education of disadvantaged students

Another common theme was respondent concerns about the impact of the OfS approach on the recruitment of students. Many respondents were concerned that the OfS approach might affect the recruitment of students from disadvantaged backgrounds, as providers might be incentivised to reduce recruiting students who are less likely to complete their studies. In particular, respondents were concerned that providers would want to avoid recruiting students who are expected to have lower chances of continuation, completion and progression so that they can meet the numerical thresholds.

*We are concerned that setting outcomes and progression as numerical thresholds will incentivise the selection of 'low risk' students at the expense of widening participation; [...] focus on meeting numerical thresholds at the expense of enhancing or even maintaining quality in other areas. (Employee of a regulator)*

*[...] these proposals risk creating a vicious circle, whereby those institutions who undertake the 'heavy lifting' of improving social mobility shoulder the greatest regulatory burden. In order to reduce risk within the proposed regulatory framework, providers are incentivised to reduce recruitment from those groups who incur the greatest risk [...] undermining the OfS's own commitment to ensure that those from underrepresented groups are able to access higher education, participate and succeed. (An employee of a higher education provider)*

## NPHE should not be included in the ‘other UG’ category

Another theme raised in respondent answers was suggestions on how NPHE should be treated. In particular, many respondents argued that NPHE courses should be treated as a different category for which the OfS should set different thresholds, rather than being considered as an ‘other UG’ category, owing to fundamental differences between NPHE and other courses and lack of data.

*We do not feel it is appropriate to include NPHE in the ‘other UG’ data at this time. NPHE courses are fundamentally different and are not broadly comparable to level 5 on the Framework for Higher Education Qualifications (FHEQ) which comprises the majority of data in the ‘other UG’ threshold. (An employee of a charity or third sector organisation)*

*“As previously noted, we believe NPHE courses should be treated as a different category rather than grouped under ‘other UG’ due to the lack of data and different contextualised thresholds should be set for these courses.” (An employee of a higher education provider)*

## Concerns about setting thresholds above sector average and suggestions on OfS approach

Some respondents expressed concerns about setting numerical thresholds above the sector average. They discussed that, considering that the UK HE sector generally performs highly, setting an above average numerical threshold would result in some providers being inaccurately presented as underperforming. Some respondents suggested there should be a guarantee that thresholds will not fluctuate wildly. A few respondents suggested that the OfS should also consider the distance from the average of indicators in the prioritisation process as well as in all stages of the regulation. This suggestion was based on the argument that a provider might have a below-average performance which does not necessarily mean that its services are of low quality.

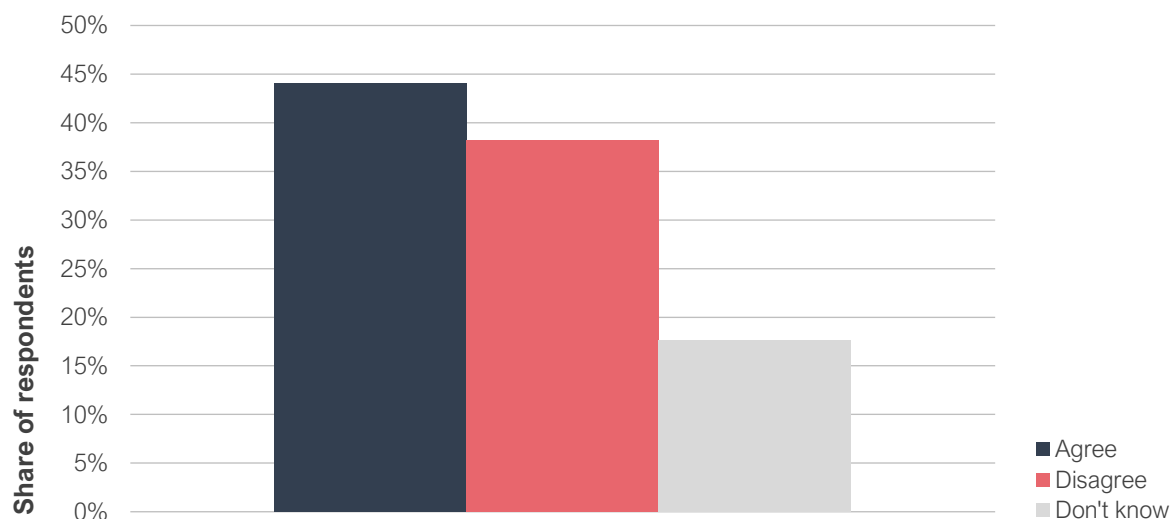
A few respondents also suggested alternating the OfS approach, mainly focusing on setting the numerical thresholds. For example, very few suggested using benchmarked thresholds that consider student characteristics and the subject of study, such that providers are compared to those providing similar types of education. One respondent suggested setting the numerical thresholds at two standard deviations below the average to ensure that the focus would be on providers who provide low-quality services.

*If the process to develop numerical thresholds is to use averages as a starting point, it follows that distance from the average of indicators should take precedence in the next stages of the regulation of student outcomes and in the process of prioritisation. [...] would object, however, to the idea that the OfS would set a numerical threshold higher than the sector average. [...] There should be some guarantees built into this regulatory approach that the setting of the numerical thresholds will not change wildly. (An employee of a university mission group)*

*Rather than a one size fits all approach, [...] proposes a benchmarked system, whereby providers are judged against those providing similar types of higher education. We would propose that benchmarking is a significantly more transparent process under a new system than how it has historically been carried out. (An employee of a private company)*

## Question 6

**Do you agree or disagree with the proposed numerical thresholds set out in summary in Table 1 and shown in full in ‘Setting numerical thresholds for condition B3’?**



Almost half (44%) of respondents agreed with the proposed numerical thresholds, while 38% disagreed with them and 18% declared that they don't know.

### Thematic analysis

The key themes identified from the qualitative analysis of responses are discussed in detail below and presented in order of how often they were raised by respondents. Many respondents commented that they are broadly in agreement with the proposal. However, they still had concerns regarding specific numerical thresholds and how they would be set.

### Concerns and suggestions about setting thresholds for specific indicators

The most frequent theme among responses to this question was concerns and suggestions for setting thresholds for some specific indicators. In particular, some respondents expressed their opposition to the numerical thresholds for part-time and full-time courses. For example, some could not understand the rationale for setting part-time (PT) progression outcomes 15% higher than full-time (FT) thresholds. Other respondents were worried that the thresholds for continuation, completion and progression were not realistic in relation to each other, and that thresholds are set in a way that will put a considerable burden on some providers.

Additionally, some respondents suggested that there should be different thresholds for some categories owing to the context of the courses and the specific characteristics of students attending those programmes. For example, some respondents suggested there should be different thresholds for FT first degrees with an integrated foundation year. A few quoted evidence that students attending these courses are less likely to continue and complete the programme than students attending FT first degrees, which, according to those respondents, justifies why FT first degrees with an integrated foundation year should be treated as a separate level of study. Additionally, as in Question 5, some respondents argued that the OfS should set different thresholds NPHE courses, as the diversity of these courses in terms of nature and intensity makes it hard to include them in the 'other UG' category.

A few respondents expressed concerns about setting thresholds on apprenticeships and suggested that thresholds should consider that providers cannot control whether students complete the apprenticeship. Although most of them recognised that completion rates of 55% are lower than other modes and levels of study, they still believed that the thresholds do not take into account the apprentices' potential lack of motivation to complete their apprenticeships. Following the completion of the embedded qualification, apprentices often do not have the incentive to complete their apprenticeship, which does not necessarily signal a lack of provider support.

*[...] we note that some of the proposed thresholds would appear to be inconsistent/incongruous. For example, the proposed progression thresholds for full-time and part-time PGT<sup>17</sup> students are 70% and 85% respectively, without a clear rationale as to why students in part-time study should be more likely to progress into highly skilled employment or further study than full-time students. (An employee of a higher education provider)*

*If completion takes into account transfers and change of courses then the completion threshold should be higher than the continuation threshold. (Respondent preferred not to self-identify)*

*[...] we are concerned that the OfS is not setting different baselines for foundation years. This may have the perverse incentive of removing provision for this group and contradicts government aspirations around 'levelling up.' (An employee of a higher education provider)*

### Concern about transparency of OfS approach

The second most frequently mentioned theme concerned the transparency and rationality of the OfS approach to setting numerical thresholds. Some respondents opposed the current OfS approach, claiming that thresholds are set arbitrarily or that the approach does not meet the OfS policy aims and objectives.

*The proposed method to set numerical thresholds appears arbitrary. There is no logic to defining the 'starting point' described in paragraph 134 other than to set it at a point where at least some number of providers fall below. Using this logic, there is never a situation where the whole sector can be deemed good enough. (An employee of a higher education provider)*

*The thresholds seem reasonable, although it would be good practice for the OfS to ensure they are subject to a transparent and ongoing review process to safeguard that they are, in fact, suitable. If a large number of providers fall below a threshold in the first years of regulating in this new way, it might be likely that the threshold has been set inappropriately. (An employee of a higher education provider)*

### Request for further information on OfS approach

Requests for further information on the OfS approach were the third most frequent theme. Some respondents in this theme explained that they could not comment on the numerical thresholds presented in Table 1 of the consultation as they felt there was not enough information on how the numerical thresholds were set or how they will be used. Some respondents asked for clarifications on specific numerical thresholds.

*It is difficult to comment on this area without a more thorough knowledge of how the thresholds will affect particular subject areas and how subject indicators will be used in assessment. While we are confident in our own performance having looked at the data, we would be highly concerned if the baseline was set at a level that—on average across the sector—delineated*

<sup>17</sup> Postgraduate taught courses (PGT)

*particular subject areas (for instance, in the arts or humanities) as inherently low quality. (An employee of a higher education provider)*

*Why are the thresholds for integrated master's programmes set differently to those for undergraduate first degree and taught postgraduate programmes (for example, 80% for integrated master's (UG/PG border), 60% for undergraduate first degree, and 70% for taught postgraduate)? (An employee of a higher education provider)*

## Broader concerns about progression indicators

The next most frequent theme was respondent concerns about setting numerical thresholds on progression indicators. As in responses to Question 5, respondents expressed disagreement with using progression measures as an indicator of provider teaching quality. Others explained that they disagree with defining success based on whether students progressed to professional or managerial jobs; the definition of progression might vary among people, especially those in the creative industry.

*We do not agree with the progression outcome metric as this is dependent upon the student entering their chosen career immediately after leaving higher education, which may not be practical or even possible. (Higher education representative body)*

*We would highlight that progression is a more nuanced aim for arts and design graduates and, while we want our students to succeed against this metric, we do not feel that the measure compares them accurately with students studying other disciplines, as explained in our submissions across this set of consultations. (An employee of a higher education provider)*

## Concerns about impact of OfS approach on education of disadvantaged students

Another theme raised in answers to Question 6 was respondent concern that this approach poses challenges to specific student population groups and will adversely impact student recruitment. Particularly, some respondents were concerned that providers who recruit students from disadvantaged backgrounds might not be able to meet the suggested numerical thresholds. As a result, it was argued that providers will be incentivised to avoid recruiting students who are more likely to fail in terms of continuation, completion and progression. This unintended consequence will hinder social mobility.

*While a focus on student outcomes is undoubtedly important, failing to take account of societal factors that influence this, and which are beyond the control of universities, might lead to a perverse disincentive that discourages universities from accepting those students most 'at risk' of exiting with lower awards." (An employee of a higher education provider)*

*Even in relation to the continuation and completion data, we suggest it is vital to understand that some students will have greater barriers than others and, even with excellent support, will be more vulnerable to attrition. The regulator should be alert to the risks of disincentivising providers from offering opportunity to such students who are, by nature, more high risk. (An employee of a higher education provider)*

## Concern about not considering contextual factors in setting numerical thresholds

Some respondents were concerned that the OfS approach fails to consider fully the provider's context or additional socioeconomic factors that might affect student outcome. Some argued that factors such as the impact of the pandemic are not reflected in the thresholds set by the OfS, suggesting that the thresholds have been set too high.



*The thresholds identified in Table 1 are not a true reflection of performance in most recent years and consideration needs to be given to the world events that have impacted students and the economy in relation to graduate jobs. None of the factors of the past two years will have been built into the numerical thresholds, therefore we would suggest they are too high. (An employee of a higher education provider)*

*It is unclear whether these numeric measures take account of the potential catastrophic circumstances that could affect student indicators. Given that we are only just coming out of two years of a pandemic-drenched education during which student physical and mental health was severely affected, it is unclear whether blunt and uniform numeric indicators in any way reflect circumstances that we experience in the classroom. (An employee of a higher education provider)*



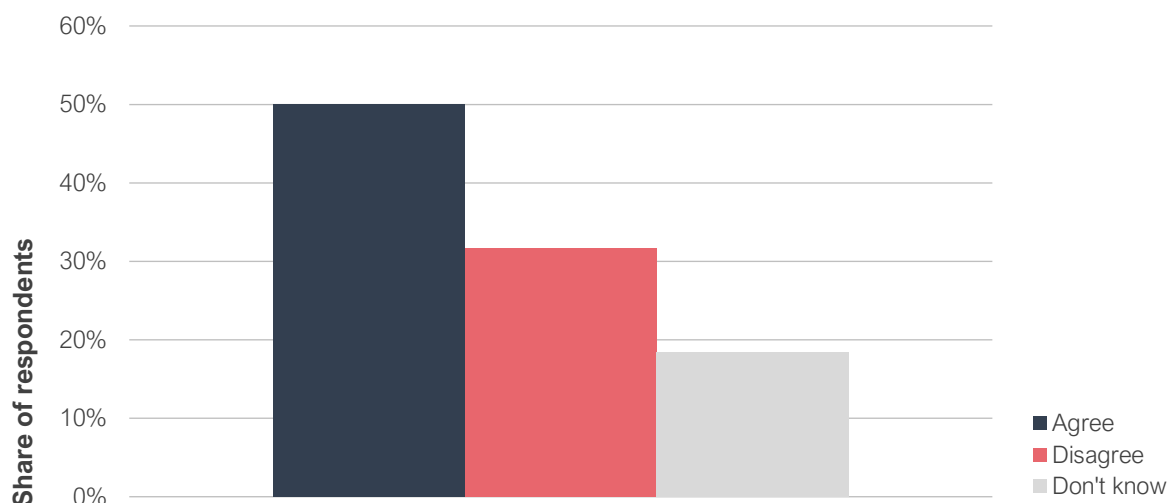
# Proposal 4: Publishing information about provider performance

## Questions covered in this section

Proposal 4 addresses OfS proposals for the publication of data and information for each registered provider. The proposal includes publishing student outcome data, performance in relation to numerical thresholds, statistical confidence and individual benchmarks of providers.

### Question 7

**Do you agree or disagree with our proposal to publish information about individual providers' student outcomes and performance in relation to our numerical thresholds, as well as sector-wide data, on our website?**



50% of respondents agreed with the proposal to publish information about the student outcomes of individual providers and performance in relation to numerical thresholds, while around one-third (32%) disagreed with it and 18% declared that they don't know.

### Thematic analysis

Many respondents agreed with the principle of transparency, which requires publishing information about an individual provider's student outcomes. However, many shared concerns regarding the approach to data publication (which information should be published, when and how), as well as the potential consequences of publishing this data. Below, we discuss these key themes.

### Contextual information should be published alongside data

The most frequent theme among the answers to this question concerned suggestions on what information should be published on the OfS website. Most respondents suggested that contextual information should accompany published data to avoid misinterpretation. In particular, according to those respondents, the OfS should provide all important information explaining that performance below a numerical threshold does not necessarily correspond to low quality or a breach of B3 conditions. This information would be necessary, especially when a provider has not been subject to further investigation or regulatory intervention.

Some respondents highlighted that publishing contextual information is necessary to make data accessible to non-expert audiences. Many were concerned that non-expert audiences would not be able to understand all the published information, including concepts such as statistical significance or large datasets with many split indicators. Making information accessible to non-expert audiences such as students and parents will support decision-making (for example, prospective students' choice of provider and any stakeholder interested in understanding and comparing provider performance).

*If the data is published, but there are valid contextual reasons for being below a numerical threshold it will be important that this context is presented in a clear and transparent way to avoid unnecessary confusion of why a provider is below a threshold in a priority area, but no action is being taken. (An employee of a higher education provider)*

*We would advise the OfS to give particular consideration to how the provider and sector-wide data it publishes will be explained and contextualised for audiences such as prospective students, parents and carers, colleagues within secondary and further education, and employers. (An employee of a higher education provider)*

### Concerns about OfS approach leading to data misuse and resulting in reputational damage for some providers

The next most frequent theme was respondent concerns that the OfS approach would be damaging for some providers. In particular, some argued that the publication of data without contextual information might disadvantage smaller providers whose data might appear bad, resulting in reputational damage. The publication of granular data in a context-absent way might allow third parties to misinterpret and misuse the published information. In particular, many respondents were concerned that third parties—such as league table compilers or similar organisations—will create rankings of provider performance, leading to misleading conclusions being drawn by end users. A few suggested that the OfS should provide guidelines to non-expert audiences on interpreting published information to avoid data misuse by third parties. Following this rationale, a few mentioned that providers should be given the chance to review and challenge their data before publication.

*Third parties (such as, university league table compilers) will inevitably use this data for their own sensationalistic purposes, which—in the absence of contextual information—may lead to reputational damage for providers and the wider sector. (An employee of a higher education provider)*

*We recommend that the OfS should provide clear guidance to interested parties on how the dashboards should be interpreted, to minimise inaccurate reporting and reduce the risk of ill-informed and unhelpful comparisons of provider performance being made by third parties. (An employee of a higher education provider)*

*Each provider ought to be given a meaningful chance to correct or challenge any inaccurate data before publication. (Solicitors)*

### Suggestions on when and how data should be presented

Another theme raised was suggestions on when and how the data should be presented. Some respondents were worried that the OfS would not give providers enough time to review the data to be published in order to identify and address any potential errors. A few suggested that the publication of data should be delayed until the OfS completes the assessment of condition B3, such that the data is publicly available alongside contextual information to avoid misuse or misinterpretation.

Additionally, a few respondents made alternative suggestions on how data should be presented, such as publishing a simple dashboard to show whether thresholds were met. Others suggested adding a snapshot view of the data, including differences from benchmarks or headline findings accessible to non-experts, or filters to help users easily navigate through the data.

*With regards to the timing of publication, we disagree that the data should be published at the same time as it is made available to providers. Providers need time to check the data for any errors and there must also be time for contextual factors to be taken into account, otherwise data will be published without any context. (An employee of a higher education provider)*

*We believe that both the indicator and the difference from the benchmark could be easily incorporated into the dashboard display. (An employee of a higher education provider)*

*We believe that further work is needed on the dashboards, including filtering, which will enable providers to gain better insights from the data. (An employee of a higher education provider)*

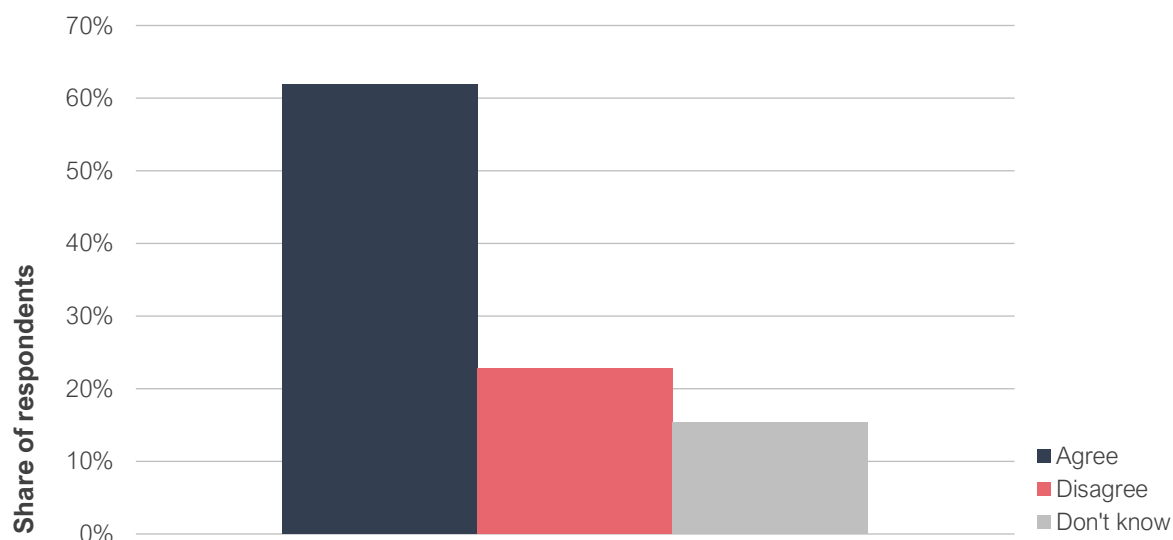
# Proposal 5: Making judgements about compliance with condition B3

## Questions covered in this section

Proposal 5 describes the OfS suggestion on how to approach provider performance along with context in the assessment process. The OfS proposes to adopt an annual cycle to consider ongoing compliance, but also a prioritisation exercise before assessment takes place.

### Question 8

**Do you agree or disagree with the proposed approach to assessment set out in Annex F? Is there anything we could do to improve the clarity of this information for providers?**



Nearly two-thirds (62%) of respondents agreed with the proposed approach to assessment, while 23% disagreed with it and 15% declared they don't know.

### Thematic analysis

Many respondents, who either agreed or did not know whether they agreed or disagreed with the approach (in the quantitative part of the question presented above), commented that they broadly agreed with the proposal on the assessment set out in Annex F. However, many respondents requested further clarity on the suggested approach, while others expressed concerns about the consequences of using this approach or made recommendations for improvement. We discuss these key themes in what follows.

### Additional clarity on various aspects of the assessment

The most frequent theme in answers to this question was respondent requests for clarity on the proposed approach to assessment. The most frequent subtheme is request for extra information on the proposed approach to considering provider context, including details on how contextual information will be used, what weight it will be given or which factors will be accepted by the OfS. Some respondents requested clarity on how the impact of factors outside provider control, such as

the pandemic, will be considered in the approach. A few respondents highlighted that in paragraph 38 of the proposal, it is written that the OfS might ask providers for contextual information, which implies that the OfS does not commit to this statement.

The second most frequent subtheme concerns a request for clarity on the prioritisation process. Many respondents expressed concern about the uncertainty around the different approaches that the OfS can use to select providers to assess their compliance with condition B3. There were mixed views on the use of the thematic approach; some respondents were concerned that it might disadvantage providers with small group numbers or be affected by political will. On the other hand, a few respondents were in favour of using this approach.

Some respondents requested clarity on different aspects and stages of the assessment process. For example, respondents asked for clarity on (i) the statistical model that will be used to determine the distance between the indicator value and the relevant numerical thresholds, (ii) the use of split indicators to assess whether a provider satisfies the B3 condition, (iii) how final decisions will be reached, (iv) regulatory interventions, including sanctions or penalties following the OfS assessment and (v) whether providers can follow an appeal process in case they disagree with the OfS decision.

Some respondents asked for further clarification on the timeframe of the approach, particularly with regard to when providers will have to report their data, which will help providers manage their resources effectively. A few respondents asked for an extension of the timeline for representations to be made by providers following the OfS provisional decision.

*We would welcome further detail on how contextual information will be consistently drawn upon, what weight it will be given and what types of context will be accepted. For example, we would advocate the use of student demographics, regional labour market and entry profiles as valid forms of context. (An employee of a higher education provider)*

*It would be helpful if this guidance included timeframes. In the context of all providers, but especially smaller providers where a limited number of staff wear multiple hats, the timing of these processes would have to be considered so as to allow all providers equal opportunity to engage with the OfS's work without risking damaging the student experience through the creation of additional workload. (An employee of a higher education provider)*

## **Misleading conclusions owing to volatile provider data and extra bureaucratic burden**

The second most frequent theme was respondent concern about misleading conclusions owing to the volatile data of providers. In particular, many respondents were concerned that decision-making should not be based on small, volatile year-on-year data, as this would be damaging, especially for smaller providers. In these cases, the OfS should engage more frequently with providers to decide whether they breach the B3 condition. On the other hand, some respondents were concerned that the engagement with the OfS to provide contextual information will add an extra bureaucratic burden, especially on smaller providers and providers that recruit students from disadvantaged backgrounds.

*Much of the data of many smaller providers is unlikely to be statistically significant or it will be volatile on a year-on-year basis; this should not be seen as a negative unless there is a rigorous discussion with the provider based on other evidence. While discussions are welcomed, there is an implication of additional burden for smaller providers. (An employee of a higher education provider).*

*Firstly, although this may reduce the regulatory burden for some providers it risks creating a vicious circle, whereby those institutions who undertake the 'heavy lifting' of improving social mobility (many of which are in London) and the 'levelling up' agenda shoulder the greatest regulatory burden. In order to reduce risk within the proposed regulatory framework, providers are incentivised to reduce recruitment from those groups who incur the greatest risk. (An employee of a charity or third sector organisation)*

## **Agreement with considering contextual factors and OfS engagement with providers**

Many respondents were in favour of using contextual information to determine provider performance when they perform below a numerical threshold. This approach would allow providers to explain why their performance might be low without breaching the B3 condition. Additionally, many supported the OfS suggestion of engaging with providers to seek relevant contextual information, as dialogue is considered a key tool in the decision-making process of any regulatory body.

*We agree that decisions should not be made on data alone, and that context will be of great importance to determine whether there is a regulatory breach. (An employee of a higher education provider)*

*We agree with the approach to assessing providers by assessing against numerical thresholds, using existing information and then engaging with the provider—this reduces the burden on providers by trying to understand any relevant context that could explain data that appears to be low before engaging with the provider, while also allowing the provider to give evidence to justify an indicator that may appear low. (An employee of a higher education provider)*

## **OfS should draw on expertise of DQB or engage with students or experts**

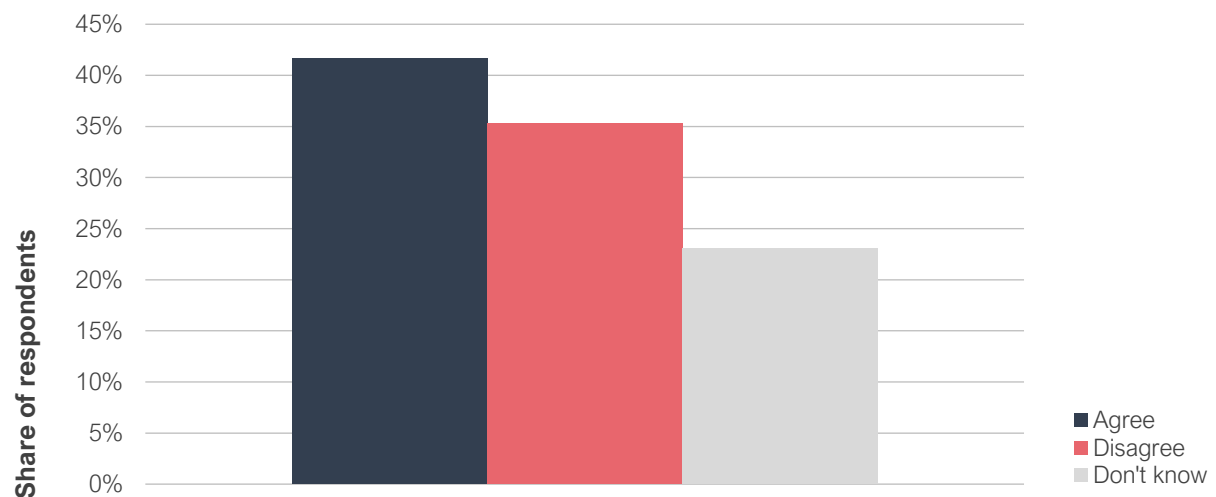
Another common theme was the suggestion for the OfS to draw on the expertise of the designated quality body (DQB) or engage with students or other sector experts. Some respondents argued that the DBQ can draw on academic expertise to assess contextual information, particularly information on continuation and progression, and make informed judgements about the provider's future. A few others supported the idea that the DBQ as well as student and academic experts should be involved in the assessment process.

*The consultation proposes that the OfS itself will assess provider compliance and will not commission the DQB to undertake the assessment. The DQB can draw on academic expertise when making its judgements and in particular when considering the contextual evidence for continuation and completion rates that might require academic as well as regulatory judgement. In complex cases the OfS should draw on the expertise of the DQB or should demonstrate how they will make these assessments in the context of wider academic judgement. (An employee of a higher education provider)*

*Paragraph 29 notes 'the OfS will determine which of these providers should be subject to assessment.' We believe that the prioritisation should have predictability and transparency. Where judgements are needed this should happen through an independent process and involve engagement from students and academic experts. (An employee of a charity or third sector organisation)*

## Question 9

**Do you agree or disagree with our proposed general approach to prioritisation? If you disagree, do you have any alternative suggestions for how we should approach prioritisation?**



42% of respondents agreed with the proposed general approach to prioritisation, while 35% disagreed with it and 23% declared they don't know.

### Thematic analysis

The key themes identified from the qualitative analysis of responses are discussed in detail below and presented in order of how often they were raised by respondents.

#### Additional clarity on approach to prioritisation

The main concern regarding prioritisation was lack of clarity in the proposal. The vast majority of responses mentioning this theme requested a transparent and clear approach to the process deciding which of the alternative approaches will be used each year. Additionally, respondents requested to be notified of the outcome of this process as soon as possible so they can manage their resources more efficiently. Another group of respondents requested additional information on how a combination of prioritisation approaches would work in practice without significantly increasing the regulatory burden on providers. One suggestion to increase transparency and ensure an efficient use of multiple approaches was to appoint an independent panel to decide the prioritisation process, possibly involving students and academic experts as well as OfS officials.

*[...] In our view, the criteria for prioritisation need to be tightly defined to add clarity and transparency, and to ensure that regulatory interventions are objectively justifiable and will have the greatest impact. From a provider perspective, it would not be possible to predict whether a possible breach, however marginal, would result in regulatory intervention.' (An employee of a higher education provider)*

*A way to make this option more viable would be to appoint an independent panel to agree upon the prioritisation measures each year and publish these to the sector significantly in advance of the process to support improvement work in focused areas. (An employee of a charity or third sector organisation)*

## Support for using risk-based hybrid approach

Regarding the preferred approach to prioritisation, the vast majority of respondents favoured a hybrid approach, which in most cases consisted of combining prioritisation of the most severe breaches (option b) where statistical confidence is substantial (option d). In most cases, respondents favoured assessing the severity of the breach using both the number of students affected (option b(i)) and the distance between indicators and thresholds (option b(ii)). In other cases, responses indicated satisfaction with either of these approaches, while it was rare for a respondent to explicitly mention only one of the two alternatives in option b. A small proportion of responses in this theme suggested a hybrid approach that would also prioritise based on breaches for particular student groups (option c).

*We consider an approach that focuses on the most severe breaches in terms of both student number and distance from the threshold, and where there is the strongest statistical confidence for this data, would be most appropriate. This would give a clear steer to providers over where to focus their own improvements and would maximise the impact upon student outcomes. (An employee of a higher education provider)*

*We firmly believe that regulatory intervention should be prioritised where the breaches are most severe and where there is the most statistical confidence. The proposals for random sampling do not fit with the stated aims of the OfS, nor its risk-based approach. (An employee of a higher education provider)*

## Disagreement with randomised prioritisation

The third most common theme was a warning against using a randomised prioritisation approach (option e). In line with the previous theme, respondents favoured a risk-based approach and were concerned about the possibility of randomised prioritisation. According to respondents, randomisation might lead to a focus on providers narrowly missing the threshold while ignoring others with significantly worse provision. Furthermore, they doubted this option would be successful as a compliance incentive and considered it would instead create a significant administrative burden for providers, thus diverting resources from teaching.

*We are, however, concerned that the random approach to determining additional prioritising risks spending regulatory time and resource (and resource within providers) investigating a limited population of students who are not representative of the general quality of provision provided across the institution, while some providers with more structural issues may not be investigated. (An employee of a higher education provider)*

*[...] we are concerned that the use of random selection as a way of incentivising compliance (as stated) with B3 reinstates the bureaucratic burden that has only recently been removed and is contrary to government guidance. With all the other prioritisation approaches outlined in the consultation, we contend that the use of random selection is unnecessary, excessive and contrary to the proportionate regulation OfS seeks to deliver. (An employee of a higher education provider)*

## Consistent approach across years

The fourth most frequently mentioned theme was the request for a consistent prioritisation approach instead of using a different one each year. Specifically, respondents mentioning this theme highlighted that knowing the prioritisation approach in advance and having the confidence that it will be the same in the foreseeable future would allow them to optimise their regulatory processes and devote the necessary time and resources to improving. Some mentioned that this approach would also promote



the sector's reputation and increase the public's confidence in the regulatory process. A few respondents proposed that consistency and transparency could be improved by involving the DQB or OfS's Quality Assessment Committee (QAC).

*The current proposals suggest that the approach to prioritisation will vary annually but that the process will not be transparent to providers. We consider this is inconsistent with the principle of transparency set out earlier in the consultation with regard to the publication of data. It is also inconsistent with the transparency duty put on providers. Moreover, this lack of transparency risks creating a perception that prioritisation is unfairly focused on particular institutions, subjects or areas and could be open to challenge. (An employee of a higher education provider)*

*Future deviation should be subject to further sector-wide consultation. (An employee of a higher education provider)*

*[...] believes there may be a role for the OfS's QAC or the DQB in the prioritisation process to ensure some level of accountability to the process. At present, it is unclear who is making the decisions on the process of prioritisation going forward. While we understand that colleagues at the OfS will be overseeing the process, it would be regrettable to have no expert peer academic judgement involved in the decision-making, even if this were to act in a limited capacity as a check and balance on proceedings. (An employee of a university mission group)*

## Question 10

### Do you think the OfS should adopt option 1 or option 2 (see paragraph 207) when defining the scope of each assessment for ongoing condition B3?

Among 193 respondents, 51% favoured option 2, 31% supported option 1, 14% provided a nuanced view that did not clearly support one or the other, and 3% actively opposed both. It is important to note that respondents provided opinions about both options, regardless of their preferred one. In the following table you can see a snapshot of the most common themes that emerged for each option. These are further elaborated below.

#### Most common themes related to each of the proposed options

Option 1	Option 2
1 Concern that isolated assessment of indicators would entail a long-lasting burden in cases of repeated assessments.	Concern about the complexity of the proposed process and the additional workload both for the OfS and providers.
2 This option suggests a more targeted and rigorous evaluation than option 2.	Option 2 would result in a more holistic approach that would take into consideration the importance of the context.
3 This option is reasonable if a thematic approach to prioritisation is taken.	This option is preferable if a prioritisation approach based on severe breaches is taken.

## Thematic analysis

The key themes identified from the qualitative analysis of responses are discussed in detail below and presented in order of how often they were raised by respondents.

## Concerns about workload of both options

The main concern raised by respondents was the potential burden in terms of administrative and regulatory tasks that these options could generate. For option 1, the main concern was that isolated assessments of indicators could entail a long-lasting burden for providers. Namely, respondents mentioned their discontent with having several engagements along the process, and the chance that these engagements could be repeated one year after the other, because indicators take time to improve given the lag in the data used. The timings of any reassessment were also a significant concern.

For option 2, despite not always opposing this alternative, respondents argued that this option entailed a much more complex procedure for the OfS, more input and engagement from the provider, and most likely, much more time to submit responses to inquiries from the OfS. A portion of respondents actively opposed the option, as described above, and argued that this workload would be disproportionate to the risk posed by the indicators assessed. A few respondents argued that this more intrusive approach is not needed to encourage timely action among providers.

Several respondents raised concerns about the impact of this workload on small providers. Some argued that both options are equally burdensome, and small providers would be disadvantaged relative to larger institutions. Providers were concerned about the multiple visits that could take place under option 1 and about the larger investigations following option 2.

*We believe it is in the interest of all stakeholders that the regulator develops and maintains a well-rounded, 'intelligent' view of providers. It should not be up to institutions to repeat and re-provide information [...], especially since key contextual information may impact more than one indicator (as well as other matters besides student outcomes). (An employee of a higher education provider)*

*Option 2 could result in investigations by the OfS that are disproportionate to the risk while also resulting in an additional burden on the provider—we feel that focus should instead be placed on assessing breaches across the sector that are much more severe. We believe that a risk-based approach needs to take into account the level and severity of a potential breach. (An employee of a higher education provider)*

*From the perspective of small providers without a dedicated data team, both appear to be equally burdensome and have the potential to require a significant diversion of resource. Could the OfS take proportionate action and, following discussion with the provider, agree a set of indicators to assess which may be below the threshold?" (An employee of a higher education provider)*

## Support for focus on whole institutions owing to the importance of context

The second most frequent theme identified was identified as one of the main benefits of option 2. According to many respondents, a holistic review of all flagged metrics would ensure quality and general improvement in the institution. Despite some respondents acknowledging the increased workload, it was argued that the duty of the OfS to ensure compliance with the indicators and level up the performance of the sector would be much better met under this option. According to these views, this wider assessment of providers under scrutiny would provide a rounded assessment and improve the overall student experience and outcomes, as well as increasing institutional reputation and public confidence in the sector.

Some respondents explicitly mentioned that option 2 would provide a better understanding of the context of the provider to inform regulatory action, which seemed well aligned with the importance of contextual information outlined elsewhere in the consultation. However, some respondents argued that if this is the approach taken, contextual information should be incorporated before any full review and assessment is triggered.

*We think that a holistic review of all flagged metrics for a provider once selected will give better assurance about quality and take an opportunity to improve holistically rather than in a patchwork approach. (An employee of a higher education provider)*

*This would be in the interest both of the provider (in not being subject to multiple interventions) and of the sector (in upholding public confidence). (An employee of a higher education provider)*

*We would argue that a full review of all indicators below the numerical threshold process should be triggered only once it has been established that the indicator prioritised is actually below threshold once contextual factors and statistical certainty have been considered. (An employee of a charity or third sector organisation)*

### **Targeted approach seems more fit for purpose, and conducive to fair distribution of public regulatory action**

The next most frequent theme was that option 1 would be a more targeted approach to provider assessment, focused on the indicator that was identified, and would provide a much more useful evaluation. According to these respondents, this option would prompt concrete action, and facilitate improvement across the sector. In fact, a few said this narrowed approach could make regulatory action easier for the OfS and hence have a wider impact on a higher number of providers. Similarly, a targeted engagement would facilitate the focus on priority areas across the sector, and thus would promote a wider self-assessment to improve outcome within higher education providers. The above argument was one of the main sources of support for option 1. Additionally, according to those respondents, both resources and the regulatory burden on providers would be allocated across the sector in a much fairer way..

*We feel that if the OfS is identifying areas for closer review via the prioritisation methods outlined, these should remain the focus. [...]. We acknowledge the limited resources of the OfS and believe that the thematic approach of option 1 will be more beneficial to the sector by ensuring more providers participate in assessment. (An employee of a higher education provider)*

### **Decision should depend on approach to prioritisation, which should be evaluated**

Lastly, a significant number of respondents conditioned their support for one option or the other based on the decided approach to prioritisation. Some argued that the assessment should be consistent with the OfS's priority setting; thus that they cannot form a preference before the approach to prioritisation is finalised. Many mentioned that if thematic preferences or areas of provision were prioritised, option 1 would be more suitable, while if severe breaches were prioritised, option 2 would make more sense.

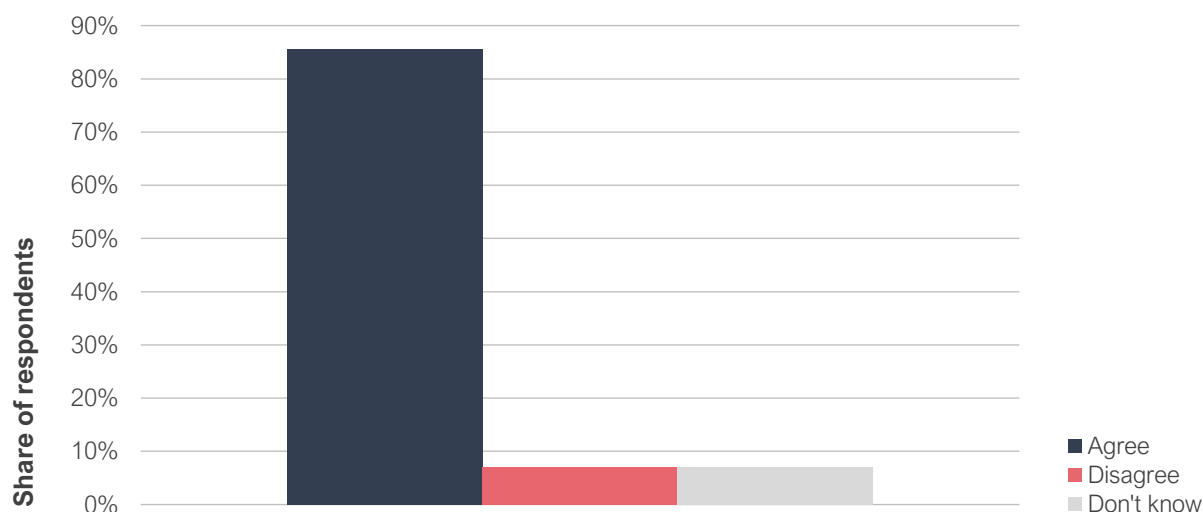
On the other hand, some participants in the consultation mentioned that the selected approach should be evaluated, and this evaluation may affect their preference. Several respondents argued that option 2 would be more suitable early in time to ensure general improvement, but option 1 may be more efficient once the whole sector has caught up and only targeted interventions are necessary. However, a few supported starting with a targeted approach—namely, option 1—and taking a broader scope if this was found insufficient.

*Whichever option is selected it must align with the OfS's use of prioritisation. For example, option 1 would relate to a thematic enquiries approach to prioritisation, whereas option 2 sits more comfortably with an approach focused on multiple breaches. (An employee of a higher education provider)*

*We support option 2 [...] to examine all a provider's indicators that are below threshold at the same time, for the early period of implementation. This may help to reduce the burden as the same contextual information may explain why several indicators are below threshold. If the interventions achieve the OfS's policy objectives, then over time we would anticipate fewer interventions will be necessary and, as such, option 1 may be a more appropriate approach in future. (An employee of a higher education provider)*

## Question 11

**Do you agree or disagree with our proposals for considering the context of an individual provider when assessing compliance with condition B3?**



86% of respondents agreed with the proposals for considering the context of an individual provider when assessing compliance with condition B3, while 7% disagreed with them and 7% declared they don't know.

### Thematic analysis

The key themes identified from the qualitative analysis of responses are discussed in detail below and presented in order of how often they were raised by respondents. It is important to note that a relatively common theme was broad support for considering the context of providers in the assessment. These respondents defined the context as paramount to the fair judgement of provider performance. However, in the vast majority of cases, respondents did not provide further insight into the underlying reasons for support and the specific aspects of the proposals they agree with. Consequently, this theme is not discussed further below.

## Additional clarity and transparency to ensure consistent and accurate judgements

Similar to responses to other questions on assessment discussed earlier, the most common idea was that the process to consider contextual factors as part of the assessment of condition B3 was not clear enough. According to many respondents, it is important to understand what type of context will be accepted, and respondents argued that the regulator should ensure a consistent and transparent use of context across providers to achieve equal weightings and fair judgements. In fact, some mentioned that it should be made clear that judgement will include expert peer reviews and opinions. Lastly, within this broader theme, a few responses referred to how this contextual information will be publicly presented alongside the data.

*There should be transparency in the process of how this will occur—for example, it [...] should be considered through processes [...] that include academic experts and peers. We would also want clarity on how context will be presented alongside the publishing of data workbooks. We would argue that it needs to be presented in some form so as to avoid confusion for people looking at the data. (An employee of a higher education provider)*

*Our view is that there needs to be greater elaboration and definition of which contextual factors and associated evidence will be taken into account, assessed and by whom. [...] We would also like more information about how the OfS will ensure consistency and fairness in reaching judgements about context, and how different elements of context will be evaluated. (An employee of a higher education provider)*

## Benchmarking should be considered earlier in process and context built into data

The second most common theme highlighted the importance of benchmark values in considering compliance with the B3 condition. According to some respondents, benchmarking is a sensible and fair approximation of a contextual assessment and can provide a more accurate picture of the capacity of providers to deliver positive student outcomes.

However, many respondents argued that a more suitable approach would be to benchmark all the data rather than applying it retrospectively. They argued that using absolute thresholds instead of benchmarking early in the process does not recognise the broader picture of structural inequalities. Several respondents argued that broad contextual information should be built into the data rather than being an afterthought, to avoid misleading students and other stakeholders. Additional clarity about how benchmarking will take place and values will be constructed was also requested.

*Our view is that the more appropriate approach would be to benchmark all data throughout rather than apply benchmarks retrospectively only to those specific student outcome measures that fall below the absolute numerical thresholds for one or more measures. (An employee of a higher education provider)*

*We believe that the loss of benchmarked thresholds for individual providers fails to recognise the structural inequalities in both education and society up to the point of entry into higher education. (An employee of a higher education provider)*

*Although we welcome the consideration of the context of an individual provider when assessing compliance with condition B3, we disagree with the proposals in terms of sequencing. Context is fundamental to the assessment of quality and, as such, should be considered during the initial stage of assessment rather than as a later consideration. (An employee of a higher education provider)*

## Support for considering qualitative information and historical performance

The next most frequent theme was support for the introduction of historical performance as part of the assessment of compliance with the B3 condition. According to these respondents, it is of great importance to assess providers' historical compliance with other regulations to capture their current capacity to deliver student outcomes and understand their current performance.

However, these respondents also argued that a qualitative approach to contextualisation is necessary, not only in terms of historical performance, but also in terms of providers' ability to present and deliver an updated action plan to improve student outcomes. Respondents were in favour of a less prescriptive and more principles-based approach to assessing contextual information, and highlighted the importance of qualitative information and narratives in assessing compliance.

A few respondents argued that these qualitative aspects to understand providers' performance and inform regulatory action could include student and graduate views or perspectives, including the student submission for the TEF assessment.

*We believe that context can be best assessed if [it] allows for a broader engagement with any provider in question allowing them to use qualitative data and present any reasonable narrative to explain their context." (An employee of a higher education provider)*

*We also support the proposals to take account of a provider's historical performance, compliance with other conditions and any evidence to substantiate the effort a provider may have placed in improving its performance. (Higher education representative body)*

*Grouping contextual factors into those that may address a provider's previous performance in a measure, and actions taken to improve performance in this measure would be appropriate, although freedom should be given to the provider to submit any evidence they see as relevant." (An employee of a higher education provider)*

*We believe that the OfS could enhance its use of context in judging these by considering geographic differences, graduate views and the different starting points of students—for example, the educational gain evidence provided within a TEF submission. (An employee of a charity or third sector organisation)*

## Context around types of course and region should be taken into consideration

Many respondents highlighted specific factors that the OfS should carefully incorporate into the assessment of compliance, as they believed they were overlooked in the consultation document. Mainly, respondents asked for consideration of regionality across the country, significant differences between courses and sectors.

Several respondents referred to the importance of the local labour markets, the role of providers in contributing to the local economy and the immediate surroundings, and the skills landscape in the region, as a way to inform provider performance. Similarly, several respondents highlighted the importance of context in specific courses, such as postgraduate level, when students have a wide range of motivations and aims for their studies. Respondents brought up specific subject examples, delivered within small and specialist providers, but also specific courses in larger institutions, that would benefit from a thorough subject-specific contextual analysis alongside student outcomes, before any regulatory action is taken. These include music conservatoires or creative art and design institutions, but also theology courses, or agriculture, food and related subjects. Respondents mentioned split indicators where the sector average already falls below threshold, and that they need more clarity on the how the regulator will treat performance on these indicators.

*It is important to recognise the different local contexts in which providers operate and how these differ structurally across the country [...]. Many providers have historically built their portfolio of subjects in strategically important areas linked to local employer needs. The OfS must therefore consider how providers contribute to the local skills system. (An employee of a charity or third sector organisation)*

*Context is particularly important at postgraduate level when students are likely to have a wider variety of motivation for study. This is particularly true for subject areas that are more vocational [...] where students may be more mature and seeking to pursue a postgraduate degree for personal interest rather than career progression. (An employee of a higher education provider)*

*The agricultural and land-based industries have well-developed qualification routes from both further education and higher education but the various skill levels for different jobs are often less well reflected in the job titles and so these graduates are disproportionately impacted by miscoding in graduate outcome returns. (An employee of a charity or third sector organisation)*

### Concerns about additional regulatory burden

Lastly, several respondents raised concern about the risk of high regulatory burden, on the regulator but especially on providers. More specifically, many were concerned about the potential need to use external resources, while others argued that the burden is higher for smaller providers, as they are usually more likely to require contextualisation.

Some made recommendations on how to reduce this regulatory burden, such as considering past submissions in relation to B3 compliance. In addition, others recommended aligning the timings of the publication of B3 data and TEF to maximise the value of the available information and reduce the likelihood of requiring contextualisation and active engagement from providers. They also argued that TEF submissions may address some issues raised in the assessment.

*We suggest that the B3 and TEF processes should be harmonised, and the OfS should consider the most recent TEF submission from a provider in step 1 of the process before engaging them further in step 2, because that submission may have addressed the specific issues prompting the assessment, and that submission will already have been considered by the expert TEF panel. (An employee of a higher education provider)*



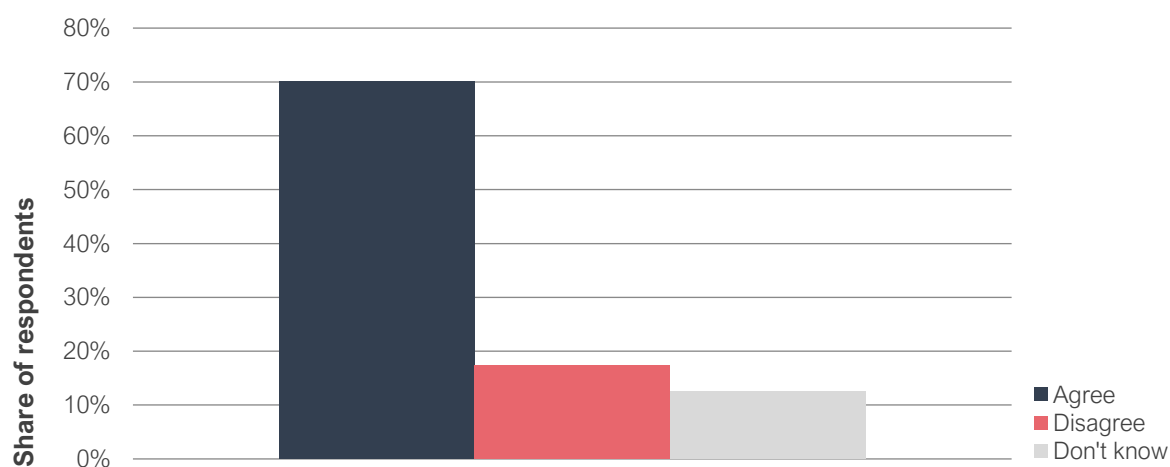
## Proposal 6: Addressing statistical uncertainty in assessment of condition B3

### Questions covered in this section

Proposal 6 sets out the OfS proposal on dealing with statistical uncertainty. The proposal includes four categories that describe the strength of statistical evidence that the OfS would use to guide judgements about non-compliance.

#### Question 12

**Do you agree or disagree with the proposed approach to using statistical measures when considering a provider's performance in relation to numerical thresholds?**



70% of respondents agreed with the proposed approach to using statistical measures when considering a provider's performance in relation to numerical thresholds, while 17% disagreed with it and 13% declared they don't know.

### Thematic analysis

The key themes identified from the qualitative analysis of responses are discussed in detail below and presented in order of how often they were raised by respondents.

#### Concerns about statistical uncertainty of small datasets and implications for small providers

The most prevalent theme in responses was concern over the statistical uncertainty associated with small datasets, which respondents argued could lead to unfair judgements of negative outcomes. Furthermore, many respondents voiced worry about the impact of the proposal on small providers and its deterrence of partnerships and specialist provision. There were also concerns about statistical uncertainty creating additional regulatory burden and complexity in the sector.

*Despite reassurances within the consultation, the proposals do mean that running courses with small cohorts pose a greater risk to providers falling short of thresholds. This may discourage institutions from providing highly specialist/technical courses where small cohorts are unavoidable. (An employee of a higher education provider)*



## Careful communication of statistical uncertainty of small datasets

The second most prevalent theme was the need to ensure statistical uncertainty is communicated effectively to avoid unfair negative perceptions of provider outcomes. This theme was often present in responses expressing concerns over the statistical uncertainty associated with small datasets. Many respondents requested that the OfS ensures data is presented clearly and fairly (for example, highlighting data limitations). However, some respondents suggested that the provision of such explanations would be complex and not easily understood by students and the wider public.

*We would strongly restate the importance of the principle of not forming a negative judgement based on small datasets that have high degrees of statistical uncertainty; it is important to consider how this data is presented as part of the transparent approach to publishing dataset and appropriate caveats highlighted. We particularly wish to see a mechanism that enables the public to understand the wider context of the provider and for the OfS to ensure that external audiences are not manipulating the data in ways that go against the principles of sound data analysis. (An employee of a higher education provider)*

## Taking holistic approach when data is unreliable

The third most prevalent theme was the importance of ensuring provider context is considered along with other qualitative evidence and that an individualised approach is taken in cases where available data is limited. This was often voiced by respondents concerned over the statistical uncertainty of small datasets. However, some highlighted the limitations of taking a holistic approach, including creating a burden for providers (having to supply additional evidence), the difficulty for the OfS to interpret this evidence and scope for subjective judgement.

*Consideration of the context of each provider is important to ensure that institutions with small datasets are not unduly penalised, as a 'requires improvement' rating could cause those institutions reputational damage and therefore harm the viability of its HE provision. (An employee of a higher education provider)*

*Context in data with low levels of statistical reliability will involve the HE provider supplying evidence of context linked more closely to specific students or groups of students, which is more burdensome than evidence applying to a larger group of students. In summary, the less reliable the data, the more work the provider has to do to provide contextual evidence and the more difficult it is for the OfS to assess it. (An employee of a charity or third sector organisation)*

## Disagreement with approach to statistical uncertainty

Although disagreement with the proposed approach to statistical uncertainty was among the least prevalent themes, responses mentioning this theme were noteworthy. Two key challenges were raised by respondents:

- Disagreement with the levels at which statistical confidence is set, which were argued to be lower than optimal.
- Disagreement with considering statistical confidence on a continuous scale, which was argued to introduce uncertainty in the sector about the actual levels used and to lead to inaccuracies in assessments. These respondents were of the view that no outcome measure above the threshold should be subject to scrutiny (and vice versa for outcome measures below the threshold).

*We believe the OfS's proposed approach to statistical certainty is unclear and not supported by scholarship or research around the use of statistics. In particular, we are unaware of any scientific analysis that supports the four confidence values outlined in paragraph 237. Moreover, the use of lower confidence values will lead to a higher error rate. (An employee of a higher education provider)*

*We believe that the OfS should not have the freedom to choose to adopt lower statistical confidence values. The point of statistical confidence is to give confidence that the difference from the threshold is likely the result of a genuine performance differential. In giving itself the freedom to choose lower confidence values, the OfS would have the freedom to pursue differences from a threshold that could not confidently be said to reflect any performance differential at all. (An employee of a higher education provider)*

## Addressing statistical issues of multiple comparisons

Another noteworthy theme mentioned by a small number of respondents was concern that the proposed approach to using statistical measures is subject to the problem of multiple comparisons, where using a single test critical value instead of a multiple test value would lead to a large family-wise error rate. Respondents further expressed disagreement with the OfS proposal not to make adjustments for this problem when constructing student outcome and experience indicators. Respondents also argued against the OfS, requesting users who wish to make multiple comparisons to consider adjusting to a higher level of confidence when making their judgements, because of a perception that this cannot be performed by inexperienced statisticians. Lastly, respondents called either for the introduction of statistical adjustments for multiple comparisons or the assessment of provider compliance based on few statistical comparisons.

*We simply do not understand why the OfS is not proposing a statistically informed treatment of such an important and well-understood problem as this. The OfS will be aware that the past President of the Royal Statistical Society said of this problem, that 'Using a single test critical value instead of a multiple test value is a serious statistical mistake, which will result in far too many indicators being spuriously flagged.' Their letter went on to explain that failure to deal with this problem in the appropriate way had rendered invalid all TEF awards previously given. We believe that failure to deal with this problem in relation to the regulation of quality would be an equally serious mistake and urge the OfS to adopt an appropriate scientific method for dealing with multiple comparisons. (Higher education representative body)*

## Question 13

**Do you have any suggestions for additional steps the OfS could take to provide greater clarity about the impact that the proposed approach to statistical confidence may have for individual providers?**

### Thematic analysis

The majority of respondents provided either no answer to this question (41% of respondents), declared they have no suggestion (25% of respondents) or had an answer which was out of scope (11% of respondents). Therefore, the themes mentioned below appeared in a minority of responses (28% of responses), where limited suggestions were made. Respondents often made more than one suggestion, meaning that the themes presented below were overlapping in some responses.

## Explanations of approach and data

The most prevalent theme was a request for additional explanation on how the proposed approach to statistical confidence will take place in practice and how the data presented should be interpreted. It was suggested that these are presented as part of a clear guidance document and accompanying explanations in data dashboards.

*More instructions on how this would happen in practice would be beneficial. Providers need a guide to help interpret the data [...]. Providers need to know as early as possible to be able to look at their own context and what actions have already been taken or need to be taken. (An employee of a higher education provider)*

*Suggest that additional explanatory information is included on the data webpages when these are published. (An employee of a higher education provider)*

## Provision of concrete examples of proposed approach

The second most prevalent theme was to publish concrete examples (such as, worked examples and case studies) illustrating how the OfS will use statistical confidence and when it would intervene. This was argued to be helpful to allow providers to understand how the proposed approach, which was described as nuanced and complex, will be applied in practice.

*The proposed new approach means that deciding on the extent to which an indicator can be relied upon is now more nuanced and difficult to describe in precise terms. Worked examples of how a statistic would be interpreted would be helpful. (An employee of a higher education provider)*

## Accessibility to non-specialist audience

The third most prevalent theme was the importance of ensuring that the proposed approach to statistical confidence is explained in a way that is accessible to stakeholders with no statistical training. Respondents making this argument tended to find the current presentation of results complex. Some further suggested that the OfS should test the understanding of its approach to statistical confidence with students to ensure correct interpretation.

*While it is important that the OfS should take the statistical uncertainty into consideration when making decisions based on numerical data, how this is done and the impact of this would need a transparent and simple explanation for providers, otherwise it may become a particularly burdensome area. (An employee of a higher education provider)*

*The OfS should test the presentation and understanding of statistical confidence with students to avoid misinterpretation. Data validity for all students is more important than statistical rules of thumb alone. The presentation of this to students needs to be straightforward and intuitive and the current proposed presentation of results is overly complex. (An employee of a higher education provider)*

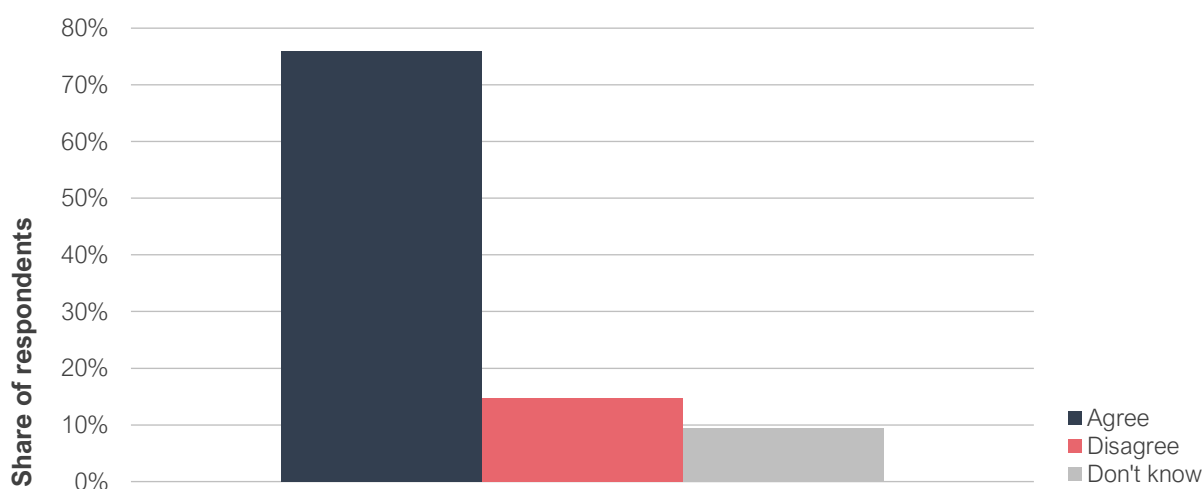
# Proposal 7: Taking regulatory action when breach is identified

## Questions covered in this section

Proposal 7 outlines the proposed OfS regulatory action when a breach is identified. This proposal includes, but is not limited to, imposing improvement notices, considering the eligibility for a TEF award, deciding about the suitability of the provider for university title, or changing grant allocations and payments.

### Question 14

**Do you agree or disagree with our proposals to impose an 'improvement notice' where we find a breach of condition B3?**



76% of respondents agreed with the proposed use of improvement notices when a B3 breach has been identified, while 15% disagreed with it and 9% declared they don't know. However, the majority of those that agreed requested additional clarification and suggested potential improvements.

### Thematic analysis

The key themes identified from the qualitative analysis of responses are discussed in detail below and presented in order of how often they were raised by respondents.

### Additional clarification needed

The most commonly mentioned theme was a request for clarification on the improvement notice and what will constitute a breach of B3. The most frequent subtheme was clarification on the process itself. Some respondents had doubts about publicising the notice since they do not know the exact wording that would be used, others inquired about what 'pre-emptive' actions providers would be allowed to take, while others wondered under what circumstances the OfS would take more intrusive regulatory action. The second most common subtheme was a request for clarification on the proposed timescales of the different stages of the process. Specifically, respondents in this subtheme would welcome clarity and transparency on the timing and duration of each stage in the process, thus

allowing them to plan ahead and manage their resources efficiently. The third most common subtheme was a request for clarification on the definitions and terminology used in the proposal for improvement notices. Specifically, a few respondents expressed doubts about what would constitute an ‘ongoing concern,’ while others had similar concerns about the ‘demonstration of sustained improvement.’

*We are unclear under what circumstances the OfS would find it more reasonable and proportionate to take more intrusive regulatory action without first applying an improvement notice, as outlined under proposal 7. It should be transparent to providers what evidence the OfS will use in judging what is a reasonable and proportionate regulatory action. (An employee of a charity or third sector organisation)*

*The OfS should clearly set out the timescales it proposes to apply to each stage of the process after a breach has been identified. These should include when providers can expect a response or further questions from the OfS after information has been submitted, and the timescales for a decision after the OfS has completed its investigation. (An employee of a charity or third sector organisation)*

*It is not clear what the OfS considers an acceptable ‘demonstration of sustained improvement’ and whether the timescale will be reasonable in terms of demonstrating this. More clarity is needed. (An employee of a higher education provider)*

### Concerns about provider reputation

The second most frequently mentioned theme was that a published improvement notice would have adverse effects on provider reputation, leading to financial difficulties for providers and possibly unintended side-effects on students. Respondents mentioned that reputational damage would lead to fewer enrolments and thus lower revenues, adversely affecting the quality of education. The concern about adverse impacts on students included potentially worsened employment opportunities since an improvement notice would diminish the value of the degree offered, consequently making employers reluctant to hire future graduates from the affected providers. One proposed solution to limiting reputational damage was agreeing on the wording of the improvement notice in collaboration with the provider in question, while others suggested publishing an action plan along the improvement notice.

*Impacts upon current and former students should be minimised/mitigated as far as possible, including minimising reputational harm which might impact the future employment prospects of graduates. (Employee of a regulator)*

*Given the negative impact the issuing of an ‘improvement notice’ could have on a provider—for example, on recruitment—we would be keen to know more about what will be included when the OfS publishes its decisions. A short narrative, for example, on the actions a provider has committed to take to improve outcomes will provide assurance to wider stakeholders that the provider is shouldering its responsibilities. (An employee of a higher education provider)*

### Adverse impact on small providers

The third theme most frequently mentioned by respondents was the adverse impact of an improvement notice on small providers. Specifically, there was concern that an improvement notice on higher education would have a disproportionate effect on small providers even though higher education might be only a small part of their overall offering. According to respondents, smaller providers are particularly vulnerable to the effects of reputational damage as their financial situation is more precarious and it can be harder for them to win back public confidence. Some respondents also

highlighted that small providers often offer alternative career paths and courses that may not be delivered by bigger providers; as a result, limiting the offering of small providers may limit the variety of professions and courses available.

*We believe all regulatory action must be proportionate and reasonable. Disproportionate actions can have serious consequences for small providers such as colleges where HE is a relatively small part of the college delivery. Reputational damage can lead to substantial loss of income that can make HE unviable for colleges with small volumes of HE. (An employee of a higher education provider)*

*The OfS's approach should be supportive in ensuring providers give quality opportunities to their students, but also not resulting in penalties that would reduce student choice and the availability of local and accessible HE provisions that target different populations across the UK and sections of society and also offers bespoke specialist programmes. (An employee of a higher education provider)*

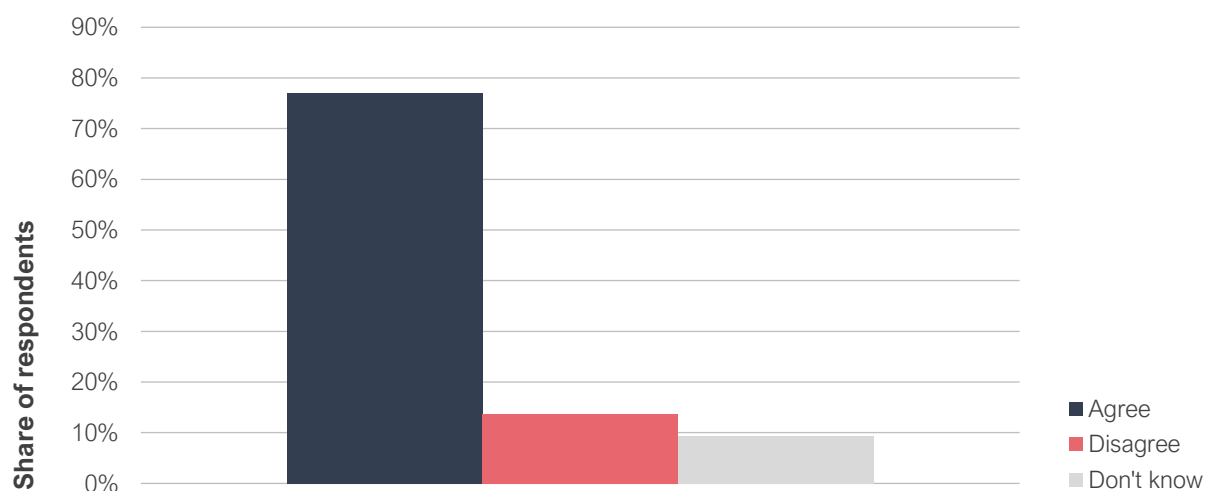
## Concerns about time lag between action and result

The last main theme was around the significant time lag between provider actions and the materialisation of improved student outcomes. Responses in this theme raised considerable concern that providers will be publicly 'under improvement notice' until the outcomes of their actions are visible, thus incurring financial and reputational harm despite having taken appropriate action. To counteract this effect, there were suggestions about removing the notice if significant measures have been taken by the provider and ensuring that the notice is removed immediately after the outcomes materialise.

*We agree with the proposal that the timescales attached to 'improvement notices' will reflect the time and effort required to achieve meaningful change, as well as recognising the time lag between intervention and linked improvements in datasets such as the graduate outcomes survey. Given 'improvement notices' will be in the public domain; however, we would recommend the OfS build in mechanisms for 'notices' to be lifted earlier if a provider can evidence exceptional and sustainable improvement at pace. (An employee of a higher education provider)*

## Question 15

**Do you agree or disagree with our proposals to take account of a provider's compliance history in relation to condition B3 for the purpose of determining eligibility for other benefits of OfS registration?**



77% of respondents agreed with the proposals to consider provider compliance history in relation to condition B3 to determine eligibility for other benefits of OfS registration, while 14% disagreed and 9% declared they don't know.

## Thematic analysis

The key themes identified from the qualitative analysis of responses are discussed in detail below and presented in order of how often they were raised by respondents.

### Clarity about compliance history

The most frequent theme concerned the need for additional clarity. The most frequent subtheme was clarity regarding the use and definition of compliance history. Specifically, some respondents indicated concern about the timeframes examined as compliance history. They also wondered if both quantity and severity of past incompliance will be evaluated, and if so, what weighting will be applied. Some inquired about the factors that will be drawn upon when investigating compliance history, as well as how the OfS would judge historic improvement notices and the achievement of improvement. The second most popular subtheme was around clarity on sanctions, while the third concerned clarity on registration and benefits eligibility.

*While we broadly agree with this approach, it is unclear how it will be assessed and what factors will be drawn upon in this judgement. How much history would be taken into account? How would the OfS judge historic improvement notices and the achievement of the improvement? (An employee of a higher education provider)*

*We would agree with the proposal to take compliance history into account; however, we would welcome further detail around this—for example, how far back compliance history will be considered and the significance of any breach of conditions. (An employee of a higher education provider)*

### Reward past compliance

The second most frequently mentioned theme was a desire to reward past compliance. Specifically, it was suggested that providers with a good compliance record should be treated with more leniency since they have proven they can be trusted.

*"We believe that a provider's compliance history reflects how a provider operates [...]. Mature self-critical providers should be afforded a greater amount of trust to address areas of concerns without heavy sanctions and intervention from the regulator." (An employee of a higher education provider)*

### Proposal is fair and promotes equality

The third most common theme was respondent satisfaction with the proposed approach to compliance history since they believed it is fair and promotes equality, transparency and accountability in the sector.

*We agree that providers should be able to participate in TEF if they meet the criteria for B3 conditions. It is illogical for a provider to hold a TEF rating if they do not meet the minimum criteria set out in the B3 conditions. If a provider has a TEF rating (even a Bronze) it cannot demonstrate excellence without meeting the B3 conditions; this can be confusing and misleading for existing and potential students. (Higher education representative body)*



## Retrospective sanctions

The next most frequent theme was about retrospective sanctions. Respondents emphasised that punishments based on past incompliance would be counterproductive since steps may have already been taken to correct previous breaches, thus sanctions would only increase the probability of future breaches.

*Agree, but it is important to ensure that compliance history is used to assess only improvement required based on the current set of metrics. Applying retrospective sanctions against historic data is not proportionate. (An employee of a higher education provider)*

*Where the provider has ongoing conditions of registration this might be appropriate, but if the performance is historical and it has been addressed, it does not seem to be proportionate to penalise the institution further. (An employee of a higher education provider)*

## Any breaches identified should be followed by detailed discussion with respective providers

The fifth most common theme was an agreement with the use of compliance history but also a call to complement it with close cooperation between the OfS and the provider found in breach. This approach would allow providers to understand where the breach is, the reasons it occurred and how to overcome this obstacle.

*We agree that an ongoing breach of condition B3 should be taken into consideration when determining eligibility for other benefits of OfS registration. However, we would hope that any such decision would follow detailed engagement between the provider and the OfS, and that any action was proportionate. (An employee of a higher education provider)*

*[We find] the proposal to take account of a provider's compliance history broadly appropriate. This should be balanced with an ability for the provider to provide any relevant contextual information, such as through the 28-day representation period. (An employee of a higher education provider)*



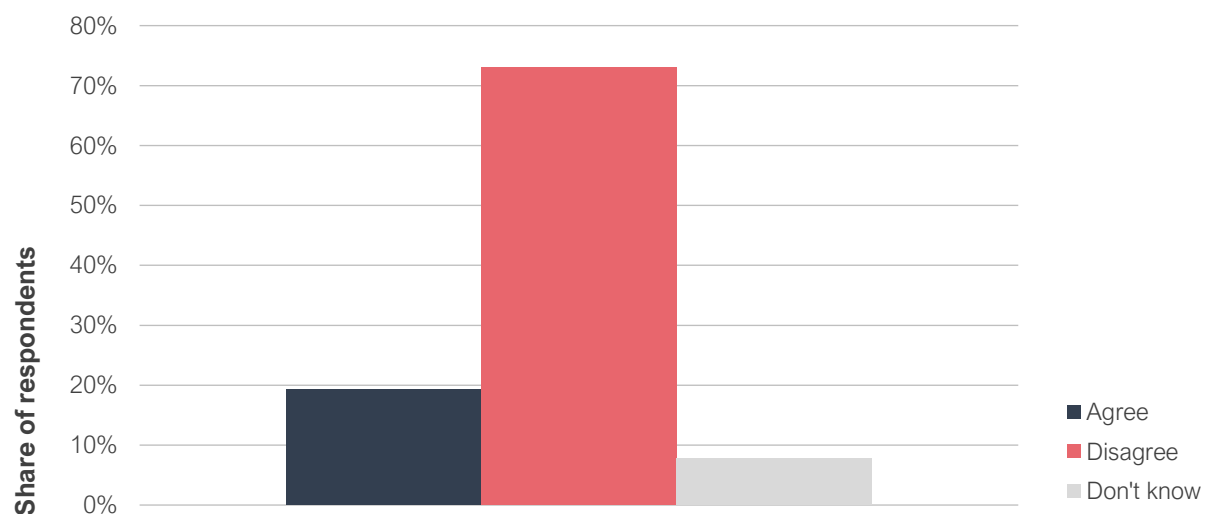
## Proposal 8: Timing of implementation

### Question covered in this section

This section of the consultation presents the timetable the OfS proposes to adopt. This includes the time available to submit consultation responses, the aim to make a decision around June 2022 and the proposed timing of implementation of the proposed approach—starting with the revised condition B3 and associated guidance coming into effect around July 2022.

### Question 16

**Do you agree or disagree with the proposals for the implementation of the proposed approach to regulating student outcomes? If you disagree, do you have suggestions for an alternative timeline?**



73% of respondents disagreed with proposals for the implementation of the proposed approach to regulating student outcomes, while 19% agreed with them and 8% declared that they don't know. The majority of those who disagreed expressed concerns such as the timing of the implementation, the impact of the pandemic and others presented in the following section.

### Thematic analysis

The key themes identified from the qualitative analysis of responses are discussed in detail below and presented in order of how often they were raised by respondents.

### Additional time needed

The most frequently mentioned theme was the need for additional time for providers to understand the changes, examine their data and respond. The most common subtheme within this theme was concern about the overlap of the proposed timeline with other regulatory and administrative obligations. As a solution, some suggested an extended timescale of six weeks instead of four, to allow providers to engage with the OfS. The second most common subtheme was a concern about the consultation itself. More specifically, those respondents mentioned that the timings proposed do not allow enough time for providers to respond to all consultations as well as for the OfS to consider all consultation responses. A few responses also voiced concerns about the accuracy of the data if not enough time is allowed for quality assurance checks.

*We believe there should be at least three months between the publishing of the data and the OfS announcing which institutions will be subject to scrutiny. This will allow time for institutions to check the validity of the data, analyse the data and consider initial action plans [...]. We do not think that starting the implementation in June 2022 is realistic, considering the tasks that think would be required to do this. (Higher education representative body)*

*The timing is incredibly tight and unfortunately gives the impression that the consultation may not influence the outcome. (An employee of a higher education provider)*

*We understand the political imperatives driving some of these changes but we worry that September is very close and we think undue haste is unnecessary and potentially very damaging for provider reputations. Statistical inaccuracies do occur, so we urge time for ensuring the accuracy of outcomes. (Higher education representative body)*

## Disproportionate regulatory burden for small providers

The second most common theme was the impact that the proposed timeline would have on small providers. It was argued that, should the proposal be implemented within the current timeline, a small team of data analysts would have to deal with multiple regulatory and administrative tasks that would be overlapping over a small period of time. A small minority of respondents highlighted that the new datasets and dashboards can add to the regulatory burden of small providers.

*Where providers are required to provide further context to explain their data, this is likely to require significant input from data-specialist staff. However, at this time of the academic year, those staff are likely to be managing the final stages of student enrolment and then undertaking HESES.<sup>18</sup> Therefore, there will be a pinch point for providers, especially smaller providers where [...] the capacity to absorb additional work is reduced. (An employee of a higher education provider)*

*For providers with small data teams, giving a short window of time from publishing the data (September) to making decisions (October) gives little time for staff to thoroughly analyse and check the accuracy of the data, and it is likely staff will be pulled from other key quality processes (annual monitoring, for example). (An employee of a higher education provider)*

*There is a lot for small providers to interpret and review in terms of new datasets and so on. We (FECs) typically do not have huge teams like universities that can allocate significant human resources to data and responses. (An employee of a higher education provider)*

## Impact of the pandemic

The third most frequently mentioned theme was the impact of the pandemic. Respondents highlighted that many providers are still recovering from the impact and, as a result, the implementation of the proposal should be delayed. Additionally, some respondents proposed that if the implementation takes place as proposed, the impact of the pandemic on provider outcome data should be considered and taken into account.

*It is important to note that the timeline proposed comes at a time when the sector is already stretched following necessary responses to the pandemic. To introduce B3 and TEF simultaneously will place a significant burden on providers and this should be taken into account by the OfS. (An employee of a higher education provider)*

<sup>18</sup> Higher Education Students Early Statistics (HESES)

*It is notable that the consultation and data provided to institutions is from before the 2020/2021 academic year, which was affected by the pandemic throughout. Therefore we recommend that should the process be carried out as proposed, any significant data variation as a result of COVID should be carefully considered. (An employee of a higher education provider)*

### Time inconsistencies in TEF award and B3 assessment

The fourth most frequent theme was a concern that with the proposed timeline, a provider might commit significant resources and time to prepare for TEF only to be informed later that they have failed B3. This would have an adverse effect on provider finances and increase the regulatory burden. Furthermore, a few respondents worried that if the TEF is awarded before B3, the TEF would have to be revoked, affecting students that enrolled based on the TEF award.

*The timeline between both B3 and TEF must work effectively together. We believe this can be achieved through introducing them in sequence rather than in parallel. Under the current proposal, a provider may be required to spend considerable time putting a TEF submission together only to be ineligible for submission. (An employee of a charity or third sector organisation)*

*We are particularly concerned about the conflicting timescales for the introduction of this revised B3 condition and preparation for the TEF leading to the potential for a TEF rating to be provisionally issued before a breach is identified. (An employee of a higher education provider)*

### Implement initial trial period

Lastly, some respondents highlighted that the proposal introduces significant changes in the sector that need to be tested first. As a result, a trial period in 2022/2023 was suggested, giving providers time to understand and familiarise themselves with the changes, while also providing the OfS with empirical evidence of whether the proposal achieves its intended aims.

*It would be useful to use 2022/2023 as a pilot year to test the thresholds and for the OfS to better understand sector context so that thresholds can be set and universities given support and time to have plans in place to meaningfully address areas of real poor performance. This would delay the TEF by a year but [...] it would allow us to balance delivering for our students and ensuring that standards are maintained. (An employee of a higher education provider)*

*We believe that implementation as soon as summer/autumn 2022 should warrant the first four-year cycle being at most a trial period with intervention moderated and mid-cycle review points overseen by an independent and impartial source. [...] Implementation of the new approach to quality and standards in the detail must be done properly. (An employee of a higher education provider)*

### Additional suggestions and concerns related to implementation

Other interesting but not frequently mentioned themes included concerns about the impact on providers that focus on disadvantaged groups, and about the timeline not allowing for student submissions. Lastly, a few responses proposed aligning the OfS policy with wider government agenda such as the levelling up ambitions.

*The proposed implementation is rushed and would benefit from an elongated implementation through to the start of AY<sup>19</sup> 2023/2024. Such a timeline would allow for investment in necessary infrastructure to enable reporting and compliance across the sector. The concern is that the rushed implementation will introduce inequity in the process by favouring providers with less complex provision and with greater investment capability. (An employee of a higher education provider)*

*[...] the timing does not support the production of useful student submissions. Most sabbatical officer teams would only have been in post from August in any given year and the expectation to produce a student submission is not proportionate. (An employee of a higher education provider)*

*We are strongly of the view that the OfS's policy should align across its activities and would welcome an approach that ensured that the revised B3 condition joins up with the government's levelling up ambitions, international education strategy and the commitments institutions make in their access and participation plans. In line with this, we would suggest that timescales are reviewed across all three exercises (APP, TEF, B3), with a view to staggering implementation over 2022-2023. (An employee of a higher education provider)*

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<sup>19</sup> Academic Year (AY)

# Considering regulatory burden on registered providers

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## Question covered in this section

This section summarises the views of respondents related to the regulatory burden for providers.

### Question 17

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**Is there anything else we could consider that would reduce regulatory burden for providers while regulating minimum requirements for student outcomes?**

#### Thematic analysis

The key themes identified from the qualitative analysis of responses are discussed in detail below and presented in order of how often they were raised by respondents.

#### Disproportionate burden for small providers

The most common theme was about concern regarding the impact on small providers. Some respondents were worried that the proposal disproportionately affects smaller providers who have limited resources. Specifically, the concern related to the impact on the quality of teaching and on administrative efficiency of responding to three consultations simultaneously, as well as the tight implementation timescales. Some respondents suggested conduct an impact assessment to examine the potential effect of the proposals on providers that do not fit into traditional university models, including smaller providers.

*We estimate there were over 20 instances in this consultation where the OfS identified a particular impact on small providers, yet there has been no clear assessment of the cost, burden or other implications of these impacts. (An employee of a higher education provider)*

*It is important to take an overall view of regulatory burden [especially] the disproportionate effect and expense for smaller providers which can reduce resource for key activities including teaching and learning. (An employee of a higher education provider)*

#### Reduce number of indicators and data granularity

The most common theme in this question was that the regulatory burden would be reduced if the OfS examined fewer indicators and the analysis required less data granularity. The proposed number of split indicators and the level of data granularity would require significant training and preparation for the data analysis teams of providers, which are usually not large enough to accommodate this burden, especially among smaller providers. A proposed solution to this problem was to establish priority and secondary indicators. This would allow for improvement notices to address only specific split indicators. Additionally, there was a concern that using the proposed split indicators might result in the same students being included in different groups.

*We would suggest a reduction in the number of split indicators and the sheer amount of data. We think the hundreds of data splits proposed here make this data unwieldy, reduce its impact and create a huge regulatory data burden. (An employee of a higher education provider)*

*It would be more helpful to have a set of priority indicators that link with general compliance and then a secondary set of indicators which would be able to demonstrate that compliance is spread across all cohorts. This could result in a notice to improve on one split indicator while still meeting a level of general compliance. (An employee of a higher education provider)*

## Consistent approach across different assessments

The second most common theme was a request for a consistent approach. Many respondents felt that the significant regulatory and administrative burden was created because of overlapping requests across different assessments, often using different definitions for the same indicators. Specifically, the majority of responses in this theme requested a common format across TEF, access participation plans (APP) and B3. One proposed way to achieve this was through a secure data portal allowing access to all relevant data. Lastly, one response requested consistency across the devolved nations.

*Metric definitions and population splits need to be aligned further across the monitoring of B3, APP and TEF using the lowest number of population splits necessary for the task. [...]. All the data (B3, APP and TEF) being accessed from a location and preferably a single source. [...] The aim should be seamless integration of APP, B3 and TEF data rather than three discrete entities. (An employee of a higher education provider)*

*Using TEF/APP institutional and TEF student submissions as the basis for the contextual judgement would reduce the administrative burden on institutions and could then be supplemented by direct integration. (An employee of a higher education provider)*

*It's important that regulation is proportionate, aligns with the devolved nations and avoids unnecessary duplication and burden on providers. (Other representative body)<sup>20</sup>*

## Additional clarifications needed

A significant proportion of responses highlighted a significant regulatory burden stemming from trying to understand the regulation. The main subtheme was clarification on the proposed process, such as the relation between APPs and B3. The second main subtheme was clarification on the metrics and indicators that will be used.

*As noted above, the supply of clear, plain English explanatory notes on the data aimed at those with no background in statistical analysis to accompany releases of workbooks to providers would be valuable [...] and would reduce the burden on staff within institutions to fulfil this function. (An employee of a higher education provider)*

## Additional time needed for consultation

The fourth most common theme was related to the time available to respond to the consultation. Respondents argued that having more time would allow providers to meaningfully engage and reflect on the topics of the consultation, efficiently regulate their processes and improve their provision. Some mentioned that publishing multiple consultations in the same period creates a disproportionate administrative burden, especially for small providers who are forced to divert their limited resources to respond to the consultations. This affects both the quality of response to the consultation and the efficiency of regulating student outcomes.

<sup>20</sup> Other representative bodies in this report refer to trade unions and professional associations.

*The volume of consultations and the amount of time providers are given to engage in these consultations is challenging. Before responding, providers need time to understand their viewpoints, consult with colleagues and others in their sectors and consider the implications to them as a provider. The sheer volume of information given in this particular phase of consultations is overwhelming. (An employee of a higher education provider)*

*We have real concerns that publishing three major—and highly complex—consultations at the same time, with only an eight-week consultation period, has placed significant pressure on the higher education sector as a whole and specifically disadvantaged smaller providers [...]. We further expect that institutions have had to prioritise the consultation responses and so the OfS will neither receive as many responses, nor will those responses have been subject to the level of consideration appropriate for the scale of the changes proposed. (An employee of a higher education provider)*

### Providing easier-to-use datasheets and workbooks

The fifth most common theme was a request for additional and more user-friendly supporting material such as datasheets, interactive dashboards and workbooks. Some respondents felt that providing these resources would significantly reduce the regulatory burden, especially among providers with small data analysis teams, and would also increase transparency and reproducibility of the indicator and threshold calculations.

*It should be noted that the effective use of dashboards in our experience requires some training. We have found it helpful to be able to edit the workbooks to show different levels of information, and the OfS may wish to take this approach to the dashboards/workbooks for publication. (An employee of a higher education provider)*

*In order to work meaningfully with the data provided, we need to be able to replicate the OfS's calculations on our own live data. This requires translation of the data from OfS fields into HESA fields and then into provider live system fields. (An employee of a higher education provider)*

Some interesting insights discussed by only a few respondents related to avoiding duplication of regulatory work stemming from both different regulators and from the different regulations of one regulator, as well as the additional burden from ILR and HESA data returns.

*We would welcome more information on this aspect and seek assurance that the OfS and OFSTED will not subject institutions to duplication of work. (An employee of a higher education provider)*

*We would encourage the OfS to consider working closely with other PSRB<sup>21</sup> bodies that require data reporting from HEPs.<sup>22</sup> Remove the duplication of data reporting of the same datasets to multiple bodies. (An employee of a higher education provider)*

*We recommend a review of timing, particularly when considering other undertakings that providers will be making at the same time. These include the TEF, HESES and then HESA returns (and soon data futures). This will place a significant burden on providers, especially the smaller and specialist providers without the size of specialist teams required to analyse and advise on these datasets and returns. (An employee of a higher education provider)*

<sup>21</sup> Professional Statutory and Regulatory Bodies (PSRB)

<sup>22</sup> Higher Education Providers (HEP)

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