



OfS and its designated bodies

Issue

1. This paper describes the roles of the designated quality body (DQB) and the designated data body (DDB), their relations with the OfS, and recent developments in relation to each.

Recommendations

2. The board is invited to:
 - a. Note the relationship between the OfS and its two designated bodies, and in particular the implications of the QAA's fee charging arrangements.
 - b. Propose that the OfS should remain committed to the development of a programme that allows for triannual data collection from providers to support its regulatory responsibilities.
 - c. Agree that support for a modified Data Futures programme will be subject to a fresh agreement with HESA which provides assurances that the modified programme will deliver the specified outcomes, and will be subject to new and more robust governance arrangements on the Data Futures programme board.
 - d. Approve continued funding of a modified version of the Data Futures programme, subject to these conditions of effective assurance and revised governance.

Further information

3. Available from Nicola Dandridge (nicola.dandridge@officeforstudents.org.uk).

Member's interests

4. All members have an interest in this paper.

Background

5. The Higher Education and Research Act 2017 (HERA) created two roles for designated bodies to undertake statutory functions on behalf of the OfS: the DQB and the DDB. The DQB's role is to perform the OfS's statutory functions to assess the quality of and standards applied to higher education providers, both at the point at which the provider applies to join the register, and subsequently once on the register. The OfS uses the DQB's assessment to make decisions about whether initial and ongoing conditions of registration are satisfied. The DQB must also provide advice in relation to quality and standards for providers seeking degree awarding powers. The DDB's role is to compile and publish appropriate information relating to registered providers and the courses that they provide. The DDB must also make that information available to the OfS, UKRI and the Secretary of State.
6. In creating roles for both a DQB and a DDB, HERA embeds the functions of these two separate bodies into the OfS's regulatory responsibilities, as well as enabling the OfS to draw on their expertise.
7. HERA creates a requirement for the higher education sector's involvement in the process for appointing and governing the DQB and DDB. Schedules 4 and 6 of HERA which set out the conditions for determining whether a body is capable of performing the designated functions, require that the persons who determine the strategic priorities of the body represent a broad range of registered providers. The Schedules also require that the body commands the confidence of registered higher education providers, to be assessed by a consultation process that the OfS has to carry out prior to making its recommendation to the Secretary of State. In this way, the approval and involvement of the sector is required as a pre-requisite to the designated bodies' appointments.
8. The provisions of HERA in relation to the designated bodies are detailed and complex. For instance, there is considerable detail in the Act as to how the designated bodies need to report to the OfS each year with an account of their performance, and the OfS must in turn report to the Secretary of State on a triennial basis. There is an explicit obligation for the OfS to hold the two bodies to account for their work for the OfS. For the DQB, there is an additional provision allowing the OfS to issue general directions with which the DQB must comply. For the DDB, the OfS can determine what data are collected and published. For both bodies, if the OfS has significant concerns about performance, the OfS must inform the Secretary of State who may remove the designation. There are also detailed provisions that relate to the powers of the designated bodies to charge fees to providers in relation to the designated functions.
9. HERA requires the OfS to convene a Quality Assessment Committee to provide advice to the OfS about its quality and standards functions. That committee is also required to provide advice about the exercise of quality and standards functions by the DQB.

10. At the time that HERA was introduced, the Quality Assurance Agency (QAA) had been undertaking a role similar to the DQB, and the Higher Education Statistics Agency (HESA) had been undertaking a role similar to the DDB. Both applied for designation and were the only candidates. Both were recommended for appointment by the OfS to the Secretary of State, and were duly appointed.
11. Both the QAA and HESA undertake other work beyond their duties as designated bodies, not least in the higher education sectors in Scotland, Wales and Northern Ireland. They also undertake other work for the English higher education sector. This other work, and the associated fee-charging arrangements, are unconnected with the OfS (other than to the extent that contracts commissioned by HEFCE and that run to 31 July 2019 were transferred over to the OfS at the point that the OfS became operational in April 2018).

The DQB

12. Since being appointed DQB, the QAA has embarked on a transformation programme that will allow it to deliver the assessment functions for the OfS. This has involved the design and delivery of new review methods for Quality and Standards Reviews, and reviews for Degree Awarding Powers. This process is moving slowly, and the pace of development does create some challenges in terms of the speed with which the OfS can register providers and award DAPs where it is dependent on the QAA's assessments.
13. However, all parties are committed to working effectively and collaboratively together to ensure that there is alignment between the OfS's regulatory requirements and the QAA's delivery of reviews activity.
14. Meantime, a particular challenge has arisen in the context of the QAA's proposed fee charging arrangements.
15. Section 28 of HERA gives to the DQB (and not the OfS) the power to set and charge fees in relation to its designated activities. This means that, as the DQB, the QAA may determine how it wishes to structure its charging regime, provided that it charges fees only to recover the costs it incurs in delivering the activities for which it is designated. The role of the OfS in relation to the DQB's fees is to take enforcement action for any non-payment by registered providers through ongoing condition of registration G3. However, this means that the OfS could be open to challenge if it took action to force payment of a fee that is not compliant with the requirements of section 28. The OfS is also required to make a judgement in its triennial report about the appropriateness of any fees charged by the designated body.
16. The OfS is currently working with the QAA and with UUK and GuildHE (as the company members – the owners – of the QAA in England) to deliver the following outcomes:
 - An independent expert assessment of the QAA's costs to provide assurance to the OfS and to providers that these costs are transparent, and economically and efficiently incurred.
 - A charging model that complies with the requirements of section 28 of HERA.

17. As a result of this process, the QAA is expected to be in a position to consult on its fee model in mid-March. Confirming the fee model needed to happen before the QAA began to carry out the review activity required for OfS registration and post-registration monitoring purposes. This has inevitably caused some delay to the OfS's ability to progress these matters. However, the joint work identified above with UUK, GuildHE and the QAA has enabled a practical solution to be identified to progress these reviews while the fee consultation takes place.

The DDB

18. The role of the DDB to collect, compile and publish provider data is a role that HESA has played in relation to established providers for several years. The quality of data in the higher education sector is highly regarded by external stakeholders, both nationally and internationally. This reputation for high quality data must be preserved and protected.

19. Prior to December 2018, HESA had no role in the collection and dissemination of data for English further education colleges save for publication of a handful of summary statistics. Routine data collection was managed by the Education and Skills Funding Agency (ESFA) and HEFCE. In order to minimise burden, the OfS agreed that the collection of individual student and financial data should remain with the ESFA. HESA's role in respect of English further education colleges will therefore be restricted to collecting data which is not already collected and to enhancing the publication of data.

20. It has been recognised for some time now that HESA's method of data collection from providers leads to it being heavily lagged, so reducing its relevance and impact. Currently, data is collected and reported on an annual basis, with, for instance, data relating to 2018/19 not being available until December 2019. This lag was identified as being of concern back in the 2011 White Paper ('Putting Students at the Heart of Higher Education'), and more recently by the Public Accounts Committee in their review of Alternative Higher Education Providers in March 2018.

21. To respond to these concerns, the Data Futures programme was established in 2015, funded by HEFCE and the devolved administrations. Its original objective, for which HEFCE's funding was directed, was to allow HESA to move from a system of lagged annual data collection, towards a system of more up to date triannual, termly, data collection. Data Futures was established as a programme owned by HESA, with responsibility for its implementation sitting with HESA, and a programme board overseeing its implementation. The chair of the programme board is a member of the HESA board, and its membership was drawn from the sector. HEFCE, and more recently OfS, are represented on the programme board, along with representatives from Scotland, Wales and Northern Ireland.

22. The programme was due to be completed by 2020, with the new model of collection due to go live in 2019/20.

23. When the OfS became operational in April 2018, it inherited the grant arrangements between HEFCE and HESA in relation to Data Futures. At that point, the total estimated cost of the programme was £9.5m, of which HEFCE – and therefore subsequently the OfS - had agreed to provide £6m. The balance was to be met by the devolved administrations,

Jisc, and HESA's own reserves. At the time of writing this paper HEFCE/OfS had made payments of £4.3m.

24. The need for more up to date data collection was acknowledged in the OfS' Regulatory Framework, published in February 2018. Paragraph 129 of the Framework proposes a system of general monitoring of providers based on lead indicators constructed from data that is 'in as near real time as possible'. In the OfS' Data Strategy 2018-21, published in November 2018, this reference to 'near real time' data was equated with the model of triannual data collection proposed in the Data Futures programme. Paragraph 12 of the Data Strategy provides that:

'Effective regulation requires up-to-date data. The OfS needs to be able to anticipate challenges to the sector or individual providers in order to take timely regulatory action. Much of the currently available data about higher education providers and their activities is at least a year out of date. HESA is undertaking a programme, which will conclude in 2020, that is designed to deliver high-quality in-year data that meets the needs of a wider range of stakeholders. This will enable us to anticipate individual provider – and sector-level challenges and take action as required'.

25. Notwithstanding this commitment to the Data Futures programme, its delivery has not proved straightforward. In particular, over the last 18 months, it had emerged that the complexity of the programme had increased, apparently to allow HESA to collect and report on data on a real time basis beyond the triannual collections originally planned.
26. In June 2018 HESA informed the OfS that the cost of the programme might increase to £11m. The OfS responded by indicating that, in principle, it might be willing to provide further funding subject to a robust business case setting out the additional benefits the programme would achieve. This business case has not yet been received.
27. Notwithstanding the increased complexity and potential increased cost, as at December 2018 HESA were still recommending to the programme board that the project should proceed according to the planned timetable. Nonetheless in the light of concerns about the likelihood of delivery of the programme within this timeframe and also the potential for increased costs, the OfS commissioned an urgent, independent review of the programme from BDO in December 2018. BDO reported in February 2019, expressing serious concerns about the deliverability of the programme.
28. On 12 March 2019¹, HESA announced its decision to pause the programme, stating that it would not be going live in 2019/20 as had previously been planned, citing technological challenges and a changing external environment. Instead it stated that it would review its options, before presenting a revised proposal and timeline to the programme board in April for wider communication with the sector in May.
29. In the light of this decision, and the BDO report, the OfS wrote to HESA on 15 March 2019 suspending its funding of the programme.
30. The OfS remains committed to the need for more near real time data as an important element of effective regulation. In line with the provisions of the Regulatory Framework and the Data Strategy, the OfS interprets 'near real time data' in terms of triannual collections,

¹ <https://www.hesa.ac.uk/news/12-03-2019/data-futures-programme-update>

as originally proposed in the Data Futures programme and consistent with the decision originally made by HEFCE. In time, there may be a case for a more ambitious strategy of moving to a genuine real time data collection model, but so far as the OfS is concerned that lies beyond the scope of its current Data Strategy and beyond the scope of the version of the Data Futures programme to which it has committed funding.

31. Subject to the board's views, it is therefore proposed that the OfS should remain committed to the development of a programme that allows for triannual data collection. However, this is subject to fresh agreement with HESA which makes any ongoing funding contingent on HESA providing assurances that a modified programme will deliver the specified outcomes.
32. It is also proposed that as a condition of any ongoing funding the OfS will require new and more robust governance arrangements on the Data Future programme board, with independent and effective assurance over delivery of the project. Meantime, current arrangements for data collection from providers will roll over for 2019/20.
33. There will be an opportunity for a more detailed discussion at the board meeting. Subject to that discussion, the recommendation is that the board approve continued funding of a modified version of the Data Futures programme, subject to revised governance arrangements.