

**Consultation**

**Office for  
Students**

The logo for the Office for Students, featuring a dark blue square with a yellow square in the top right corner containing the letters 'OfS' in white.

**OfS**

# **Consultation on our strategy for 2022-25**

This consultation runs from **11 November 2021**  
to **6 January 2022**.

**Reference** OfS 2021.49

**Enquiries to** [strategyteam@officeforstudents.org.uk](mailto:strategyteam@officeforstudents.org.uk)

**Publication date** 11 November 2021

The Office for Students is the independent regulator for higher education in England. We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers.

### **Our four regulatory objectives**

All students, from all backgrounds, and with the ability and desire to undertake higher education:

- are supported to access, succeed in, and progress from, higher education
- receive a high quality academic experience, and their interests are protected while they study or in the event of provider, campus or course closure
- are able to progress into employment or further study, and their qualifications hold their value over time
- receive value for money.

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## Foreword

Three and a half years since our public launch, this consultation on our new strategy marks a significant milestone for the Office for Students (OfS).

During our first years of operation, we focused on establishing ourselves as the independent regulator for higher education in England, adding more than 400 diverse universities and colleges to our Register. We are now consulting on proposals for our second strategy, which will run from April 2022 to April 2025.

The new strategy proposes two central priorities for our work: quality and standards, and equality of opportunity. It signals a step change in our focus and impact.

Ensuring that all students can benefit from a high quality academic experience has to be core to what we do. We can be proud of much of the higher education on offer in England, and for those universities and colleges we will seek to reduce regulatory burden so they can flourish in doing what they do so well, unencumbered by unnecessary bureaucracy. But for those universities and colleges that are letting students down by providing inadequate teaching and support, leading to weak outcomes, we will be uncompromising in intervening and imposing robust sanctions. We have already embarked on this mission during the current strategy – the proposals set out in our recent quality and standards consultations will enable us to crackdown on providers where quality simply is not good enough.

Quality education is not possible without equality of opportunity. All students, whatever their backgrounds, should be able to unlock their potential through higher education. If students from disadvantaged backgrounds are recruited onto poor quality courses that provide weak graduate outcomes, we are failing them. As well as the impact of socioeconomic status, we will consider the impact of broader factors, including geographic inequality and how we can maximise engagement with schools to improve students' opportunities to attend and thrive. Over the course of the next year, we will look forward to welcoming our new Director for Fair Access and Participation who will lead our work in this area.

These proposals position quality and standards and equality of opportunity at the centre of the OfS's work. Within these broad, interrelated areas there are several more specific priorities, not least tackling harassment, and student mental health and wellbeing. Students have faced unprecedented challenges during the course of the last year due to the pandemic, and universities and colleges will need to ensure they are provided with the support they need to succeed.

This consultation proposes a framework for our work over the next three years. We are keen to hear from everyone with an interest in higher education and its effect on society. Do please read it and let us know what you think.

**Lord Wharton of Yarm**

Chair of the Office for Students

## About this consultation

The Office for Students is consulting on a new strategy for 2022 to 2025. We would like to hear your views.

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### Timing of consultation

Start: **Thursday 11 November 2021**

End: **noon on Thursday 6 January 2022**

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### Who should respond?

We welcome responses from anyone with an interest in higher education in England. We are particularly (but not only) interested in hearing from **prospective and current students, recent graduates, higher education providers, and graduate employers**. We welcome the views of all types and size of provider.<sup>1</sup> We are also interested in the views of further education colleges, third sector organisations, policy bodies, and others with an interest in the future strategic direction of the OfS.

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### How to respond

You can submit your response by completing the online response form at

<https://survey.officeforstudents.org.uk/s/OfSstrategy/>

If you require this document in an **alternative format**, or need assistance with the online form, please contact [digitalpublishing@officeforstudents.org.uk](mailto:digitalpublishing@officeforstudents.org.uk). **Please note:** this email address should **not** be used for submitting your consultation response.

The consultation closes at **noon on Thursday 6 January 2022**.

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### How we will treat your response

We will summarise and/or publish the responses to this consultation on the OfS website (and in alternative formats on request). This may include a list of the providers and organisations that respond, but not personal data such as individuals' names, addresses or other contact details. If you want the information that you provide to be treated as confidential, please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic

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<sup>1</sup> We use the term 'provider' to refer to universities, colleges, and other types of higher education provider.

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confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

The OfS will process any personal data received in accordance with all applicable data protection laws (see our privacy policy).<sup>2</sup>

We may need to disclose or publish information that you provide in the performance of our functions, or disclose it to other organisations for the purposes of their functions. Information (including personal data) may also need to be disclosed in accordance with UK legislation (such as the Freedom of Information Act 2000, Data Protection Act 2018 and Environmental Information Regulations 2004).

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## Next steps

We are aiming to publish a summary of responses to this consultation by March 2022. We will explain how and why we have arrived at our decisions, and how we have addressed any concerns raised by respondents. We expect to publish this strategy in early 2022.

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## Enquiries

Email [strategyteam@officeforstudents.org.uk](mailto:strategyteam@officeforstudents.org.uk)

Alternatively, call our public enquiry line on 0117 931 7317.

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<sup>2</sup> Available at [www.officeforstudents.org.uk/ofs-privacy/](http://www.officeforstudents.org.uk/ofs-privacy/).

# Introduction

## Background and context

1. The OfS published its first strategy in 2018 for the period 2018 to 2021. During this period, our main focus was on establishing the OfS as a regulator, registering over 400 universities and colleges on a level playing field for the first time, and creating the tools needed to regulate efficiently and effectively. During the next strategic period (2022 to 2025), our priority will be to seek to ensure higher education providers comply with our minimum requirements, while continuing to incentivise and shape activity that goes beyond.

## Objectives of these proposals

2. In producing this strategy, our objective has been to create a plan of action that will guide our activities as a regulator over the next three years. This strategy will make sure we are targeted, sequence our work effectively, and are able to achieve our aims and make best use of the resources we have available. Publishing a strategy helps to ensure that we are transparent and accountable to students, taxpayers, and other stakeholders.
3. In developing these proposals, we have considered the need to minimise regulatory burden on providers where possible. As explained in paragraph 24 below, the regulatory approach that we take during this strategic period will focus on securing compliance with our minimum requirements. Providers which satisfy these minimum requirements will be able to continue to innovate and determine their own paths. The highest performing providers should normally expect to meet our minimum requirements comfortably. This should minimise regulatory burden, as they will not need to expend significant effort to demonstrate they have met these requirements.
4. All the OfS's powers and functions under the Higher Education and Research Act 2017 (HERA) are relevant to the proposals in this consultation.

## Summary of proposals

5. The main proposal set out in this consultation is a strategy for 2022 to 2025. In the proposed strategy, we first restate our mission statement and four regulatory objectives. These remain unchanged from our previous strategy published in 2018.<sup>3</sup> Second, we set out the OfS's regulatory approach. This is a statement of how we intend to perform our functions in the next strategic period. We identify two areas of focus: quality and standards and equality of opportunity. These are inextricably linked. Progress in one area is dependent on and supported by progress in the other. As we seek to make progress in these two areas, we will do so in a way that is consistent with both the regulatory approach set out in this strategy and our regulatory framework.<sup>4</sup> We have also identified a number of goals to support our areas of focus. These represent the specific outcomes we want to achieve in the next strategic period. In seeking to achieve these goals, we will use a range of regulatory tools, including but not limited to setting minimum regulatory requirements and enforcing these to ensure registered

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<sup>3</sup> See [www.officeforstudents.org.uk/publications/office-for-students-strategy-2018-to-2021/](http://www.officeforstudents.org.uk/publications/office-for-students-strategy-2018-to-2021/).

<sup>4</sup> See [www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/](http://www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/).

higher education providers comply with them, information tools such as the publication of data, and funding.

## Why are we consulting?

6. We are consulting on our strategy for 2022 to 2025 because we want to take account of stakeholders' views in its development and to ensure a fair and transparent process. In developing this strategy, we have considered a broad range of evidence, including but not limited to:
  - our experiences as a regulator since our inception
  - qualitative student survey data<sup>5</sup>
  - internal data and analysis<sup>6</sup>
  - HESA data.<sup>7</sup>
7. Through the questions asked in this consultation, we are seeking the views of stakeholders on whether the consultation proposals give rise to any unintended consequences. We are especially interested to know if they will affect particular types of provider, student, or individuals with protected characteristics.
8. Annex C sets out the matters to which we have had regard to in formulating these proposals, including those related to reducing regulatory burden and operating in a risk-based way.
9. In this consultation, we are seeking views on the OfS's strategy for 2022 to 2025. We are not seeking views on broader topics such as our role as a regulator, our regulatory framework, or on individual conditions of registration.

## Further information on this proposal

10. To improve the readability of this document, we have placed further information about this proposal in Annex B, which comprises the following sections:
  - a. **What are we proposing and why?:** This section covers our rationale for our regulatory approach, areas of focus (quality and standards and equality of opportunity) and goals; how our regulatory approach and areas of focus support our regulatory objectives; and how our goals support our areas of focus and our regulatory objectives.

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<sup>5</sup> For example: National Student Survey 2020 results ([www.officeforstudents.org.uk/advice-and-guidance/student-information-and-data/national-student-survey-nss/nss-2020-results/](http://www.officeforstudents.org.uk/advice-and-guidance/student-information-and-data/national-student-survey-nss/nss-2020-results/)) and HEPI Student Academic Experience Survey 2020 ([www.hepi.ac.uk/2020/06/11/the-student-academic-experience-survey-2020/](http://www.hepi.ac.uk/2020/06/11/the-student-academic-experience-survey-2020/)).

<sup>6</sup> For example: OfS internal analysis of OfS Equality and Diversity data ([www.officeforstudents.org.uk/data-and-analysis/equality-and-diversity-student-data/](http://www.officeforstudents.org.uk/data-and-analysis/equality-and-diversity-student-data/)) and OfS internal analysis of individual student data from HESA and the Individualised Learner Record.

<sup>7</sup> See HESA Higher Education Student Statistics: UK 2019/20 ([www.hesa.ac.uk/data-and-analysis/students/releases#bulletin](http://www.hesa.ac.uk/data-and-analysis/students/releases#bulletin)).



- b. **What will the effects of this proposal be?:** This section covers the effect we anticipate this strategy will have on providers, students and society.
- c. **Alternative approaches:** This section covers the alternatives to our proposals that we have considered.
- d. **Proposed implementation:** This section summarises our next steps following the closure of the consultation.

## Consultation principles

- 11. We are running this consultation in accordance with the government's consultation principles.<sup>8</sup>
- 12. At the OfS we are committed to taking equality and diversity into account in everything we do. We have a legal obligation to have due regard to the Public Sector Equality Duty.

For more information about our 2018 to 2021 strategy, please visit the OfS website:  
[www.officeforstudents.org.uk/about/our-strategy/](http://www.officeforstudents.org.uk/about/our-strategy/)

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<sup>8</sup> See [www.gov.uk/government/publications/consultation-principles-guidance](http://www.gov.uk/government/publications/consultation-principles-guidance).

# Contents of proposal 1: OfS strategy for 2022 to 2025

## Structure of this strategy

13. In this strategy, we set out our overall mission and our primary regulatory objectives. These are the long-term aims we seek to achieve as an organisation.
14. We then set out our 'regulatory approach'. This is our approach to performing our functions and delivering the strategy, consistent with the regulatory framework.
15. We specify two areas of higher education where we will focus over the next strategic period: 'quality and standards' and 'equality of opportunity'. We believe our focus on these two areas will be the most effective way to progress our mission.
16. Finally, we set out our goals. These are the specific outcomes we will seek to achieve in 2022 to 2025. The goals will either advance our two areas of focus or they will facilitate our work.
17. The goals describe what we want to achieve; the regulatory approach describes how we will achieve it.

## What is the OfS?

18. We are the independent regulator of higher education in England. We regulate in the interests of students and prospective students from all backgrounds, whether they are:
  - undergraduates or postgraduates
  - UK-based or international
  - students studying full-time or part-time
  - those based on campus or learning at a distance.

## What do we want to achieve?

19. We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers.

## Regulatory objectives

20. Our mission translates into our four primary regulatory objectives, and our work is designed to mitigate the risk that these objectives are not met:
  - a. **Participation:** All students, from all backgrounds, with the ability and desire to undertake higher education, are supported to access, succeed in, and progress from higher education.
  - b. **Experience:** All students, from all backgrounds, receive a high-quality academic experience, and their interests are protected while they study or in the event of provider, campus or course closure.
  - c. **Outcomes:** All students, from all backgrounds, can progress into employment, further study, and lead fulfilling lives, in which their qualifications hold their value over time.

d. **Value for money:** All students, from all backgrounds, receive value for money.

21. These objectives have relevance beyond students; the wider public has an interest given the relevance of higher education to our economy, culture and society.

## The OfS's regulatory approach

22. Our approach is based on a set of minimum expectations that we refer to as the 'regulatory baseline'.

### What is the 'regulatory baseline'?

The regulatory baseline is a set of regulatory expectations that represent the minimum performance to which students and taxpayers are entitled.

The baseline is predominantly expressed through our conditions of registration and all providers are required to satisfy these. We also use statements of expectation and other tools to express this minimum level of performance from providers to which students and taxpayers are entitled.

23. We regulate by reference to our regulatory baseline: taking action to ensure providers' compliance with it, and incentivising and influencing providers to go beyond these minimum expectations, for instance in relation to access and participation and the Teaching Excellence and Student Outcomes Framework (TEF). Where it is proportionate to do so, we prevent providers operating below the baseline from accessing public money and other benefits.

24. During the next strategic period, our work will be strongly focused on ensuring that providers are meeting these expectations. Performance that falls below our regulatory baseline fails students, who contribute through their time, effort and fees. It fails taxpayers, who support a significant investment of public funds through grants and subsidised loans. It also fails to deliver the objectives set out in our regulatory framework.

25. We use a range of regulatory approaches to secure compliance with the baseline: setting clear expectations for compliance with our conditions of registration; taking proportionate action to secure compliance with this baseline, escalating enforcement action where it is breached; and intervening where a provider is at risk of dropping below it. We also communicate information and use influence to incentivise compliance with the baseline.

26. Where it is proportionate to do so, we regulate to ensure that providers cannot continue to access student loan funding, grant funding, and degree awarding powers, if their performance falls below this baseline.

27. In regulating providers against this baseline, we use a risk-based and proportionate approach. This means that we prioritise and act according to the risk posed to students and taxpayers, and that our interventions are proportionate to that regulatory risk. This approach enables us to minimise burden on providers where possible: providers that represent low risk to students and taxpayers will experience lower regulatory burden.

28. Above the baseline, we believe that autonomous providers making their own decisions is the best way to ensure the sector can flourish and innovate. We do not prescribe how universities and colleges should operate beyond our minimum requirements, and most of our activity will be designed to ensure that providers meet these expectations.
29. We will, however, influence and incentivise providers to perform beyond our minimum requirements over the next strategic period. Student choice has a significant role in shaping the sector to respond to students' needs and goals: effective information, advice and guidance plays a major role in driving high quality outcomes. We will therefore take steps to ensure that students and their advisers have access to relevant and targeted information to inform their choices about whether, what and where to study.
30. We will also use other methods. For instance, in using our funding powers to incentivise certain outcomes or through such mechanisms as the TEF.
31. We believe the best way to deliver our regulatory objectives is to employ a broad range of regulatory tools. These are set out in HERA and described in more detail in the regulatory framework, and include:
- Setting regulatory standards and monitoring whether these are satisfied in practice.
  - Taking enforcement action where requirements expressed in a condition of registration are breached, such as monetary penalties, suspension, deregistration.
  - Imposing additional monitoring requirements or specific ongoing conditions of registration so we can better understand and mitigate specific risks.
  - Publishing information about providers' performance and our regulatory interventions to incentivise compliance.
  - Publishing information and advice to support students to make the right higher education choices for them, the economy and society.
  - Communicating expectations to influence provider behaviour.
  - Sharing evidence and information to highlight effective and innovative practice.
  - Distributing funding in line with government priorities and to support our own strategic priorities.
32. Most of these tools can be used to ensure providers' compliance with the baseline, and to incentivise providers to go beyond these minimum expectations.
33. The effectiveness of this strategy depends on our ability to engage with and listen to students, providers, and other groups such as employers. We will seek to engage closely with our many stakeholders – such as UKRI with which we share many common objectives including the wellbeing of postgraduate research students. Throughout the new strategy we will also continue to work closely with our counterparts in Scotland, Wales and Northern Ireland, to ensure close and effective liaison on areas of common interest.

34. Ultimately, we consider this approach to be the best way to meet our objectives and succeed in our mission – creating a higher education sector in which all students with the ability and desire to undertake higher education can access, succeed in and progress from higher education. This approach means students are increasingly able to trust that the provider at which they choose to study has met our minimum requirements – including on quality, commitment to advancing equality of opportunity, and protecting their rights as consumers. They can also have confidence that we are influencing providers to go beyond this minimum baseline and to offer exceptional higher education.

## **Our areas of focus for 2022 to 2025**

35. The two areas that we will focus on from 2022 to 2025 are quality and standards, and equality of opportunity. These underpin our four primary regulatory objectives which reflect the duties and powers set out in sections 29-37 and 23-28 of HERA. They are closely connected and mutually reinforcing: improving equality of opportunity without ensuring quality and standards will fail to lead to positive student outcomes, and likewise ensuring quality and standards without improving equality of opportunity means that students who could benefit will not.

36. These areas of focus are important in their own right, and they have only become more so in the context of the coronavirus pandemic. In response to the pandemic, we paused some of our reporting requirements as higher education providers adapted to the novel and fast-moving environment. As we transition out of the early stages of the pandemic over the next strategic period, we know that quality and standards will be of utmost importance to students. Many have faced significant disruption to their education during the pandemic, while new opportunities have emerged from the significant change that came with it. Meanwhile, gaps in opportunity have for the most part stagnated or widened during the last two years, and longer-term effects are still unclear, adding further imperative to focus on this area.

37. These areas of focus have shaped this strategy, and will continue to guide us as new issues and opportunities emerge, which will be inevitable given the highly uncertain external environment. The more closely an issue relates to quality and standards or equality of opportunity, the more likely we are to consider regulatory activity either to secure compliance with the baseline or to incentivise performance above it.

38. A third area of focus – enabling regulation – captures underpinning regulation that enables quality and standards, equality of opportunity, and areas of our work that are necessary for the higher education system to operate effectively. These areas directly support our ability to deliver regulation that protects the interests of students and taxpayers.

## **Our goals for 2022 to 2025**

39. The goals that we seek to achieve during the period of this strategy fall into the categories of quality and standards, equality of opportunity, and enabling regulation.

40. We recognise that these goals can only be achieved working through the higher education sector. As the regulator, our role is to incentivise and influence providers and other actors in the sector to bring about the changes needed to achieve these goals.

## **Quality and standards<sup>9</sup>**

- Students receive a high quality academic experience that improves their knowledge and skills, with increasing numbers receiving excellent provision.
- Students are rigorously assessed, and the qualifications they are awarded are credible and comparable to those granted previously.
- Providers secure free speech within the law for students, staff and visiting speakers.
- Graduates contribute to local and national prosperity, and the government's 'levelling up' agenda.

## **Equality of opportunity**

- Students' access, success and progression are not limited by their background, location or characteristics.
- Prospective students can choose from a diverse range of courses and providers at any stage of their life, with a wide range of flexible and innovative opportunities.
- Providers act to prevent harassment and sexual misconduct and respond effectively if incidents do occur.
- Providers encourage and support an environment conducive to the good mental health and wellbeing that students need to succeed in their higher education.

## **Enabling regulation**

- Providers are financially viable and sustainable and have effective governance arrangements.
- Students receive the academic experience they were promised by their provider and their interests as consumers are protected before, during and after their studies.
- The OfS minimises the regulatory burden it places on providers, while ensuring action is effective in meeting our goals and regulatory objectives.

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<sup>9</sup> We are currently consulting on our approach to the regulation of quality and standards and the content of the current paper is not intended to pre-judge decisions that will be made as a result of that consultation process.

## **How we will adapt as an organisation to deliver this strategy**

41. To achieve our goals and deliver this strategy, we will continue to develop the skills and competencies of our staff and equip them with the right tools and technology. We will also improve equality, diversity, and inclusion within our organisation, by meeting our ambitious employment targets.
42. We will improve the efficiency and effectiveness of our systems and processes. We aim to deliver our goals while also providing value for money to the taxpayers and providers that fund our work. Our work will be informed by evidence of what works and we will evaluate our impact to support future improvements.

## How we will deliver our strategy

43. Each year, we will set out our intended activity in an annual business plan. All our goals will take multiple years and a variety of tools to deliver. Below we set out the major activity we expect to carry out over the strategic period.<sup>10</sup> The next strategy will likely cover a period of significant change for the sector, including policy reform by government. These plans may be subject to change, and in executing them we will retain the ability to adapt as the external environment continues to shift.
44. In seeking to achieve these goals, we recognise that they can only be achieved working through the higher education sector. We will therefore need to influence providers and other actors in the sector to bring about the changes needed to achieve them.

## Quality and standards

### **Students receive a high quality academic experience that improves their knowledge and skills, with increasing numbers receiving excellent provision.**

- Subject to the outcomes of our current consultations, we plan to take a more robust approach to quality. We are consulting on introducing revised quality conditions that provide greater clarity about the minimum requirements that providers must meet.
- We will use the data and regulatory intelligence we hold to identify courses and providers that may not satisfy our regulatory requirements for quality. We expect this proactive approach to result in an increase in our investigative and enforcement activity from the first year of the strategy, with courses that do not meet our requirements being improved or closed.
- We will ensure that all providers satisfy our minimum requirements for student outcomes. Subject to the outcome of further consultation, we plan to publish annual data that shows the outcomes delivered by each provider. Our initial focus will be on implementing a revised condition of registration following consultation; following implementation we will identify priorities for our enforcement activity. Where appropriate, we will investigate compliance concerns and use the full range of our powers to take action.
- We will report on our regulatory activity for individual providers and on wider themes relevant to all providers' compliance.
- We will consider using our funding powers to support small-scale regulatory 'sandbox' activity for providers wishing to experiment in course design and delivery in a way that continues to satisfy our requirements.
- We will also drive improvement in the quality of undergraduate courses beyond our regulatory requirements by implementing the next iteration of the TEF scheme. Our initial focus will be on implementing the scheme following consultation; following implementation we will focus on increasing the influence of TEF ratings, to strengthen incentives for improvement across all providers.

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<sup>10</sup> These plans may be subject to change. Each goal represents a priority for the organisation and the goals listed below are not listed in order of importance.



- Towards the end of the strategic period, we will focus on promoting and improving comparable information about quality for the benefit of prospective students, which we expect will in turn further incentivise providers to improve as they seek to attract students.

**Students are rigorously assessed, and the qualifications they are awarded are credible and comparable to those granted previously.**

- We will use the data and regulatory intelligence we hold to identify courses and providers that may not satisfy our regulatory requirements in relation to the rigour of their assessment and awarding practices. We expect this proactive approach to result in an increase in our investigative and enforcement activity from the first year of the strategy. We will address practices that do not meet our requirements to ensure public confidence in higher education qualifications.
- We will continue to consider the extent to which increases in degree classifications over time can be explained. We will focus investigatory and enforcement activity on cases where significant increases cannot be explained by our data analysis or other evidence.
- We will report on our regulatory activity for individual providers and on wider themes relevant to all providers' compliance. We will consider using our funding powers to support small-scale regulatory 'sandbox' activity for providers wishing to experiment in assessment and awarding practices in a way that continues to satisfy our requirements.

**Providers secure free speech within the law for students, staff and visiting speakers.**

- We will continue to be clear that all providers must secure academic freedom and free speech within the law, and that this requires them to take positive actions. In doing so they must give due regard to other legal obligations, such as the public sector equality duty, but these should not prevent action to secure free speech.
- We will respond to individual cases where a provider has failed to take steps to secure academic freedom and freedom of speech, including where a provider's approach has the effect of inhibiting the expression of minority, unpopular or controversial views. We will report our regulatory activity for individual providers to ensure that all providers understand what is expected of them.
- We will undertake any necessary investigatory and enforcement activity using our existing powers. Subject to parliament's decisions, and any relevant legislation introduced, we will implement new policies and we expect this to include consultation during this strategic period. We expect our investigatory and enforcement activity to increase as any new powers are implemented.

**Graduates contribute to local and national prosperity, and the government's 'levelling up' agenda.**

- Our regulation of quality will ensure that courses require students to develop the skills they need for success beyond higher education and that all providers satisfy our minimum requirements for progression of their students to professional employment or postgraduate study.

- Our approach to TEF assessments will incentivise providers to deliver provision that supports progression of students to professional employment or postgraduate study beyond the minimum requirements.
- Our regulation of access and participation plans will ensure that providers take steps to address inequalities in relation to progression to professional employment or postgraduate study for any student due to their background, location or characteristics.
- We will work with others across government to design, deliver and evaluate programmes to address current and anticipated skills shortages for business and public services locally and nationally.

## Equality of opportunity

### **Students' access, success and progression are not limited by their background, location or characteristics.**

- Our access and participation regime will focus on equality of opportunity and good student outcomes, and is closely connected with our regulation of quality and standards.
- We will keep our approach to access and participation plans under review, including our national targets. When monitoring plans, we will increasingly focus our activity on those providers that represent most risk and will take enforcement action to ensure all providers are taking all reasonable steps to deliver the commitments in their plans.
- We will encourage an increased focus on higher education providers seeking opportunities to work in partnership with schools.
- Our regulation of quality will ensure that students have the resources and support they need to succeed in and beyond higher education, and that all providers satisfy our minimum requirements for student outcomes for all students.
- Beyond the requirements we place on individual providers, we will continue to support the sector to make progress on access and participation, using funding, information and evidence. Where evidence about 'what works' to improve access and participation is lacking, we will seek to generate and disseminate new evidence and make our existing resources more accessible to a wider audience, helping providers to tailor support for these groups.

### **Prospective students can choose from a diverse range of courses and providers at any stage of their life, with a wide range of flexible and innovative opportunities.**

- We will ensure that our approach to the registration of new providers facilitates market entry for those with high quality courses and innovative approaches.
- We will continue to encourage diversity of provision through our funding streams.
- We will consider using our funding powers to support small-scale, regulatory 'sandbox' activity for providers wishing to experiment in innovative and flexible approaches in a way that continues to satisfy our requirements.

- During the latter half of the next strategic period, we will seek to proactively increase the diversity of provision available to students. We will explore using information to stimulate demand and competition and funding to stimulate supply. We will also explore ways to facilitate new entry to the sector through our approach to registration and degree awarding powers, including looking at the resources available to prospective providers and considering whether new categories of registration would be helpful.
- We will work with central government to ensure our regulatory approach is appropriate in the context of lifelong loan entitlement.<sup>11</sup>

**Providers act to prevent harassment and sexual misconduct and respond effectively if incidents do occur.**

- We will commit to taking effective action to address and prevent harassment and sexual misconduct. We will collect evidence on the actions that providers are taking in response to our statement of expectations<sup>12</sup> on harassment and sexual misconduct, and we will carry out qualitative and quantitative research to build our evidence base on the nature and prevalence of harassment and sexual misconduct among students.
- Based on the evidence gathered and other evidence available to us, we will develop an approach that is most likely to drive the change needed in this area. We expect this to focus on the use of our convening powers, influence, and the publication of case studies and other information to demonstrate how providers could effectively respond to complex cases of harassment and sexual misconduct.
- We expect to use our investigatory and enforcement powers to underpin our approach where this is necessary and will re-examine the enforcement approaches that may be appropriate as we respond to individual cases.
- In pursuing this goal, we will place particular emphasis on our use of student engagement to make sure we are taking the most effective course of action.

**Providers encourage and support an environment conducive to the good mental health and wellbeing that students need to succeed in their higher education.**

- We will evaluate the progress on interventions on student mental health, focusing on supporting providers to innovate, improve and tailor their practice. We will consider whether providers are responding effectively and addressing student mental health as a strategic priority.

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<sup>11</sup> The 'lifelong loan entitlement' (LLE) is a government policy proposal to provide individuals with a loan entitlement to the equivalent of four years' worth of post-18 education to use over their lifetime. See Department for Education, 'Skills for Jobs: Lifelong Learning for Opportunity and Growth' (2021), page 5: [assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/957856/Skills\\_for\\_jobs\\_lifelong\\_learning\\_for\\_opportunity\\_and\\_growth\\_web\\_version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957856/Skills_for_jobs_lifelong_learning_for_opportunity_and_growth_web_version.pdf) [PDF].

<sup>12</sup> See [www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/prevent-and-address-harassment-and-sexual-misconduct/statement-of-expectations/](https://www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/prevent-and-address-harassment-and-sexual-misconduct/statement-of-expectations/).

- We will explore opportunities to work with partner organisations in the higher education and mental health sectors and in government to enable providers to support the good mental health and wellbeing of their students.

## **Enabling regulation**

### **Providers are financially viable and sustainable and have effective governance arrangements.**

- During the next strategic period, we will consult on changes to our conditions of registration related to management and governance so that we can identify and address issues in providers more effectively before they register with the OfS and on an ongoing basis.
- We will use the regulatory intelligence we hold, including financial and market information, to identify providers where governance arrangements may come under pressure. We expect this proactive approach to result in the diagnosis of any weaknesses in governance that need to be addressed by a provider before any pressure builds.
- We will continue to monitor the financial viability and sustainability of providers to ensure we identify any provider likely to face financial difficulties and can intervene to protect the interests of students.

### **Students receive the academic experience they were promised by their provider and their interests as consumers are protected before, during and after their studies.**

- In the first year of our strategy, we will consult on an updated approach to protecting the interests of students as consumers. This will involve revisiting the requirements we currently impose through the C conditions and developing proposals to replace these with more focused requirements that set the student protection norms for the higher education sector. We expect this to include proposals for the information providers should give to students choosing what and where to study, fair contractual terms, and complaint-handling arrangements.
- In pursuing this goal, we will place particular emphasis on our use of student engagement to understand the main issues for students in terms of consumer protection.

### **The OfS minimises the regulatory burden it places on providers, while ensuring action is effective in meeting our goals and regulatory objectives.**

- We will become increasingly risk-based in the way we monitor compliance with conditions of registration and take enforcement action. We will continue to test whether the reporting requirements in place for all providers are appropriate for those that we consider present the least regulatory risk.
- In reviewing our approach to access and participation plans, we will focus in particular on opportunities to reduce burden.
- By the end of the strategic period, we will have varied the regulatory requirements we place on individual providers according to the risks they pose. We expect this to involve increasing requirements for providers where we judge risk to be highest.
- We will maintain our dialogue with providers about the impact of our regulation, testing that the benefits to students and taxpayers continue to outweigh the burden to providers.

**Question 1**

Proposal 1: Do you have any comments to make on the OfS's proposed strategy for 2022 to 2025 or the priorities set out within it?

**Question 2**

Proposal 1: Do you have any comments about any unintended consequences of the proposed strategy or the priorities set out within it, for example for particular types of provider, particular types of student, or for individuals on the basis of their protected characteristics?

## Proposal 2: Minor addition to regulatory framework

### What are we proposing and why?

45. We are proposing to add the text below to Part 1 of the regulatory framework:
46. 'For more information about our priorities in a particular strategic period, please consult our current strategy, which can be found at [www.officeforstudents.org.uk/about/our-strategy/](http://www.officeforstudents.org.uk/about/our-strategy/).'
47. This text would be added to Part I of the regulatory framework, to the section titled 'Overview of the regulatory approach', between paragraphs 15 and 16. We are proposing to add this text to the regulatory framework to clarify the relationship between the regulatory framework and our strategy documents.
48. Further to s.75(8) of HERA, we are seeking consultees views on this proposed change to the regulatory framework.

### What would be the effect of this proposal?

49. In making this addition to the regulatory framework, we are seeking to give our stakeholders greater clarity on the relationship between two related but distinct documents (the regulatory framework and our strategy).

### Proposed implementation

50. Subject to the responses received through this consultation, we are proposing to add this to the regulatory framework before the publication of the next strategy in early 2022.

#### Question 3

Proposal 2: Do you have any comments to make on the proposed addition to the regulatory framework?

# Annex A: List of consultation questions

## Question 1

Proposal 1: Do you have any comments to make on the OfS's proposed strategy for 2022 to 2025 or the priorities set out within it?

## Question 2

Proposal 1: Do you have any comments about any unintended consequences of the proposed strategy or the priorities set out within it, for example for particular types of provider, particular types of student, or for individuals on the basis of their protected characteristics?

## Question 3

Proposal 2: Do you have any comments to make on the proposed addition to the regulatory framework?

## Question 4

Are there aspects of proposals 1 and/or 2 you found unclear? If so, please specify which, and tell us why.

## Question 5

Do you have any other comments?

## Annex B: Further information on proposal 1 (OfS strategy for 2022 to 2025)

### What are we proposing and why?

1. We set out our proposed strategy for the OfS in 2022 to 2025 in proposal 1. It includes the following elements: we first set out our overall mission and our primary regulatory objectives – these are the long-term aims we are seeking to achieve as an organisation.

### Regulatory approach

2. Second, we set out ‘the OfS’s regulatory approach’ – this is a description of the approach we will take in performing our functions and delivering this strategy. This regulatory approach is consistent with the description of how we will perform our functions that is set out in our regulatory framework.<sup>13</sup> In this strategic period, our regulatory approach will place more focus on securing compliance with our minimum requirements, with a smaller proportion of our time and effort allocated towards shaping and incentivising activity at higher education providers above this minimum level.
3. We have proposed this approach because focusing on securing compliance with our minimum requirements will reassure students and taxpayers of the minimum return on their investment. Where this return is not being secured because a provider falls short of our minimum requirements, the OfS can take regulatory action. Our approach of regulating through minimum requirements means that the highest performing providers should normally expect to meet these comfortably. This should minimise regulatory burden as these providers will not need to expend significant effort to demonstrate that requirements are satisfied. Providers performing below the minimum requirements are likely to experience greater regulatory attention than high performing providers, including through the use of our enforcement powers. We also consider that focusing on securing compliance with our minimum requirements is the most proportionate way to drive progress towards attaining our overall mission and primary regulatory objectives. It allows autonomous providers to flourish and improve above the baseline, while protecting students and taxpayers from poor performers at risk of falling below our requirements.

### Areas of focus

4. Third, we set out our areas of focus for 2022 to 2025. These are quality and standards and equality of opportunity. These two areas are closely linked and interdependent. Ensuring rigorous quality and standards means that all students – including those targeted through efforts to improve equality of opportunity – receive a high quality education. Quality and standards are not truly being upheld if they only apply to a subsection of the student population. Advancing equality of opportunity will also increase the number of students that benefit from high quality provision.
5. In proposing to focus our activities in these areas, we have had regard to our general duties under s.2 of HERA. In particular we have had regard to: (1) the need to promote quality and greater choice and opportunities for students (under s.2(1)(b)); and (2) the need to promote equality of opportunity in connection with access to and participation in higher education (under

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<sup>13</sup> See [www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/](http://www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/).



s.2(1)(e)). In addition, we have noted that HERA requires the OfS to have in place a mandatory access and participation plan condition for certain institutions (s.12) and that it identifies quality and standards as an area we may in particular regulate using our conditions (s.13). HERA further sets out our duties and powers, and other provisions, in respect of quality and standards (ss. 23-28) and access and participation (ss. 29-37).

6. We have chosen to focus on these two areas because we believe that doing so is an effective way of achieving our primary regulatory objectives. These two areas closely connect to all the objectives, and therefore we consider progress in them will advance our objectives more than any other areas of focus.
7. These areas of focus connect to our primary regulatory objectives<sup>14</sup> in numerous ways, including:
  - Objective 1 – Upholding quality and standards will support all students to succeed in and progress from higher education, regardless of their background. Promoting equality of opportunity will help to ensure that all students with the ability and desire to undertake higher education, rather than a narrow subset, are supported to access, succeed in, and progress from higher education.
  - Objective 2 – Our focus on quality and standards aims to ensure that students receive a high quality academic experience. Promoting equality of opportunity will extend this to all students, so that they all receive this high quality experience, regardless of their background or other characteristics.
  - Objective 3 – Our focus on ensuring quality and standards will, by definition support students, from all backgrounds, to progress into employment, further study, and fulfilling lives. Our focus on promoting equality of opportunity seeks to secure these benefits of higher education for all students, regardless of their background. If we successfully ensure standards are upheld, qualifications will hold their value over time.
  - Objective 4 – Fulfilling objectives 1, 2 and 3 will help to ensure that the English higher education system demonstrates value for money for students and the taxpayer. It is through these objectives that our focus on quality and standards and equality of opportunity will support our objective on value for money.
8. We have also chosen to focus on these areas because they are of particular importance to achieving our primary regulatory objectives, and have become even more important in the context of the ongoing coronavirus pandemic. For example, on quality and standards, the pandemic has seen many changes to the method and practice of teaching. In some cases, students have raised concerns about the quality of the digital teaching and learning they received.<sup>15</sup> Relatedly, improving equality of opportunity is of particular importance given the extensive disruption to learning in schools and the potential for access and attainment gaps to

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<sup>14</sup> See [www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/](http://www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/).

<sup>15</sup> In student polling conducted for 'Gravity assist: propelling higher education towards a brighter future' ([www.officeforstudents.org.uk/publications/gravity-assist-propelling-higher-education-towards-a-brighter-future/](http://www.officeforstudents.org.uk/publications/gravity-assist-propelling-higher-education-towards-a-brighter-future/)), 29 per cent of respondents disagreed or strongly disagreed with the statement 'I am content with the digital teaching and learning I have received on my course'.

widen as a result.<sup>16</sup> Focusing on equality of opportunity will also help to ensure that we realise the gains of our existing work on access and participation plans that were started in 2019-20.

## Goals

9. Finally, we set out our goals for this strategic period. These goals are the specific outcomes we will seek to achieve from 2022 to 2025. We will use ‘the OfS’s regulatory approach’ as we deliver these goals. In other words, the goals set out what we want to achieve in the next strategic period, and the regulatory approach sets out the parameters for how we will achieve it. Reaching these goals will drive forward progress on equality of opportunity and quality and standards (our two areas of focus for 2022 to 2025). They are split into three groups: (1) quality and standards, (2) equality of opportunity, and (3) enabling regulation. The third category refers to activities that we need to maintain or advance so that we can continue to regulate effectively and deliver progress in the first two areas.
10. In the category of quality and standards, we have identified four goals. Our first goal is that ‘students receive a high-quality academic experience that improves their knowledge and skills, with increasing numbers receiving excellent provision’. This is directly relevant to the quality and standards of the higher education students receive. It will support student’s progression and improve their employability.
11. Our second goal is that ‘students are rigorously assessed, and the qualifications they are awarded are credible and comparable to those granted previously’. This is relevant to quality and standards because assessment plays an important role in quality. To maintain standards, students must be rigorously assessed, and qualifications awarded should be credible and comparable to those granted previously so that they hold their value over time.
12. Our third goal in this category is ‘Providers secure free speech within the law for students, staff and visiting speakers’. This is relevant because free speech – for example through open academic debate – is a necessary component of high quality higher education. It exposes students to new ideas and allows existing schools of thought to be challenged.
13. Our fourth goal is that ‘Graduates contribute to local and national prosperity,<sup>17</sup> and the government’s ‘levelling up’ agenda.’<sup>18</sup> It is our view that part of what signifies quality in higher

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<sup>16</sup> See Department for Education, ‘Understanding progress in the 2020/21 academic year: Interim findings’ (January 2021), pages 28-32. ([www.gov.uk/government/publications/pupils-progress-in-the-2020-to-2021-academic-year-interim-report](http://www.gov.uk/government/publications/pupils-progress-in-the-2020-to-2021-academic-year-interim-report)). This research found that schools closures have led to a widening of the disadvantage gap in attainment.

Also see Ofqual, ‘Summer 2021 student-level equalities analysis – GCSE and A level’ (2021) at [www.gov.uk/government/publications/analysis-of-results-a-levels-and-gcses-summer-2021/summer-2021-student-level-equalities-analysis-gcse-and-a-level](http://www.gov.uk/government/publications/analysis-of-results-a-levels-and-gcses-summer-2021/summer-2021-student-level-equalities-analysis-gcse-and-a-level).

This analysis found that there were decreases in overall GCSE and A-level outcomes from 2019 to 2021 for students from certain groups – including, but not limited to, students eligible for Free School Meals and Gypsy and Roma candidates.

<sup>17</sup> In referring to ‘local and national prosperity’, we are referring to economic prosperity as measured by, for example, levels of unemployment, standards of living and GDP.

<sup>18</sup> In referring to the government’s ‘levelling up’ agenda, we are referring to a broad range of policy interventions aimed at addressing the UK’s regional economic disparities. For more information see: [commonslibrary.parliament.uk/research-briefings/cdp-2021-0086/](https://commonslibrary.parliament.uk/research-briefings/cdp-2021-0086/).

education is that graduates can contribute to local and national economic prosperity by securing successful outcomes, which enable them to progress into employment and/or further study. We also take the view that promoting the government's 'levelling up' agenda as part of our regulatory work in relation to quality and standards will have a positive socio-economic impact. In particular, this will help in addressing and mitigating regional economic disparities of current and prospective students. It will serve the interests of students and the wider public through students' contributions to local and national economies. We note that our fourth goal, in particular in relation to the government's 'levelling up' agenda, overlaps with the category of 'equality of opportunity' and intersects in particular with one of our strategic goals under that category – 'Students' access, success and progression are not limited by their background, location or characteristics'. This reflects the mutually reinforcing nature of the two areas of quality and standards and equality of opportunity which we discuss further in the text of our proposed new strategy.

14. In the category of equality of opportunity, we have identified four goals. Our first goal is that 'Students' access, success and progression are not limited by their background, location or characteristics'. This goal will support our focus on equality of opportunity for this strategy by addressing some of the main barriers that prospective and current students face in accessing and participation in higher education. In seeking to achieve progress on this goal we will take an outcomes-based approach that focuses on demonstrating that our regulation is leading to improvements to equality of opportunity over time. This will ensure that we are using our resources and those of providers efficiently and effectively.
15. Our second goal is that 'Prospective students can choose from a diverse range of courses and providers at any stage of their life, with a wide range of flexible and innovative opportunities'. It advances equality of opportunity because innovative and flexible learning, and diversity of choice will mean that students are better able to choose and access higher education that suits and is adaptable to their needs at the time that is convenient in their lives.
16. Our third goal is that 'Providers act to prevent harassment and sexual misconduct and respond effectively if incidents do occur'. Experiences of harassment or sexual misconduct can negatively impact on student access, success and progression. This can then result in barriers to equality of opportunity, particularly given that data shows that students with certain protected characteristics including but not limited to race, religion or belief, sex and sexual orientation, may be at particular risk of experiencing harassment, or sexual harassment.<sup>19</sup> Ensuring that providers have effective policies, procedures and practices in place to prevent harassment and sexual misconduct will mitigate that risk.
17. Our fourth goal is that 'Providers encourage and support an environment conducive to the good mental health and wellbeing that students need to succeed in their higher education'. Students with certain protected characteristics, including but not limited to race, religion or belief, sex and sexual orientation, may be at particular risk of experiencing poor mental health.<sup>20</sup> If

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<sup>19</sup> See section titled 'What's the issue' at [www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/prevent-and-address-harassment-and-sexual-misconduct/](http://www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/prevent-and-address-harassment-and-sexual-misconduct/).

<sup>20</sup> See [www.officeforstudents.org.uk/publications/coronavirus-briefing-note-supporting-student-mental-health/](http://www.officeforstudents.org.uk/publications/coronavirus-briefing-note-supporting-student-mental-health/).

students are supported, this will put them in a stronger position to access, succeed in and progress from higher education.

18. In the category of enabling regulation, we have identified three goals. 'Enabling regulation' refers to areas of our work that are necessary for the higher education system to operate effectively. These areas directly support our ability to deliver regulation that protects the interests of students and taxpayers. The areas of work included in this category also support the delivery of our regulatory objectives and the areas of focus set out in this strategy of quality and standards and equality of opportunity.
19. The first goal is that 'Providers are financially viable and sustainable and have effective governance arrangements'. This aims to ensure that providers have the financial resources and governance arrangements to meet their obligations, including to their students. This protects the interests of current and prospective students and taxpayers by mitigating the risk of providers exiting the market, which otherwise could disrupt and adversely impact the continuity of students' higher education. Financial sustainability and effective governance in a provider are also necessary prerequisites for the provider to be able to deliver on the two areas of focus identified in this strategy (quality and standards and equality of opportunity) – without funds or proper management, providers couldn't operate at all.
20. Our second goal in this category is that 'Students receive the academic experience they were promised by their provider and their interests as consumers are protected before, during and after their studies'. This supports our work on quality and standards because effective consumer protection must exist to ensure that students receive the high quality education they were promised. Also, for autonomous providers to be incentivised to provide students what they were promised, and to deliver high quality higher education, students' rights as consumers need to be protected. We have set out in the proposed strategy that we intend to consult on an updated approach to protecting the interests of students as consumers in the first year of the new strategy if taken forward.
21. Our final goal in this category is that 'The OfS minimises the regulatory burden it places on providers, while ensuring action is effective in meeting our goals and regulatory objectives'. This is aimed at reducing regulatory burden and minimising bureaucracy. It also supports our work on both quality and standards and equality of opportunity, because excessive regulatory burden will limit providers' ability to make progress in these areas.

## **What would be the effect of this proposal?**

22. For providers, the effect of our proposed regulatory approach, which focuses on securing compliance with our minimum requirements, will be that high-performing providers that comfortably meet our minimum requirements will experience lower regulatory burden. Conversely, we expect that our proactive approach to identifying courses and providers that may not satisfy our minimum requirements (especially in relation to quality and/or the rigour of their assessment and awarding practices) will result in an increase in our investigative and enforcement activity. As a result, courses that do not meet our requirements will be improved or closed.
23. Students will typically see an improvement in provision and in their experience overall, with improvement concentrated in the quality of their provision and wider aspects of their

experience including reductions in harassment and sexual misconduct and improved mental health support. We would expect current and future students to have greater confidence in the value of qualifications and their prospects for success beyond higher education. We expect students will experience reduced inequalities by background, location or characteristics in the way they progress to professional employment or postgraduate study, as providers take steps to address these issues. As a result of our focus on flexibility and diversity of choice, we expect that there will be a wider range of flexible and innovative opportunities on offer for students.

24. For society in general, we expect our proposals to lead to a number of benefits. These include greater confidence in the value of English qualifications, which will make it easier for employers to identify high quality job applicants. We also expect the quality of the labour supply to increase itself, beyond improvements to the signalling mechanism. The prospect of a transformational higher education experience will be accessible to more people. And the economy, nationally and locally, will benefit from all these factors, leading to further benefits to communities beyond direct participants in higher education.
25. Note: some further effects of the strategy are also discussed in the strategy itself (see pages 9-19).

## **Alternative approaches**

26. In developing these proposals, we considered alternative approaches: extending the existing strategy or having no strategy for the next three years. In our view, neither would be a credible course of action. Both bring similar, marginal benefits: there would be no new information for stakeholders, including OfS staff, to spend time and effort understanding; and in the case of extending the existing strategy, there would be greater stability in the system as the regulator would operate in the same way.
27. The consistency argument holds limited weight, as the new proposals maintain a high degree of continuity with the previous strategy by keeping the same regulatory objectives and mission. Likewise, the brevity of the strategy document means that the time saved by these alternative options is negligible.
28. Both alternatives carry significant disadvantages. So, for now, and subject to consultation responses, we have provisionally discounted them as credible options. These disadvantages correspond to the rationale for producing a new strategy. Without one, our activity will lack direction, coordination and focus: our work will be less impactful, so students and society will likely be worse off as a result. These alternatives would also be less transparent than the proposed strategy. No strategy at all would be the least transparent option, reducing accountability and increasing uncertainty for providers and others. Extending the existing strategy would also be less transparent: the proposals go into more detail than the current strategy; they are also grounded in the current context, rather than that of three years ago.

## **Proposed implementation**

29. We will take into account the responses received as a result of this consultation, and we will review the contents of our proposed new strategy before deciding the outcome of our consultation proposals. We intend to publish the strategy in early 2022.



## Annex C: Matters to which we have had regard in reaching our proposals

### The OfS's general duties

1. In formulating these proposals, the OfS has had regard to its general duties as set out in section 2 of HERA. The proposals in this document are relevant to all the OfS's activity over the next three years, and we therefore consider all general duties to be highly relevant.
2. Our risk-based regulatory approach recognises the importance of general duty (2)(1)(a), the need to have regard to protect the institutional autonomy of providers, and the weight we place on this duty varies with the risk posed to students and taxpayers – we place less weight on the need to protect institutional autonomy the greater the risk, with a significant inflection point moving from above, to at and below, our minimum regulatory requirements. Our approach to prioritising regulatory intervention according to the risk posed will minimise interference with institutional autonomy and regulatory burden.
3. The general duty under s.2(1)(b) requires the OfS to have regard to the need to promote quality, and greater choice and opportunities for students, in the provision of higher education. Promoting quality has been central to the OfS's development of the proposed strategy and this is reflected in our focus on quality and standards, with several goals and much of our strategic activity designed to promote quality, in some instances through encouraging greater choice and opportunities for students. For example, the provision and improvement of comparable information for prospective students promotes greater choice, which we expect will incentivise providers to improve quality in order to attract new students. The OfS's regard to this duty is also reflected in our proposal to focus on equality of opportunity, through efforts to extend opportunities through access and participation. In particular our proposed strategic goal that 'prospective students can choose from a diverse range of courses and providers at any stage of their life, with a wide range of flexible and innovative opportunities' will mean that students will have diversity of choice and be able to choose higher education that suits and is adaptable to their needs at the time that is convenient in their lives.
4. We have considered our general duty under s.2(1)(c) to have regard to the need to encourage competition in the interests of students and employers, and the benefits to students and employers from collaboration between providers, in developing the proposed strategy. The need to encourage competition is most clearly reflected in activity designed to drive improvement above the baseline. However, we are not proposing to prescribe how universities and colleges should operate above our baseline, as we believe that autonomous providers making their own decisions is the best way to ensure the sector can flourish and innovate. Therefore, in that respect, our general duty to have regard to the need to protect institutional autonomy is given more weight. Several planned activities rely on competition as their mechanism for delivering change. Similarly, we have had regard to the benefits that collaboration can bring, when identifying our proposed strategic actions.
5. We have had regard to the need to promote value for money in the provision of higher education as per our s.2(1)(d) duty. Value for money in the provision of higher education is important for both students and the taxpayer. By establishing a regulatory baseline of minimum requirements, these proposals are intended to secure a system whereby stakeholders (including current students) derive value from high quality higher education, which prospective

students have equal opportunity to benefit from. If successful, students will benefit from a better and more accessible higher education experience, while taxpayers will benefit from a better educated workforce.

6. We have had regard to the need to promote equality of opportunity in connection with access to and participation in higher education. This is the focal point of our general duty under s.2(1)(e), and is one of our two areas of focus for this strategy. In proposing activities related to this area, we have placed significant weight on this duty. It is also reflected in our focus on quality and standards: for equality of opportunity to be meaningful, the higher education provision in question must be high quality. Access to and participation in low quality provision does not constitute meaningful opportunity that allows students to succeed in, and progress from higher education with successful outcomes.
7. We have had regard to the need to use the OfS's resources in an efficient, effective and economic way under our s.2(1)(f) general duty. We have sought to design these proposals so that, if enacted, the OfS would use its resources in the most efficient, effective, and economic way, by focusing on what we believe is the most impactful combination and sequence of strategic and regulatory activity possible with our available resources. Once a final decision has been reached on the outcome of the consultation proposals, work will be carried out internally to make sure our staff are best equipped to deliver the proposed strategy if taken forward.
8. Under these proposals, our regulatory approach will place more focus on securing compliance with our minimum requirements, with a smaller percentage of our time and effort allocated towards shaping and incentivising performance above our minimum requirements. In proposing this approach, we have had regard to our general duties, in particular, we have had regard to: (1) the need to protect institutional autonomy (under s.2(1)(a)); (2) the need to use the OfS's resources in an efficient, effective and economic way (under s.2(1)(f)); and (3) principles of best regulatory practice – including the principles that regulatory activities should be – (i) transparent, accountable, proportionate and consistent, and (ii) targeted only at cases in which action is needed (under s.2(1)(g)).

## **The Regulators' Code**

9. We have had regard to the Regulators' Code when formulating our consultation proposals and our view is that the following sections are particularly relevant:
  - a. Section 1 which says that regulators should carry out their activities in a way that supports those they regulate to comply and grow, including using proportionate approaches and avoiding unnecessary burdens.
  - b. Section 3 which discusses the need to base regulatory activities on risk, including when choosing the most appropriate type of intervention.
  - c. Section 6 which states the need for regulators to ensure that their approach to their regulatory activities is transparent.



## Guidance issued by the Secretary of State

10. We have had regard to guidance issued to the OfS by the Secretary of State under section 2(3) of HERA, including, but not limited to the following guidance:<sup>21</sup>
  - a. 'Guidance to the Office for Students – Secretary of State's strategic priorities' (8 February 2021).
  - b. 'Additional teaching grant and funding/reducing the bureaucratic burden on providers' (14 September 2020).
11. We will have regard to any further guidance from the Secretary of State once issued.
12. We have in particular had regard to the Secretary of State's comments in his guidance letter of 8 February 2021, including, but not limited to, the following sections or matters that the Secretary of State raised:

### Ongoing response to the COVID-19 pandemic

- a. Monitor quality of teaching closely during pandemic, and to take swift action where it is clear that quality and academic standards have dropped.
- b. Communicate the findings from monitoring work.
- c. Ensure students are aware of the notification process that they can follow to raise any issues.
- d. Continue to support initiatives in relation to mental health in the short and long term.
- e. Fund challenge competitions to enable providers to develop innovative practice in mental health support, targeting students transitioning from school/college to university and prioritising the most disadvantaged learners.
- f. Identify opportunities to work with the higher education and health sectors to contribute to guidance and strategic frameworks to share good practice.
- g. Continue to work in close collaboration with the DfE and UKRI on financial sustainability.

### Quality

- h. Progress rapidly to ensure that a robust enhanced regulatory regime can be operational as soon as possible, following the quality and standards consultation.
- i. Ensure that decisions on regulatory intervention and registration can be made in relation to minimum absolute standards of quality which apply across the whole of higher education provision.
- j. Use the full range of the OfS's powers and sanctions where quality of provision is not high enough: the OfS should not limit itself to putting in place conditions of registration requiring improvement plans for providers who do not demonstrate high quality and robust outcomes,

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<sup>21</sup> All statutory guidance cited is available at [www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/](http://www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/).

but should move immediately to more robust measures, including monetary penalties, the revocation of degree awarding powers in subjects of concern, suspending aspects of a provider's registration or, ultimately, deregistration.

- k. Not register providers without rigorous quality and a commitment to robust graduate outcomes, which should be closely monitored once registered.
- l. Take a risk-based approach to quality assessment and regulation, focusing its efforts on lower quality providers.

### **Admissions and equality of opportunity**

- m. Focus access and participation work on delivering real social mobility: ensuring students can make the right choices, accessing and succeeding on high quality courses which are valued by employers and lead to good graduate employment. Encouraging more and more students onto courses which do not provide good graduate outcomes does not provide real social mobility and serves only to entrench inequality.
- n. Continue to consider broader factors, including socio-economic status and geographical inequality, which are likely to impact on access and participation in higher education, including a focus on white boys on free school meals who are currently the least likely group to progress to higher education.
- o. Ensure that providers' access and participation plans and Uni Connect lead to clear, measurable progress on access and participation that considers broader factors.
- p. Encourage universities to do much more to work with schools in a way which meaningfully raises the attainment of disadvantaged children.
- q. The OfS has a statutory duty to have regard to the need to promote equality of opportunity, not equality of outcome.
- r. Champion for the importance of academic and technical excellence in all aspects of the student lifecycle, from selection to graduation.
- s. Be guided in access and participation work by the approach to equality of opportunity set out by the Minister for Women and Equalities in her speech of 17 December 2020.

### **Risk-based regulation and reducing bureaucracy**

- t. Look across everything that it does to identify further opportunities to reduce unnecessary bureaucracy and reporting requirements for providers.
- u. Implement a markedly more risk-based model of regulation, with significant, meaningful, and observable reductions in the regulatory burden upon high quality providers within the next 12 months.

### **Free speech and academic freedom**

- v. Take more active and visible action to challenge concerning free speech incidents that are reported to it or which it becomes aware of, as well as to share information with providers about best practice for protecting free speech beyond the minimum legal requirements.

- w. Robustly challenge providers that have implemented such policies to drop authors or texts that add rigour and stretch to a course, and clearly support individual academics whose academic freedom is being diminished.

## **Antisemitism**

- x. Consider, when cases of antisemitic incidents occur, if it is relevant whether the provider has adopted the International Holocaust Remembrance Alliance (IHRA) definition when considering what sanctions, including monetary penalties, would be appropriate to apply.

## **International opportunities and risk**

- y. Monitor the adoption by providers of Universities UK recommendations on managing risks in internationalisation and continue to support the sector to manage these risks to the reputation, integrity and sustainability of individual institutions, as well as to the sector as a whole.
13. From the September 2020 guidance, we continue to have regard to the Minister of State's comments about regulatory burden, including that 'there is now an opportunity to consider how we can continue to reduce the bureaucratic burden on providers for the long term, enabling them to continue to focus on delivering high quality outcomes for students next year and beyond, while also ensuring you are equipped to deliver the range of functions granted to you under the Higher Education and Research Act 2017'.

## **The Public Sector Equality Duty**

14. We have had regard to Schedule 1, paragraph 21 of HERA, which extends the Equality Act 2010, and therefore the Public Sector Equality Duty, to the OfS. This requires the OfS to have due regard to eliminating unlawful discrimination, foster good relations between different groups and take steps to advance equality of opportunity.
15. Through this consultation we are seeking views on any unintended consequences of our proposals, for example on particular types of provider or student. We are also seeking views about the potential impact of our proposals on individuals on the basis of their protected characteristics. Responses to this consultation will inform our assessment of the impact of our proposals on different groups.
16. In considering the intersection between our work on (1) quality and standards and (2) equality of opportunity, we have had regard to equality considerations. The OfS is focused on ensuring that all students, whatever their background and characteristics, can have confidence that they will receive a high quality higher education and successful outcomes. At the same time, we are taking steps through our regulation of access and participation to reduce the gaps in equality of opportunity between students from underrepresented groups and other students, before, during and beyond their time in higher education. These proposals are framed to have the same positive impact on students by securing minimum requirements for all student groups, while our broader approach to regulation means that we have regard to the impact of interventions on all student groups in deciding whether to take regulatory action.
17. We have considered whether there may be any tension between these two areas of focus. Our view is that meaningfully extending equality of opportunity means providing all students, irrespective of their characteristics, with the opportunity to benefit from their higher education.

This is only possible if they can attain the successful outcomes associated with higher education provision that meets rigorous quality and standards. If a subset of the student population is not offered sufficient support to achieve these outcomes, then they have not had a genuine opportunity to benefit from higher education, and therefore have not experienced meaningful equality of opportunity.



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