

Response to the higher education green paper



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This report is being submitted to the Department for Business, Innovation and Skills as a response to the higher education green paper, *Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice* (Cm 9141, November 2015).

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Introduction

Nick Hillman, Director of HEPI

Education policymaking generally involves searching for new answers to old questions. Yet, arguably, the most noticeable feature of the higher education green paper is that it provides some old answers to the old questions.

Time and again, the proposals – for example, on assessing teaching and on centralising degree validation arrangements – resemble earlier characteristics of the UK's higher education system. This is not, in itself, a bad thing. We might learn some useful lessons for, as LP Hartley wrote, 'The past is a foreign country; they do things differently there.'

But the echoes of the past in the green paper seem almost accidental and do not seem to reflect much institutional memory. This is a consequence of political turmoil. Higher education bounced around Whitehall like a rubber ball between 2007 and 2009, ending up in three different departments in just 18 months. Since then, it has remained in the Department for Business, Innovation and Skills (BIS) but there have been three differently-coloured Governments. Moreover, between 2014 and 2015, there were three different Ministers for Universities and Science, all from the same political party.

In addition, wave after wave of austerity-inspired changes have meant a constant revolution in key civil service personnel. In an interview with the Institute of Government after leaving office, David Willetts, who was a Minister in the mid-1990s as well as the Minister for Universities and Science from 2010 to 2014, complained: 'I would say the official memory, which has

always been a problem in Whitehall, is even worse now because people move around so the expertise doesn't build up.'

This explains why HEPI has chosen to respond to the green paper by asking people with deep roots in the higher education sector to reflect on the proposals. We have eschewed the option of going through the specific consultation questions one-by-one, which would have been a recipe for a bland response and could have masked the most important points. We have, instead, asked experts on each of the main areas of policy discussed in the green paper to evaluate the proposals, to set them into a broader context and to propose alternative policies where they disagree with the Government on the best way ahead.

Green papers are designed to be consultative, whereas white papers propose particular legislative solutions. Nonetheless, the sheer greenness of this green paper was somewhat unexpected for many people had expected it to be green with large white edges. There has been some dismay at the vagueness of the policy prescriptions. But, at HEPI, we welcome the fact that the door is open on many of the main areas. It offers the higher education sector a valuable opportunity to help shape the final proposals, using evidence and experience.

This is abundantly clear in the chapter by Graham Gibbs, who can lay claim to be the person who put student engagement fully on the agenda of policymakers. He argues that, while a rebalancing of priorities towards teaching is welcome or even overdue, the output measures proposed for the Teaching Excellence Framework (TEF) may not work. Process measures would be better but remain under-developed. We clearly need

to ensure the early years of the TEF do not disrupt the whole policy area for a time when better metrics are available.

In the second chapter, Bahram Bekhradnia, who used to oversee the Research Assessment Exercise (RAE) for the Higher Education Funding Council for England (HEFCE), notes the green paper's vague proposals on research lack historical awareness. Even-handedly dividing the proposals between 'The good' and 'The bad', he welcomes the commitment to public spending on research, dual funding and the Haldane principle. But he also notes the green paper ignores research students, the relationship between research and teaching and research selectivity, which should all be an important part of the debate over how to maintain and improve our research base.

In the third chapter, Roger King, who led the Higher Education Commission's work on a new regulatory landscape, evaluates the Government's attempt to introduce a fairer and simpler system of higher education regulation that better reflects the current model of funding (full-time undergraduate) tuition predominantly through student loans. Wielding both evidence from the past and lessons from abroad, he questions whether parts of the green paper are overly timid, provides a strong defence of the Quality Assurance Agency's (QAA) role and argues that the Office for Students (OfS) is an inappropriate name for the tasks that HEFCE's proposed replacement will need to undertake.

In the past few years, one of the most common complaints about higher education policy has been the treatment of students as consumers. Institutional leaders and student representatives

are united in seeing learning as a shared endeavour that has little in common with purchasing consumer goods. But while there might be a consensus on the problems of treating students as consumers, the issue is a whole lot more complicated than is often recognised. In the fourth chapter, Gary Attle looks at the legal history of students as consumers, illustrating the story with some specific examples, and notes how private and public law are likely to affect the future student experience.

Some people have attacked the green paper's proposals for supply-side reform as making life too easy for so-called alternative providers of higher education. The penultimate chapter, by Roxanne Stockwell, looks at the proposals in detail and comes to a rather different conclusion. She argues that life could remain hard for genuinely new higher education providers, which will inhibit the vibrant and diverse sector that the Government are pushing for. In recent years, there has been a substantial gap between the rhetoric from Ministers on the benefits of more diverse provision and how hard it is to establish a new institution, yet it seems the green paper may not close the gap all that much.

The green paper has little to say about students' unions but what it does say is simultaneously vague and vaguely threatening. While the student movement is perhaps best known for unruly demonstrations and factional in-fighting, individual students' unions have a proud record of constructive dialogue aimed at protecting students, improving their rights and bettering their education. Nowhere is this clearer than in the final chapter, by Emma Sims of Liverpool University's Guild of Students.

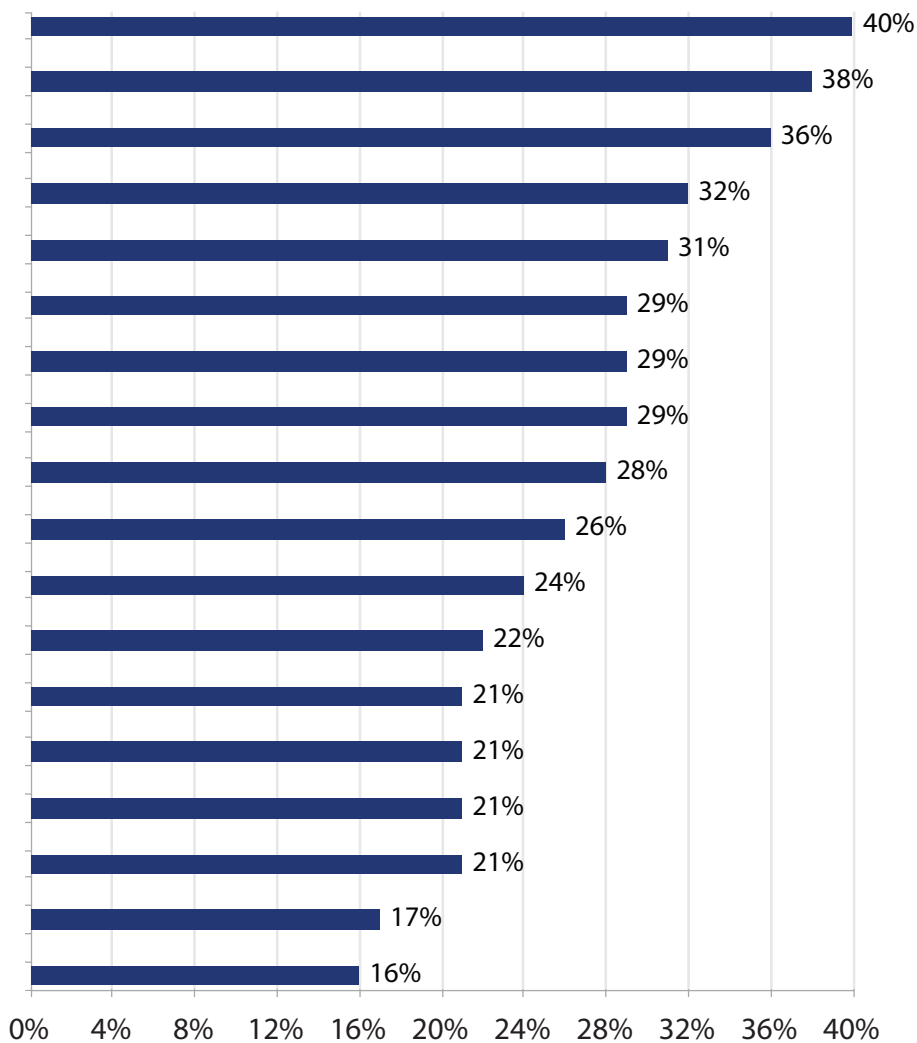
In autumn 2015, HEPI and YouthSight asked 1,005 full-time undergraduates about a range of possible metrics on teaching quality. The table that follows shows how they responded when asked which they thought were 'very helpful'. The results, which are discussed in Graham Gibbs' opening chapter, show some of the complexities involved in assessing teaching quality in universities. For example, students' favourite metrics (such as 'The proportion of students who achieve good degrees') often do not match others' preferences. The opposite holds true as well, with students having less confidence in 'External review by the Quality Assurance Agency (QAA)', which the Government intends to make the key metric for the first year of the TEF.

These survey results are not presented to suggest that students know better than those who study the effectiveness of different pedagogies in higher education. They are presented rather to highlight the complexity of evaluating teaching quality in a way that is light-touch, fair and consensual, and which does not inadvertently discourage innovation. Moreover, even if policymakers opt ultimately to discount them, it is still useful to know students' views about measuring good teaching as the TEF takes root.

Finally, legislation to implement the green paper proposals is not guaranteed. This is not unprecedented. Once upon a time, it looked inevitable that the 2011 higher education white paper would be enacted, but it never happened. This time around, there is no two-party Coalition to complicate matters. But green papers are further back in the development chain for new legislation than white papers, the Government lacks a majority in the House of Lords and there are fears that the

To what extent do you think the following measures are very helpful indicators of the quality of teaching at your university?

- The proportion of students who achieve good degrees
 - Graduate employment statistics
 - Course accreditation
 - Student support on academic and learning skills
 - Average time of receiving feedback on assessments
 - Number of contact hours
 - Money spent on facilities and learning resources
- The difference between student achievement on entry and on graduation
 - Student ratings on websites and social media
 - Student reviews in surveys such as the National Student Survey (NSS)
 - Teacher/student ratio
 - Number and type of assessments
 - Involvement of students into research
- The availability of teaching training available for academics at universities
 - Salaries for new graduates
 - Balance between lectures and seminars
 - Offer of extracurricular activities
- External review by the Quality Assurance Agency (QAA)



Opposition might use the introduction of a higher education bill as a reason to launch a new debate about tuition fees. Moreover, politicians may find their attention drawn to other pressing matters, particularly the forthcoming referendum on the country's place in the European Union.

So the jury is out on whether we will see a new Higher Education Act placed on the statute book before the 2020 general election. But it would be a shame if the opportunity to set a new legal framework were missed yet again, given recent reforms such as the changes to student funding, the growth of alternative providers and the commitment to a new TEF. Indeed, if the question were dodged for a second time, our rulers could be accused of resembling the Grand Old Duke of York, who repeatedly marched his men to the top of the hill only to march them down again.

1. Teaching

Graham Gibbs, former Professor at the University of Winchester and Director of the Oxford Learning Institute, University of Oxford, and author of *Dimensions of quality and Implications of 'Dimensions of quality' in a market environment*

Attempts to reward good teaching and to improve teaching are welcome. This commentary on the Teaching Excellence Framework (TEF) proposals in the green paper focuses on three issues: the rationale for the TEF; using metrics and qualitative judgements to measure quality; and the proposal to introduce Grade Point Averages.

Rationale for the TEF

There is an assumption in the higher education green paper that there is a pressing need to 'drive up teaching standards': paragraph 19 states 'More than half of all providers performed significantly below expected levels in at least one element of the NSS [National Student Survey]'. Impartial observers might find this reading of the progressive improvement and high levels of most NSS scores hard to recognise. A more credible interpretation is that the use of comparative metrics, such as the NSS, however flawed, has acted as a surprisingly strong lever to improve quality, or at least metrics about quality, even when there have been few consequences for institutional income. Whether an increased use of different metrics, linked directly to fee levels, will produce more rapid improvements, is open to debate, but such a policy will have to do rather well to improve on the record of the last decade.

The scale and sophistication of current teaching improvement efforts in higher education in England is, despite its patchy implementation, amongst the highest in the world, and with measurable positive consequences. The Government should recognise the risks of establishing a competing and different mechanism that could divert current efforts.

Substantial sums of public money have been invested in a succession of initiatives designed to do what the green paper describes as 'highlighting exemplary practices'. It is to be hoped that the Government learns from these successes, as well as from failures such as the Centres for Excellence in Teaching and Learning (CETL) initiative.

It is assumed that doing well in the TEF will attract more applications from prospective students and allow fees to be raised. Yet some institutions that have consistently improved their NSS scores have not experienced an increase in applications. Some institutions recruit mainly locally, and neither quality metrics nor minor variations in fees make much difference. The market is complex, and not everyone will be able to benefit from these proposals.

A parallel is drawn between the Research Excellence Framework (REF) and the TEF, with the intention of rewarding excellence in teaching as well as in research. However, the REF and its predecessors were established not to reward but to fund selectively and to withdraw funding from most. Much of academia has experienced this as punitive, greatly reducing access to research funds and changing the character of academic lives and institutions. The consequences of poor TEF results might also be experienced as primarily punitive: institutional

reputations would be harmed, student recruitment and total funding could suffer and teaching quality might then go down. The current student recruitment and funding situation is volatile and the TEF seems likely to increase that volatility. The institutions most at risk may be those that address the 'social mobility' agenda with the most vigour, yet social mobility is a core theme of the green paper.

While additional REF funding is clearly spent on research, it is not clear that additional funding from fees, achieved through the TEF, will be spent on teaching. For example, despite their better funding, Russell Group Universities have comparatively larger cohorts and larger class sizes, and their small group teaching is less likely to be undertaken by academics, all of which save money but reduce learning gains. Increasing fees will not necessarily increase teaching quality.

Part of the rationale for the TEF is the belief that higher education is currently considered by many students to be poor value for money. In many businesses and markets this might suggest that prices are set too high, rather than too low. Students' continued willingness to pay what they think is over the odds suggests that higher education is an unconventional market. There is widespread scepticism about whether historical data about the 'graduate premium' reflects current employment market realities, with suggestions from some that there are already more graduates than graduate jobs. There are other drivers of students' sense of value for money than educational quality, and the fact that satisfaction ratings are very much higher than value for money ratings suggests that quality is not the main issue.

The rationale includes the goal of informing students about which institutions they might choose to invest in. The green paper places a strong emphasis on the development of non-academic skills, student employability and industry relevance as indicators of the quality of higher education. However, a new HEPI survey finds some employment-related measures are considered by students to be amongst the poorest indicators of quality (see Introduction). In contrast, students viewed traditional academic characteristics – teachers’ enthusiasm and subject knowledge – to be the best indicators of quality. The indicator of quality of teaching that students were least likely to say was ‘very helpful’ was ‘Review by the Quality Assurance Agency’, which is the key metric for the TEF in its first year.

It is not always appropriate to respond to student preferences. In the HEPI survey, the metrics that students most frequently found ‘very helpful’ indicators of the quality of teaching at their university – the proportion of students who achieve good degrees, and graduate employment statistics – are both largely a function of the quality of students rather than of the quality of a university’s teaching. They might be adequate metrics to inform students about their employment prospects, but that is different. Also, just as with students’ persistent obsession with class contact hours, which do not predict learning gains, their views about what they want are sometimes flatly contradicted by research evidence about what is good for them. ‘Satisfaction’ is a difficult measure to interpret and there is no research evidence that satisfaction predicts learning gains. The Government must choose between obliging universities to give students what they say they want, even if it is counter-educational, and encouraging forms of provision which are

known to be more educationally effective, whether students want them or not.

The goal of balancing the values placed in teaching and on research is laudable. The first conferences and publications in the UK about recognising and rewarding excellent teaching in higher education were in the mid-1980s. In the 30 years since, probably every institution has introduced a number of mechanisms that boost the careers and rewards for excellent teachers, though with mixed success. Changing values is a very slow process. There are also policies that undermine progress. For example, new institutions find they have to recruit and reward the best researchers, rather than the best teachers, to generate a large enough research profile (largely without funding) to obtain university status.

The use of metrics for teaching quality

The quality of teaching is measurable and there are a number of potential metrics that could be used with some confidence in the TEF. However, using such metrics to make the kind of decisions the TEF requires, within the proposed timescale, is not without problems.

Outcome measures, such as retention rates and degree classifications, are substantially influenced by the quality of students and do not tell us much about the quality of the education they experience.

Employability measures are affected by student quality as well as by a wide range of additional variables, many of which are not under the control of the institution. Unmoderated

employability metrics are unfair and short-term employment metrics are misleading.

Scores on outcome measures are highest in institutions with high student entry standards, which are primarily a function of institutional reputation, and while reputation measures correlate highly with research income, they do not predict student learning gains. Neither do they predict the extent of the use of educational practices known to improve learning gains. The higher education market in the United States is driven by reputation and one consequence is that they put comparatively little effort into teaching improvement.

Student outcomes and learning gains are often bundled together as if they were similar, but outcomes are not well predicted by the quality or quantity of educational processes while learning gains are. Yet, while we have measures of outcome, we do not yet have any usable measures of learning gain. The Assessment of Higher Education Learning Outcomes (AHELO) project of the Organisation for Economic Co-operation and Development (OECD) has been seeking to develop universal measures of generic outcomes of higher education to be used before and after students' university experience to provide a measure of gain. It is likely to take time, perhaps a long time, for any such measures to gain the credibility they would need.

Reviews of teaching quality measures generally conclude that the only safe thing to do is to use process measures – indicators of what you do with whoever your students are, and measures of how they experience and respond to what you do – rather than input or outcome measures. Here we run into difficulties

to do with the timescale proposed for the introduction of the TEF because, although some valid process measures currently exist, some of the best process measures, such as student engagement, are still under development. If, as a short term stopgap, readily available outcome measures are used, this will simply reinforce the existing reputation-based hierarchy. It will become clear to institutions that they will do better trying to improve their reputation than their teaching. Recovering from such a start might be difficult. It would be sensible to delay the introduction of higher levels of the TEF until enough valid process measures are available and are more widely understood and trusted.

Statistical difficulties

Most teaching quality metrics are distributed with a few institutions at the top and bottom readily distinguishable from the rest but those in the middle statistically indistinguishable from each other, or from institutions ranked ten places above or below. This effect is compounded by adding metrics that are quite different from each other, which is what happens in most published teaching rankings and what must happen in the TEF if all data feeds into a single decision. When differences between institutions are small, rankings can be volatile from one year to the next: even small changes in a single metric can have a big impact on rankings. The national press may get excited about institutions making huge and sudden leaps up teaching rankings, or huge crashes down, but most such lurches are likely to be caused by quite minor random variations in individual metrics. Decisions about whether an institution is above or below a metric-based threshold for the purpose

of setting fee levels may therefore be unreliable for many institutions in the middle of the range of quality, especially if only one year's metrics are used. Identifying a small number of institutions that are demonstrably better or worse than the vast majority would be safer, and using a number of years' data rather than only from one year would be safer.

Unit of analysis

As highlighted above, many institutions do not differ greatly from each other in terms of their NSS scores and other teaching quality metrics. This is in part because most institutional scores are aggregates of subject level scores, and subjects vary widely within institutions and between institutions. If the intention is to make fine discriminations then it makes sense to use subject-level metrics. It must also be the case that prospective students need to be able to compare subject A at institution 1 with subject A at institution 2, and the averages of all subjects at institutions 1 and 2 are not of much help, especially if they teach a different range of subjects. Employability metrics vary particularly widely between subjects, and knowing that an institutional average is high (perhaps because they have mainly professional courses with good employment prospects, such as Nursing) is not of much help to a student wanting to study English Literature.

Producing NSS scores that reflect students' experience of the quality of a particular degree programme has however proved problematic, and many published scores are aggregates across clusters of broadly related degree programmes, with significant variations within those clusters going unreported. The level of granularity necessary to provide useful information is not easy to

achieve and can be foiled by small sample sizes and missing data.

Using invalid metrics for valid dimensions of quality

Even where a broad dimension of quality has a strong enough empirical backing to be safe to use, the specific form a measure of this dimension takes can rob it of validity and credibility. For example there is good enough evidence that training of teachers (to the level of a Postgraduate Certificate) improves several teaching metrics. However, the Higher Education Academy (HEA) award accreditation to training programmes that are much less substantial and not subject to academic assessment standards, and which as a consequence currently have no such empirical backing concerning their impact on teaching quality or student learning. This would make the proportion of an institution's teachers who have HEA Teaching Fellowships a questionable metric.

Using the same metrics for varied contexts

There is recognition that what teaching excellence looks like might be somewhat different for different types of students in different types of institutions. However the rationale of the TEF requires the use of a consistent set of comparable metrics.

It should not be assumed that in very different forms of provision, such as full-time, distance learning and study in the workplace, educational quality takes the same form, or that direct comparisons between different forms are possible or safe. Almost all of the available educational research that has established reliable and valid measures of educational quality has been undertaken in the context of conventional full-time

face-to-face higher education. The Open University currently does well in the NSS, but it has class sizes, class contact hours, levels of use of part-time teachers and other indicators that would cause them severe problems if they were to be used as quality metrics. What might make for a high-quality 'degree apprenticeship' is likely to be quite distinctive, but is currently not known. So it may be prudent to exclude 'non-standard' provision from the TEF for the time being.

Using qualitative judgements

Only a small proportion of what are proposed as defining characteristics of excellence in teaching can be measured or quantified, placing a heavy burden on qualitative judgements by expert (or perhaps inexperienced) panels. QAA review processes have not in the past been designed to make finely-grained decisions about whether institutions are just above or below a threshold of teaching quality that could justify higher fee levels. Indeed much of the review process has not even been about teaching quality, but about quality assurance procedures. For example, they enquire about whether documents state how many hours a student should study but not about the actual level of student effort or engagement.

The previous Teaching Quality Assessment (TQA) arrangements, in contrast, were attempts to judge teaching quality. TQA produced scores out of 24 based on qualitative peer judgements on a four-point scale concerning each of six quality domains. Such scores might, if they were up-to-date, have provided a more appropriate input into TEF decisions. However, TQA scores were subsequently shown to be largely predictable on the basis of institutional research performance

alone, without reference to any teaching variables. As research performance does not predict student learning gains, this suggests reviewers were swayed by (research) reputation and somewhat blind to actual teaching quality.

There were also a number of substantial systematic biases in the scores. For example, some subjects had much higher average TQA scores than others, with no obvious justification. Even more worryingly, large courses were more highly rated, despite cohort size being a strong negative predictor of both student performance and learning gains, so reviewers got that wrong. It may be that qualitative peer judgements have a role to play in the TEF, but if the end product has to be a summary judgement, rather than a qualitative commentary, history suggests this will be difficult to achieve in a reliable, valid and unbiased way.

Those who question the reliability of quantitative data about teaching quality need to be aware of the lower reliability of qualitative judgements and the likely inconsistency of the inevitably large and diverse panels of reviewers that would be required. It should also be remembered that TQA took five years to review all subjects once. Any qualitative review that could be conducted to the TEF timetable and with the promised light-touch would have to be a good deal less rigorous than TQA.

The use of Grade Point Averages

Current degree classifications provide very little discrimination between students, though this is partly because of grade inflation: most students today achieve a 'good degree'.

Paragraph 41 of the green paper recognises that Grade Point Averages cannot solve grade inflation problems. However, it does not recognise that if you cannot solve standards problems then none of the other problems that are supposed to be addressed can be solved either. Most higher education in the United States has used Grade Point Averages for a long time. They have worse grade inflation than the UK, their standards are more varied and their students are less engaged, studying for fewer hours even than in the UK. In the USA, none of the problems the green paper wishes to address have been solved by the use of Grade Point Averages.

A Grade Point Average of 3.8 from a Bible College does not mean the same as 3.8 from the Massachusetts Institute of Technology, and this causes employers problems. They end up having to rely on reputation rankings because they cannot trust or make sense of Grade Point Averages. If all they were doing was choosing between graduates from a single degree programme at a single institution, then Grade Point Averages would be helpful. But when comparing students from a range of degree programmes and institutions, grade point averages become uninterpretable unless there are workable mechanisms to make standards comparable across contexts. Imposing a standard 13-point scale cannot help employers in the UK if the external examining system is broken. The green paper is avoiding the central problem.

Many, perhaps most, degree programmes in the UK already use 100-point scales (percentages) or other multiple point grading systems, when marks are allocated to individual pieces of student work, often varying in ways that are appropriate to the

discipline or form of assignment. Adding these percentages and grades into a single final summary, a degree classification, often happens only at the end. Some degree transcripts already report most of the marking information for all the courses students have taken. While the Government may feel it has the right to advise universities on forms of reporting, it is not in a position to advise academics on their marking.

Whether a new 13-point grading scale, and new rules for adding and reporting marks, will affect student learning behaviour, as is claimed, will be worth researching. A good deal is known about how to improve student engagement and therefore stop what is referred to as 'coasting', but no research has so far found that introducing a consistent marking scale improves engagement.

If the proportion of students gaining 'good degrees' (even if redefined in terms of a particular Grade Point Average) is to be used as a metric in the TEF, then any hope of regaining control of grade inflation, or increasing student engagement, or improving comparability and interpretability for employers, goes out of the window. Past policy from HEFCE, of allocating funds on the basis of how many students had passed their courses, damaged standards.

Summary

It is worthwhile trying to further redress the balance of attention paid to research and teaching and to continue developing mechanisms that have leverage over teaching quality.

Use of existing teaching quality metrics by institutions, for their own purposes, appears to have improved quality, without

needing to be linked to funding.

Direct comparisons of the REF and TEF are unhelpful as the REF funds selectively and removes funding altogether for most teachers in HE.

The freedom to increase fees as a result of success in the TEF will be of less use to some institutions than others, especially when value for money is already perceived as low and increasing fees will not automatically improve teaching quality.

High institutional outcome measures are achieved largely by the best students being attracted by the best institutional reputations, but neither student quality nor reputation tell us much about teaching quality or provide leverage to improve teaching quality. A TEF, and a higher education market, based on reputation would be a disaster for quality, but this is what using outcome measures could achieve.

Process measures of teaching quality provide better indicators than outcome measures, but are not yet sufficiently developed. Over-hasty implementation of the TEF could undermine its goals.

Making fine distinctions on the basis of teaching-quality metrics between institutions in the homogeneous middle range of quality may prove difficult and untrustworthy.

In terms of teaching quality, it is easier to distinguish institutions at the subject level than by using institutional averages across subjects. Prospective students need subject level information.

Most of the stated indicators of educational quality are qualitative and require subjective judgements. Qualitative judgements of educational quality have in the past been unreliable and biased.

Grade Point Averages may discriminate better between students than degree classifications, but they cannot tell employers what they need to know if there is inadequate control of standards between institutions. There is no evidence that they increase student engagement.

If Grade Point Averages are used as an outcome measure in the TEF, then standards will decline.

2. Research

Bahram Bekhradnia, President of HEPI and former Director of Policy at the Higher Education Funding Council for England (HEFCE)

The section on research in the higher education green paper is the shortest of all, amounting to under five pages. That is perhaps unsurprising given that the Nurse review had not yet been published, but more especially given the title of the green paper is *Teaching Excellence, Social Mobility and Student Choice*. The section on research is essentially a statement of intent – it contains very little by way of policy proposals, and mainly consists of generalities.

For example, the Government will:

- ‘preserve the excellence of the UK research base’;
- ‘deliver economic impact’;
- ‘minimise the administrative burden’;
- ‘strengthen the voice of UK research’; and
- ‘drive effective and efficient processes’.

Little is set out by way of proposals for achieving these goals. But the paper is not without substance, especially if lines are read between the text that lies on the page. Some of it is good and some of it is less good.

There is one thing that is apparent – not just in this section but elsewhere too – and that is a lack of collective memory within the government machine or, even worse, a wilful ignoring of

the past. So, for example, the proposal for the TEF – not a bad idea in principle – includes no hint of any awareness of previous considerations of similar proposals. The references to the use of metrics in research assessment have no reference to the extensive work done by HEFCE following previous incursions into this, neither do the references to the cost of the REF.

The good

The biggest relief about this short section is that it does not repeat the sort of market-oriented ideology that underpins the Government's approach to the funding of teaching in higher education, namely that it is essentially a private good and should be privately funded. At one time, it seemed on the cards that that was a possibility which would have had devastating consequences for research in higher education. So for that the university system – and the country – has to be grateful.

Better than that, the document contains a ringing and unambiguous recognition of the benefit of public investment in research. Paragraph 2 of the research section contains the bold statement that, 'For every £1 spent by the Government on R&D, private sector productivity rises by 20p'. The next paragraph states that 'Government investment is vital'. Those are courageous statements, perhaps intended to pre-empt a Treasury strike, and bolder than the independent Nurse review, which is more careful and essentially appears to say 'research needs plenty of money, but not too much'. But then Nurse had to be careful of the Mandy Rice-Davies response to any play he may have made for more resources – 'Well, he would, wouldn't he?'

There is also a welcome and unequivocal commitment to dual funding, clearly and convincingly articulated, with the statement that ‘the system sustains a dynamic balance between research which is strategically relevant and internationally peer reviewed and research which is directed from within institutions.’ That is repeated in the Nurse review, and so it would appear on the face of it that dual support is safe yet again (there have been periodic attempts to undermine it over the last 30 years). But, given the proposal to abolish HEFCE, it cannot yet be assumed that dual support is going to be preserved in any meaningful long-term sense. The intent and the statements around it are welcome but the reality remains clouded.

The commitment to the Haldane principle – that the Government decides how much it is willing to make available for publicly-funded research, but that it is for researchers themselves to decide what research to pursue – is good and, again, for that much self-denial on the part of the Government we should be grateful.

The document contains an intriguing commitment to ‘invest in research excellence with impact wherever it is found.’ Interpreting the phrase ‘wherever it is found’ is challenging. It could mean, on the one hand, that the Government rejects the notion that some universities will be designated research universities, some teaching-only universities and some mixed – the ‘RXT’ arrangement proposed by the Advisory Board for the Research Councils 30 years or so ago. Or it could mean that public research funding will be available to charities and perhaps private bodies, and if so it is unclear whether that would just apply to Research Council funding or whether they will be able

to take advantage of the HEFCE part of dual support (which will presumably mean participating in the REF in future). The Nurse review also addresses this point and reports that universities are wary of such a development, which is hardly a surprise. It would actually be a serious matter if the non-Research Council side of the dual support system were diluted, as that is part of the core funding of universities, albeit calculated on the basis of research-based criteria, so a dilution would be a dilution of their core funding.

The phrase 'with impact' is unsettling. If it means that the Government is only willing to invest in research judged highly in the impact assessment of the REF, then that would be a serious matter too. More likely 'impact' here is intended to include academic impact but it is something to be watched.

The document also proposes to recognise emerging research excellence between REFs, but is unable to say how. Again, that is something that has been discussed in the past, but it has not proved feasible to develop and implement such an idea. It is another example of good intentions with no regard to the practicalities of implementation or indeed whether they are implementable.

The bad

So the green paper contains many proposals, and certainly statements of intent, that are to be welcomed. But not everything is positive.

Considering the title of the document and its overall thrust – enhancing the student experience – it is astonishing that

it contains no reference to the impact of the undergraduate funding regime on research students, nor to academic careers. Those omissions are strange considering the number of reports that have been produced on postgraduate education in recent years, including one from BIS itself, as well as from HEPI and the British Library. The reluctance of English graduates to undertake PhD programmes is a serious matter and one would have expected it to be covered in a green paper that covers research policy.

Even stranger is the absence of any discussion of the relationship between research and teaching, and more particularly the negative impact that the focus on research has had on teaching. Successive surveys by HEPI and the HEA have shown how little is expected of undergraduate students, and this lack of attention to teaching has coincided with our universities' impressive improvement in research performance, rightly celebrated in the green paper. But the two are not unrelated. The day has only so many hours, and as more effort is put into research it is not surprising that teaching has suffered. A new approach is required. The green paper cautions against unintended consequences of developments in research policy. That is absolutely right, and so the absence of a consideration of the impact of increased research activity on teaching is a serious lacuna.

Finally, the paper is silent on the question of selectivity and the degree of selectivity that should underpin the Government's policies. There is research evidence going back over many years that a high degree of selectivity in the allocation of research funding – the reason for the RAE and now the REF – has had a

beneficial impact on research quality, but that an optimal level of selectivity has been reached and very probably exceeded. On the one hand, the statement that it will 'invest in excellent research wherever it is found' has, on one interpretation, some bearing on the question of selectivity, but it should be clear about this. How research money is spread and the optimum basis for its allocation is a fundamental issue for research policy.

Structures

Overshadowing the discussion of research in the green paper is the abolition of HEFCE and the consequent loss of one of the twin pillars of the dual support arrangements in England. There is an awkwardness in that new arrangements are needed not because they would actually improve on the present, but because for other unconnected reasons HEFCE is to be abolished – its funding role is largely gone and so the organisation is seen to be redundant. That is regrettable if for no other reason than because it has played an essential role in the arrangements that have led to the present strengths of the research base.

Making do is not a good basis for building research policy. Something needs to replace HEFCE if dual support is to continue. The green paper is unable to say what, one of the factors in its inability to do so presumably being that in other parts of the UK the Funding Council pillar of dual support will still exist and will still perform its functions. Despite the critical importance of HEFCE in the past – and so whatever arrangements will replace it – the green paper can say nothing at present.

The Nurse review, which had a remit to review the Research

Councils, is largely irrelevant to this – although if implemented the proposed new umbrella body to regulate the functions of the different Research Councils could presumably take on HEFCE's present research funding role. It is notable that throughout the Nurse review, it speaks with approval of HEFCE's role and appears to assume a continuation. Only towards the end is there an acknowledgement that HEFCE may be abolished, but also that it will need to be replaced by equivalent arrangements, cautioning the Government about measures it should take to retain the benefits that have accrued.

The abolition of HEFCE and its replacement is a ghost overshadowing the green paper discussion about research.

Research Excellence Framework

One-and-a-half pages of the four-and-a-half pages are devoted to the REF, as if it were the most important single issue in a discussion of research policy. In the green paper, as in so much of academic life, the REF looms disproportionately large and dominates discussion.

The REF must stay – that is explicit – and the next REF will take place by 2021, more or less the same interval as in the past. The discussion is mainly concerned with two related issues:

- making the REF less burdensome; and
- making it cheaper.

Burden

The green paper is not the first policy document to demand that assessment be made less burdensome and bureaucratic, and like others before it pins its hopes on greater use of 'metrics'. However, there is no recognition of the difficulties encountered by previous attempts – most famously Gordon Brown's announcement in 2006 that the RAE would be replaced by a purely metrics-driven system of research assessment. It took four years to dismantle this idea and the RAE was eventually replaced with something that was more or less identical to it. Peer review is the process that we retain, with metrics used by peer-review panels where appropriate to their discipline. It could be that a greater use of metrics would be appropriate in future, but it is a matter of scale. It would be unwise to assume that there should be any large-scale replacement of the current peer-review process with a metrics-driven one.

What it is reasonable to hope, though, is that the assessment of impact may become more sophisticated and rely less on the stories that universities are required at present to write and the need for panels to assess these in what must be a largely subjective way. Impact is a reasonable thing for research funders to be interested in and to ask recipients of research funding to demonstrate where appropriate. The discussion needs to be around the relative importance of the non-academic impact of research, compared to its other qualities, and mechanisms for assessing that. So the green paper is right to propose retaining impact and also right to aspire to reforming the mechanisms for assessing it. It will, though, take much more than warm words and good intentions to achieve.

As far as the mechanisms for the REF itself are concerned, it is worth bearing in mind why it has the sophistications, bells and whistles that it does and which it has accumulated over the years. These have all been introduced with the intention of addressing weaknesses or perceived unfairnesses and include:

- a requirement to select four publications per person, introduced to remove any perceived incentive to produce ever larger numbers of research publications;
- the measures to offset perceived disadvantage from taking career breaks or young academics entering the profession; and
- changes to address the perceived unfairness of institutions losing academics shortly before an exercise and being unable to count the research produced while they were present, and the reverse.

The process could easily be made simpler and less bureaucratic, but that would risk reintroducing unsatisfactory features that were addressed by these measures.

Cost

The reference to cost is curious, and once again appears to show a lack of corporate memory. Research Councils UK produced a report in 2007 that showed that the cost of the Research Councils' grant processes amounted to 20 per cent of the value of the grants awarded. As only a small fraction of grant applications are successful, a great deal of academic time (and therefore resource) is taken up making unsuccessful applications. So 2.4 per cent of the value of the funds allocated, which the green

paper says is the transactional cost of the funding allocated as a result of the REF, is extraordinary good value by comparison. In global terms, and within the UK, the REF/Funding Council side of the dual support system provides extremely good value. If cost and value for money were dominant considerations, then the Government should consider removing the Research Councils' grant funding function and allocating those funds to the REF/Funding Council side of the dual support system.

Anyway, a reduction in the cost of the process of conducting the exercise would have only a relatively small impact. The vast majority of the cost is incurred by universities which, as the green paper says, undertake dummy runs and rehearsals in an attempt to optimise their performance in the exercise. As the green paper also points out, that has been compounded in the most recent exercise, when the cost increased fourfold largely as a result of the introduction of 'impact'. It is not obvious what can be done to reduce this. The reason institutions do it is because they wish to increase their income and the stakes are so high – should they fail, they can suffer hugely. That is a result of the high degree of selectivity in the allocation. The only way of reducing the amount of preparation is to reduce the rewards and incentives for success – and the penalties for failure.

3. Regulation

Roger King, Visiting Professor at the School of Management at the University of Bath, Co-Chair of the Inquiry on higher education regulation by the Higher Education Commission (2013) and Chair of the Board of Governors of the UK College of Business and Computing (UKCBC)

A key part of the new green paper is to complete the regulatory changes necessitated by the funding and competitive reforms introduced by the previous Coalition Government. Two particular challenges confront Ministers. First, to tidy up the now longstanding regulatory architecture of the higher education system in England, in which a wide range of bodies exist. These include some with UK-wide responsibilities, others as sector service entities, and those with statutory responsibilities.

The aim is to produce a lead regulator for the higher education sector operating under clear legal purposes. This would decisively shift away from the notion of regulatory authority as residing in financial allocation powers, and operating as conditions attached to institutional grant funding, as has happened with HEFCE.

Secondly, how to stimulate alternative providers to enter the higher education provider market to facilitate more competition, while also maintaining student protection (academic and financial), and leveraging up standards overall. More particularly, how can the grip of the existing universities over routes to degree-awarding powers by new providers be released?

On the first challenge, as institutional monies for undergraduate education have derived increasingly from tuition fees, the overall size of and powers associated with operating grants allocated by HEFCE to universities and colleges have declined. Moreover, levels of student loans to pay for such fees, distributed by the Student Loans Company (SLC), have grown rapidly and outside the allocative responsibilities of HEFCE. Attaching conditions to student loan designation of courses (rather than to operating grants) lies outside the legal responsibilities of HEFCE, which has no direct responsibility for such funding.

Consequently, to date, some rather nifty footwork has been required between the Government and HEFCE to allow Ministerial powers in this area to be administered by the funding body. The proposal to establish a new non-departmental entity – to be known as the Office for Students (OfS) – aims to consolidate and extend HEFCE's regulatory powers away from reliance on the funding link with institutions. At the same time, much of HEFCE's other, mainly regulatory, functions, along with the Office For Fair Access (OFFA), would pass to the OfS. This latter proposal is sensible and should increase efficiency and communication on a range of access matters.

Could BIS have gone further in consolidating and streamlining the range of regulatory bodies that are found in the higher education sector for England? Could the SLC have been merged into OfS as well? This would allow for some continuation of regulatory authority being linked to this new (indirect) route for institutional funding through student finance provisions. There are strong grounds for such a move on grounds of economy and improved administrative efficiency, too.

Arguably, however, this could be deferred for future consideration. The SLC has a number of organisational issues that it is grappling with – so to merge it into the OfS could be distracting for both bodies at this time. Moreover, the OfS needs time, too, to confirm its new regulatory powers as based largely away from undergraduate funding processes. A future government, however, should return to this matter during its first review of the workings of the new regulatory architecture.

There seems to be a signal lack of concern in the green paper about the regulatory implications of future information, data, and predictive analytics as these become more standard fare in increasingly digitalised universities and colleges (and as a vital underpinning for evidence-based policymaking). A consolidation of the Higher Education Statistics Agency (HESA), the Joint Information Services Committee (Jisc), and the Universities and Colleges Admissions Service (UCAS) into either the OfS, or to form a new statutory body, would help to remove, for example, current funding uncertainties surrounding Jisc's possible move to a subscription-based service. It would also ensure that vital planning, regulatory and coordinating information is readily available to BIS and the OfS, without reliance on obtaining often sensitive and perhaps self-interested institutional data from bodies established by the sector.

The influential Browne Review (2010) argued for taking architectural consolidation in the sector much further than the green paper, by merging the QAA and the Office of the Independent Adjudicator, as well as OFFA and HEFCE, into a new Higher Education Council. There seems to be no advantage

in merging the Office of the Independent Adjudicator into the OfS, as it needs to be seen to be independent of institutional and governmental interests to retain sector credibility. Such an observation could suggest, however, that the OfS becomes responsible for helping to populate the Board of the Office of the Independent Adjudicator rather than it being chosen by institutional representatives.

There are particularly strong arguments, nonetheless, for maintaining the independence of the QAA. One such reason is that Browne's proposal for its merger into the main regulator has been rejected once already, not least because the QAA is a UK-wide standards body. It could not easily be amalgamated into an English-only funding (or regulatory) body.

Moreover, national external quality bodies are generally established as autonomous organisations. The European-wide Bologna Declaration, to which the UK Government is a signatory, is an ongoing process which has led to the creation of the European Quality Assurance Register (EQAR) for reviewed and recognised national quality assurance agencies. A key guideline focuses on the necessity for quality assurance agencies to be independent from government. The option suggested, as part of the current HEFCE review of external quality assessment, that it could be taken 'in-house' to HEFCE (and presumably the new OfS) and away from the current contractual relationship with the QAA, would not seem to pass this Bologna test of organisational independence.

One possibility, of course, would be to make QAA a statutory authority. In Australia, a counterpart to QAA – the Tertiary Education Quality and Standards Agency (TEQSA) – is a

statutory entity of the federal government and has its independence enshrined in legislation. However, this does not preclude ministerial direction and government has intervened over senior personnel changes and revisions to its functions. Moreover, the threshold standards by which TEQSA evaluates institutions are constituted by Government-agreed codification. It is doubtful that such an approach would gain the support of the sector in England.

Nonetheless, it is not clear either that a contractual relationship of the current kind between HEFCE and QAA for the purposes of quality assessment of institutions always passes the independence test either – as found in EQAR guidelines for inclusion on the European Register. In 2009, the review of QAA by the European Association for Quality Assurance in Higher Education queried the extent to which QAA was truly independent of government.

Moreover, if a contract is onerous, or its terms one-sided or if the contract is insufficiently lengthy, the quality agency could face a continuously threatening shadow from the contractor. It is perhaps better if such a contract is set and monitored by an independent oversight body that reports publicly to Ministers and to Parliament.

The green paper rather absolves itself from these questions, arguing that, as the QAA is a sector-owned body, government lacks the jurisdictional authority to interfere (presumably it may fear being accused of publicly sequestering private funds and trampling on the sector's autonomy). Consequently, there is a real danger that BIS may simply follow the consultation outcomes of the current HEFCE Review of Quality Assessment.

This Review essentially asks the regulated whether they would like to continue to be regulated, to which the unsurprising response appears to be 'no'. On offer instead is a form of light-touch self-regulation, which is bound to appear attractive to many institutions.

It would be interesting to know to what extent in other sectors the Government would simply follow the wishes of the regulated as to whether they wanted regulatory oversight of their activities or not. Would this approach pass muster for investment bankers, for example? Moreover, such 'light-touch' regulation by the Financial Services Authority leading up to the 2007 crash was one of the major causes of high-risk practices that led to it.

Yet the green paper is labelled as effectively putting students at the heart of the regulatory system, with the new OfS being established primarily as a student champion. QAA's role in protecting students, however, is passed over in silence. Although, rightly, the Government elaborates a possible consumer protection system for students at times of institutional mergers and closures, it rather ignores the issue of how students are protected in normal times. There is a strong case for arguing that QAA is as much a student champion as OfS and on a more continuous basis.

Moreover, quality, standards and reputation are key resources that are best not jeopardised by a too casual dismissal of an internationally well-regarded quality assurance agency. There is a strong business case for good regulation, including of the higher education sector, and QAA as well as HEFCE contributes to this. The Higher Education Commission in its 2013 report

Regulating Higher Education noted that higher education is part of the national infrastructure, and we must ensure that students investing thousands of pounds on their futures are receiving top-quality provision. This assurance also protects the brand of UK higher education as a whole.

Nonetheless, there is scope for the QAA to take on the validation services proposed for new alternative providers to provide an escape route from the anti-competitive barriers in the current university partnership arrangements, which offer the only realistic route to degree-awarding powers for new bodies. It would be better for validation services to sit with the QAA's quality and standards responsibilities than for them to be a component of the OfS as is suggested in the green paper. The validation arm of the old Council for National Academic Awards (CNAA) still exists after a transfer to The Open University. Perhaps it could be contracted by QAA to form an effective new validation services partnership?

Similarly, the QAA could develop the much needed role of providing quality support alongside validation services, aimed especially at new providers. This dual approach – support and validation – worked well for the CNAA in its development and encouragement of the polytechnics to become degree-awarding bodies and eventually universities between the 1970s and 1990s.

This proposal in the green paper to consider the creation of an awarding and validating body, that dispenses degrees without having to pass through an established university, is aimed at loosening the process and reducing the time required of new providers to achieve degree-awarding powers. There is

little doubt that new providers have been facing difficulties in both securing and operating validation agreements with conventional universities. This is despite the need for some universities to boost their domestic student numbers – now that restrictions for institutions on student numbers largely have been removed – including through franchise and similar partnership arrangements with new providers.

Ministers clearly view current validation requirements for alternative providers as at least potentially anti-competitive. The successful role of the CNAA as a validation body outside the grip of the established universities 30 years ago gives credence to the idea that an independent validation service would do much to reinforce the competitive influences of the new providers and reduce regulatory red tape.

The CNAA-aided old polytechnics/new universities, mostly constituted as corporations by the legislation of 1988 and 1992, also feature in the green paper's proposal to allow them to dissolve themselves and to transfer their assets. The purpose undoubtedly is to allow more readily the prospect of institutional mergers and acquisitions, including across the conventional/alternative provider dividing line – although such a border will just about disappear as the green paper is enacted.

It is not clear what the consequences of such moves will be for the status of these institutions as exempt charities under charity legislation. Dissolution of assets in the charity sector has often involved net assets on dissolution being transferred back to the Charities Commission, for example. Will institutions have the choice of disposing of charitable status if business reasons allow?

Arguably, the green paper may be regarded as replacing some of the public benefit provisions of charity legislation by proposing that the current public interest provisions in governance will still be mandatory. Sanctions for miscreants, however, rather bafflingly refer to consequences for institutions' 'continuing operating grants' – just as the link between regulatory authority and funding issues was meant to be being broken.

Admittedly, responsibility for the allocation of teaching grants will not disappear entirely. A key proposal is to transfer HEFCE's current teaching funding responsibilities to government, leaving OfS to act as an unburdened (funding-wise) regulator. Moreover, this proposal is regarded as providing Ministers with some leverage in ensuring that identified national priorities are captured and expressed in the remaining funding allocations to institutions.

Arguably, the green paper may not be radical enough at this point. Looking further into the future, could we not imagine a time when institutional funding virtually all arrives through the tuition-fee route, effectively eliminating allocations of undergraduate operational grants to institutions? In such circumstances, it may be better if Ministers' views on national priorities (sector skills, trained-person shortages, STEM needs and similar) are captured in a national scheme of student bursaries and scholarships. These could be allocated directly by Government or, more likely, constituted as a national funding pool with identified volumes of specified scholarships for which institutions could bid.

Finally, the green paper offers the intriguing prospect that universities and colleges may like to pay for the privilege

of being regulated by OfS (rather than it being funded by government, as now for HEFCE). A subscription model is identified that could save government around £25 million annually; small in overall public expenditure terms but of some assistance to higher education Ministers in negotiations with the Treasury over public expenditure reductions.

Although we find that regulators in other sectors, such as the press, are often funded through a subscription or levy on those being regulated, this is often accompanied by at least some form of co-regulation between the agency and the sector itself. Among regulators for the privatised industries, it is also common for the regulated to help pay for their regulation. Essentially, the aim is to bestow both expanded public authority as well as substantial autonomy on a sector with major commercial opportunities conferred by the state.

But executive non-departmental bodies of the kind envisaged for the OfS have rather a different function. They do the heavy operational work on behalf of Ministers and are available for scapegoating by government if matters go awry. Such bodies are much less suited to a subscription model than say those found in the privatised sectors. Is BIS becoming confused as to whether the appropriate regulatory model is that as found for the privatised industries, or is OfS to be regarded as a hived-off part of Whitehall as the description of its locus implies?

Moreover, will OfS follow a more co-regulatory path than is required of HEFCE currently? Will this subscription-funding model become so embedded that institutions (not students as such, despite the title of the green paper) become OfS's real customers? Could this diminish the regulatory grip of the sector

by the new regulator and even lead to what is referred to as regulatory capture – when a regulator is effectively governed by, or for, those it regulates, rather than, say, consumers more widely or taxpayers?

The green paper takes forward the aim of the previous Coalition Government to ‘put students at the heart of the system’ and to use competitive and commercial-type instruments as part of this endeavour. The naming of the OfS underlines this intention and, as with other industries, emphasises the necessity for proportionate and effective regulation in the student-consumer interest. But this title for the new regulator jars and seems lacking in appropriate regulatory and sector gravitas. It apes the regulatory titles of agencies for the privatised industries – but the green paper in fact is offering a rather different kind of entity in the case of the new OfS. Consequently, a rethink on the title for OfS is necessary.

Moreover, although consumers generally are the best judges of value-for-money in many markets, it is not clear that they are always so when it comes to undergraduate education. Many students are uncertain or even poorly advised about what type of learning will benefit them in the long run. Many will certainly change their minds and attitudes as they study and learn. Responding to student-consumer preferences, perhaps to the exclusion or prioritisation of much else, risks institutional policies on recruitment, course provision, and assessment, for example, being seriously sub-optimal, both for the long-run interests of students and for the longer term material and non-material prosperity of the country.

Consequently, as higher education is of vital interest for all citizens in a country – for example, in producing people with the right skills for our global economic needs, with a commitment to democratic and similar principles – we have to regulate higher education with more than just the student-consumer transaction in mind. Many other stakeholders in higher education also have a legitimate concern in knowing that effective regulation is looking out for some of their interests too.

It would be better if the title of the lead regulator were to reflect the welcome and legitimate policy aspirations of the Government, particularly as its direct subscribers will be institutional customers. The Higher Education Council or similar would be a much better reflection as a title of the main purposes of universities and colleges than a name that appears to have been inappropriately borrowed from regulators in sectors very different to that of higher education.

4. Consumerisation

**Gary Attle, Partner, Head of Education and Governance,
Mills & Reeve LLP**

The Government's higher education green paper highlights the growing consumer power of students and presses for more of the same. The story needs to be set in context. If we look back at the mists of time, to a case brought in the courts by an undergraduate in 1896, we note a robust rejection of the private law of contract to the relationship between a student and their higher education institution:

I cannot think of anything more fatal to discipline than the notion that a contractual relationship exists between the college and its undergraduates. (Mr Justice Wills)¹

In those days, it was the Visitor to the college or university who was the guardian of the internal laws of the institution, including its academic and disciplinary regulations. The Visitorial jurisdiction over grievances within higher education institutions that had been established by Royal Charter was rooted in the law of charitable foundations.

If we fast-forward 120 or so years, higher education institutions have been issued with 'advice on consumer protection law' by the Competition and Markets Authority (CMA) that is based on the following analysis:

Consumer protection law will generally apply to the relationship between HE providers and prospective and current undergraduate students. It is our view that HE

¹ Green-v-St Peter's College, *The Times*, 10 February 1896.

providers are acting for purposes relating to their trade, business or profession when providing educational services and will be a 'trader' or 'seller or supplier' for the purposes of consumer protection legislation. The fact that an HE provider may be structured as 'non-profit' or 'not-for-profit' is immaterial to the assessment of whether it is a 'trader' or 'seller or supplier' under consumer protection law.²

The CMA advice goes on to state:

Conversely, undergraduate students will generally be acting for purposes outside their trade, business or profession, and therefore will be 'consumers' for the purposes of the legislation.

It is beyond the scope of this article to review the CMA advice on consumer law or the full complexity of the case law on the charity law, public law and private law nature of the legal relationship between students and their institutions. However, there are two cases that highlight important points of principle and which stand out in the transitioning of the legal and regulatory framework.

The Court of Appeal confirmed in a case in 2000 that a university established as a statutory corporation had 'capacity to enter contracts within its powers' and that the 'arrangement between a fee-paying student and [the University] is such a contract.'³ It was held by the court not to be an abuse of process to challenge the decision of the university in question (which

² CMA33: UK higher education providers – advice on consumer protection law – 12 March 2015.

³ Clark-v-University of Lincolnshire and Humberside [2000] EWCA Civ 129.

had no Visitor) by way of contract law, rather than by way of public law principles in a judicial review of the decision of the statutory corporation. Lord Justice Sedley went on to reaffirm an important principle about the unusual nature of students' relationships with their universities:

Like many other contracts, it contains its own binding procedures for dispute resolution, principally in the form of the Student Regulations. Unlike other contracts, however, disputes suitable for adjudication under its procedures may be unsuitable for adjudication in the courts. This is because there are issues of academic or pastoral judgment which the university is equipped to consider in breadth and in depth, but on which any judgment of the courts would be jejune and inappropriate.

A decade or so later in 2011, a student tested the principles of contract law in higher education further by claiming substantial damages (£100,000) after failing a postgraduate professional course.⁴ The student alleged a breach of the implied term of a contract under section 13 of the Supply of Goods and Services Act 1982, namely to provide services with reasonable skill and care. In other words, this was a claim alleging that the teaching provided by the defendant institute was below the required standard. The institute conceded that section 13 applied to the relationship between the parties but the trial judge dismissed the claim on its facts and merits, taking into account the evidence which had been submitted by the institute and the student's own testimony.

⁴ *Abramova-v-Oxford Institute of Legal Practice* [2011] ELR 385.

We now have the Consumer Rights Act 2015 which came into force on 1 October 2015. The Act seeks to consolidate our piecemeal consumer law into one statute and sets out the statutory rights and remedies which are available to a consumer who has entered into a contract with a trader for the sale of goods, the supply of services or the supply of digital content. A trader is defined as 'a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf'. A consumer is defined as 'an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.'

So the green paper's recommendation in November 2015 to introduce a TEF for higher education providers arrived in the midst of an increasing focus on consumer law:

The TEF should change providers' behaviour. Those providers that do well within the TEF will attract more student applications and will be able to raise fees in line with inflation.

The initial response from the National Union of Students (NUS) voices some dissent over the proposals.

Teaching should always be a key focus of higher education but NUS is adamant that the Teaching Excellence Framework should not be linked to an increase in fees. Students should not be treated like consumers.⁵

⁵ NUS President, Megan Dunn, NUS website, 6 November 2015.

The green paper also makes an express link with consumer law and regulation in its second chapter:

3. Similarly, we want to ensure that, as a precondition of the TEF, the sector observes the Competition and Markets Authority (CMA)'s published guidance on how consumer protection law applies to higher education providers. A review of a sample of provider websites carried out by Which? suggested a number of providers were not complying with all of their legal obligations. The CMA guidance covers:

- *Giving students the information they need to make an informed decision before they apply including:*
 - *the course content and structure;*
 - *information about the composition of the course and how it will be delivered, and the balance between the various elements, such as the number and type of contact hours that students can expect (for example, lectures, seminars, work placements, feedback on assignments), the expected workload of students (for example the expected self-study time), and details about the general level of experience or status of the staff involved in delivering the different elements of the course;*
 - *the total costs of the course including tuition fees and any additional costs associated with the course, such as field trips, lab equipment or bench/studio fees.*

- *Setting terms and conditions, including any rules and regulations that students are bound by.*
 - *Ensuring that complaint handling processes are fair.*
4. *We will consider how the TEF can drive best practice in compliance with consumer law, also taking into account the forthcoming CMA compliance review and HEFCE's consultation on student information.*

With the onward march of the private law of contract and consumer protection law to the higher education sector, is there any room left for public law?

One of the areas which might be tested in due course is the extent to which decisions made by, or on behalf of, the Office for Students (OfS) under the TEF will stand up to challenge by a 'provider' (or possibly by others who are deemed to have 'standing') under public law principles. Lord Justice Sedley had to consider a judicial review challenge in 1993 brought by the then Institute of Dental Surgery of a decision made by the then Universities Funding Council under the RAE.⁶

The Institute in this case had originally had the quality of its research assessed at 2.6 (an average score following a secret ballot by each of the panel members for clinical dentistry). If this score had remained then it would have been rounded up to 3. In fact when the panel met to make its final assessment, the score was revised to 2.4 and was then rounded down to 2 on the 5-point scale.

⁶ R-v-The Universities Funding Council ex parte The Institute of Dental Surgery [1993] EWHC Admin 5.

It was argued in the judicial review that it was unfair as a matter of public law for no reasons to be given for the scoring and that the decision was inexplicable. The court noted the 'importance of the decision to the applicant's future' and did not doubt the evidence provided by the Institute, commenting as follows:

Not only does a reduced rating directly affect the quantum of government funding; it reduces the standing and competitiveness of the institute in seeking funding. The morale and future of an institution such as the applicant are shaken by the decision.

However, on the facts of the case, the court declined to hold that there was a duty to give reasons for the scoring and declined thereby to quash the decision. The reasoning of the court is important:

We must therefore look also at the other indicia: the openness of the procedure, widely canvassed in advance and published in circular form; the voluntary submission of self-selected examples of work; the judgment of academic peers ... the nature of the exercise was that it was open in all but its critical phase, and its critical phase was one in which ... 'the grades awarded to a particular institution was not determined by a score against specific features'.

Lord Justice Sedley concluded:

We would hold that where what is sought to be impugned is on the evidence no more than an informed exercise of academic judgment, fairness alone will not require reasons to be given.

As Lord Justice Mann noted, this was a 'case which has raised a question of some general importance'.

Another case brought under public law, this time by two 6th form students in 2012, was to challenge the lawfulness of the statutory architecture which had been put in place for the charging of increased tuition fees by higher education institutions.⁷ Following the Browne Review, *Securing a Sustainable Future for Higher Education*, statutory instruments were approved in 2010 to increase the 'basic amount' to £6,000 a year and the 'higher amount' to £9,000 a year.

The claimants argued that the three-fold increase in tuition fees created a barrier to entry to higher education and that this amounted to a breach of Article 2 Protocol 1 of the European Convention on Human Rights, which is the right not to be denied an education.

It was noted in the judgment that the jurisprudence of the European Court of Human Rights was that 'although A2P1 does not oblige a state to provide institutions of higher education, if it chooses to do so then it must provide "an effective right of access to them"'. It was not contended on behalf of the claimants that it was unlawful to charge tuition fees for higher education but it was argued that 'for many poorer students, the right is rendered theoretical and illusory'.

Lord Justice Elias noted in his judgment:

I would accept that there is evidence that some students at least will be discouraged from applying to institutions of

⁷ R on the application of Hurley and Moore-v-Secretary of State for Business Innovation & Skills [2012] EWHC 201 (Admin).

higher education because of the fee increases, even having regard to the availability of loans and grants. Common experience would also suggest that this will be the case. There must inevitably be students who feel for one reason or another – perhaps even a deep psychological antipathy to going into debt – that the economic or other benefits to be derived from higher education are not worth the long-term debt that they will necessarily incur in pursuing it.

However, ultimately the claim failed:

The fact that someone may be temperamentally or psychologically disinclined to accept a student loan and enter into debt does not justify the conclusion that the right to higher education of such a person had been denied or unjustifiably restricted.

Particular regard was placed by the court on this being an area of macro-economic judgment involving decisions about the prioritising of public resources.

What can be said by way of some concluding remarks in this short article on an important subject? First, as to the role of consumer law in the higher education sector going forward, there is likely to be something of a ‘triple lock’ comprised of:

- (1) the guidance from the Competition and Markets Authority and its regulatory authority;
- (2) the Consumer Rights Act 2015 and the redress available to individuals in the courts for breaches of their statutory rights; and

- (3) the proposed TEF operated by the new OfS whose purpose 'will be to empower, protect and represent the interests of students'.

As noted in the CMA's guidance, consumer protection law 'is important not only in protecting students but also in maintaining student confidence and the reputation of the higher education sector and in supporting competition.'

Public law and the supervisory jurisdiction of the High Court will remain in respect of the decisions and actions of public bodies (including the Government and regulatory bodies). Public law is also likely to continue to apply to the legal relationship between students and certain types of higher education institution and in respect of certain functions. But, with the advent and encouragement of 'alternative providers', the law of contract and consumer law is likely to provide a more level playing field for students at all types of institution.

5. New providers

Roxanne Stockwell, Vice President of Higher Education Awards at Pearson UK and Principal of Pearson College London

We are living through what could be viewed as the great democratisation of higher education. Internationally, there is an increasing demand for university education in developing economies, a rising number of mobile global students who want the freedom to choose their country of study and a push to open up higher education and not keep it as the preserve of an elite.

In this country, there is an increasing emphasis on the accountability of universities to wider society, a strengthening commitment to social mobility and the uncapping of student number controls (SNCs), which makes it possible for far more people to attend higher education. Students have financial assistance, which is an extraordinarily generous offer by the government (and taxpayers) as well as a powerful endorsement on the perceived value of higher education.

This democratisation also extends to the types of institutions involved in university education. Universities in developing countries increasingly see themselves as having the right and capability of becoming world-leading, and all over the world technology-based organisations are emerging providing flexible online routes into higher education. In the UK, we have alternative providers, although the higher education green paper tends to describe them as 'new providers'.

The rise of new providers is part of the context of change, challenge and democratisation in which higher education elites of all kinds are being questioned. Western dominance, the type of students who attend, the forms of pedagogy, the locations of learning and the institutions themselves are all changing fast.

A useful starting point is to ask: why have new providers at all and what can they contribute to the higher education sector? According to the green paper, they stimulate competition and innovation, increase choice and help improve efficiency. Note that this is describing the purpose of new providers in terms of their impact on other institutions and the sector overall. However, new providers cannot be successful if they exist merely as 'competition fodder'. They need a proper chance to grow into worthwhile and successful institutions in their own right. After all, even our most traditional institutions were new providers once. Furthermore they will only have a positive impact on the sector if they are successful. Otherwise, instead of stimulating competition they will only stimulate complacency. So, if we are to have a new provider sector at all, we should aim to make it world-leading to sit alongside our world-leading traditional sector.

To achieve this, three basic requirements stand out:

- (1) being able to enter the sector;
- (2) having the ability to grow and to reach financial sustainability, and;
- (3) enjoying a fair opportunity to develop a good and distinctive reputation.

The green paper addresses sector entry in some detail, proposing to reduce the track record required for Degree Awarding Powers (DAP) to three years. However, all this overlooks a crucial point: is it feasible for a brand new institution to enter the sector? The answer is no.

Currently, to obtain designation for student loans, and therefore attract domestic students, a new provider needs a QAA report. Alternatively, to be able to attract international students, a new provider needs to have achieved Highly-Trusted Status, for which it also needs a QAA report. To be eligible to apply for this report, a new provider must have been operating for 12 months, while the process of applying and obtaining the report takes 6-12 months.

Overlaid on this is the current requirement for three years of audited accounts, to be reduced to two in the green paper. This effectively adds another year to the entry route for completely new providers.

In summary, if you are a new provider attached to another institution in some way, you will have to operate for two years without any international or domestic students, which seems virtually impossible. If you are a wholly new institution then you will have to operate for three years in that way, which is even more unlikely.

In my view, sector entry is the most serious problem in Part B of the green paper. The current rules only came into effect from September 2013, and no existing provider, public or private, has had to go through them. It is unlikely that anyone will. Therefore, we need to create an on-boarding process where

it is possible for an entirely new institution to have loans for its students and/or attract international students *ab initio*. Without this, we will not attract genuinely new institutions but only those recycled from within the existing system.

A related issue that the green paper explores in detail is the validation of programmes at new providers. Until an institution has its own degree-awarding powers, it cannot offer degrees without being validated by an existing university. Under the current system, a new partner has to find a willing validating partner, and it is locked out if it cannot. Finding a partner can take a considerable amount of time, and the new provider has no choice but to act within the timescales and strategic priorities of the potential partner.

Additionally, validations come under what is called collaborative provision, which is viewed as higher risk from a quality assurance perspective. This means that the university, understandably, will want to be cautious and risk averse in approving any new programme. However, the new provider will want to move quickly and ideally create something distinctive and innovative. This can create a tension.

Furthermore, much activity in the sector, including validation, depends on peer review – that is, approval by academics from other universities. Therefore both the new provider and the university have to consider what other academics will think. This creates a ‘cycle of conservatism’, meaning it is easier to gain the necessary approvals the more like everyone else you appear.

Finally, and most importantly, the current system effectively requires approval from existing competitors in order to enter. This is the equivalent of Apple having to ask Google for permission to release a new iPad. Even more, Apple would have to provide the full specs of the new design and ask Google (who would form a panel with, for example, HP and IBM) for their approval of the design. There is no consumer redress for Apple if Google decides to reject the design for 'strategic reasons' – including the reason that it would be too competitive – even though Apple will have paid a validation fee and will have invested many months in the process.

This means that the validation issue not only increases entry time or even prevents new providers from entering altogether, it also pushes against the concept of innovation which is one of the main reasons for wanting new providers to exist in the first place.

The green paper acknowledges this and proposes alternative validation models. Whichever model is used, consideration should be given to creating a validation service open to new providers (and existing institutions without degree-awarding powers) which entitles new providers to validation provided they fulfil the quality criteria, follows clear time frames, is not subject to the strategic priorities of existing individual universities and provides redress if the service is below standard, anti-competitive or unfair.

Indeed, if we are truly to build what could eventually become a world-leading new provider sector, greater consideration needs to be given to supporting the early years of new providers.

Developing high-quality institutions is not just about setting entry criteria and having consequences for poor provision (both of which are crucial), it is also about on-boarding new providers in a positive way that sets them and their students up for success rather than failure.

The green paper starts to create a framework, with model 1 (for highly-trusted status but no loans), model 2a (for student loans capped at £6,000), model 2b (for student loans capped at £9,000) and degree-awarding powers. This is worth developing, even though it leaves out wholly new providers as it starts with organisations that have already been attempting to enter the sector for at least three years. Therefore, we need to consider other approaches. What safeguards would we need to allow new providers access to domestic or international students from the start? Could we have an incentive for universities to mentor new providers into the sector? A national validation service of some sort is essential. Could we tender for this among current universities? Could we have off-the-shelf qualifications that new providers could choose to offer as an entry point so that they do not have to go through validation at all initially? Could we effectively achieve that by allowing institutions who teach for the London external programmes to be designated for student loans, provided they have passed a relevant QAA review?

The second requirement for a successful new provider sector is the ability to grow and reach a sustainable level reasonably quickly. In one sense, this should be obvious, yet there is such opposition to growth and the student number controls for new providers are so low (50 to be raised to 100) that this does not

seem to be fully understood or accepted. Institutions need to reach a point of financial sustainability where they are covering costs and generating a surplus for further investment. The average publicly-funded university has about 17,000 degree students. There are no new providers of that size, and only a handful in the thousands. In discussions with many providers, and allowing that it can vary a great deal, I would suggest that for a provider reliant on degree income alone, well over a thousand students is necessary to reach a sustainable point as a minimum. Based on current caps and assuming a permitted growth of 20 per cent, it would take at least eight years to reach this number, and a quarter of a century to reach the size of an average publicly funded university.

The ability to validate new programmes quickly also has an impact, as cohorts on individual programmes in UK universities are, on average, surprisingly small. Therefore, adding programmes is an important part of any growth strategy. Regulations can have an impact too. For example, the annual designation process means new providers are prevented from confirming the loan status of prospective students at the most important part of the student recruitment cycle. The green paper refers to the possibility of introducing a multi-year approval process, but this problem could be resolved immediately, simply by having designation agreements (even if still annual) that are set one year ahead.

The creation of a world-leading new provider sector also requires that new providers are placed in a position where they have a fair opportunity to develop a good and distinctive reputation. Some of the aspects discussed above have an important

bearing on this. The ability to increase student numbers affects the ability to develop a significant word-of-mouth reputation and to build up an evidence base of good practice. It also affects the ability to reach financial sustainability and therefore create long-term security and surplus. The current validation model can make it difficult both to add new programmes and to develop truly innovative and distinctive approaches.

A particularly important issue is student loan caps. Currently, students at new providers are only allowed to claim a maximum £6,000 tuition fee loan, as opposed to a maximum of £9,000 for students at publicly-funded institutions. This means the traditional sector has 50 per cent more tuition fee funding to invest in the student experience.

The quality of the student experience is a key element of building a good reputation. The green paper notes students want smaller classes, more teaching hours and better facilities. These cost money, and the loan cap effectively limits the quality that can be provided. This is particularly unfair on students, given all students repay loans at the same rate irrespective of where they studied. The repayment period may well be shorter, but graduates will not experience any difference in repayment for perhaps 20 years or longer. It does not seem right that they cannot have as much invested in their learning experience. This seems a clear example of how new providers do not have a fair chance to develop a good reputation, and it is therefore good to see the green paper suggest £9,000 loan caps for the future.

The best way to create a fair opportunity for new providers is to develop a more level playing field across the sector as whole.

The general tenor of the green paper shows this is the direction of travel with the aim of creating a single system. Universities operate as ecosystems that combine teaching, research and scholarly activity, facilities and services management, and outreach and public engagement. These reinforce each other in various ways in terms of developing reputation and there are a number of opportunities around funding and participation that are not open to new providers at present. It will be very interesting to see how far the Government intends to go along this path over the next few years.

There are a number of relevant issues unexplored in the green paper. There is no discussion of the role that price-sensitivity should play in the sector. If one reason for having new providers is to improve value for money, then it needs to be noted that this will be limited in a price-insensitive sector. There are issues with price-sensitivity, so the extent to which we should have price-sensitivity needs careful debate. There is no proposal to change funding from a per-year model to a per-credit model, restricting potentially innovative developments such as accelerated degrees and credit transfer. Finally there is little acknowledgement of non-degree entry routes such as professional education, work-based learning, higher apprenticeships, corporate education or international degrees. All these could have an impact on the likely development of innovative and valuable new providers.

In conclusion, the emergence of new providers can be seen as one aspect of a worldwide democratisation of university education in which we are seeing the participation of new countries, new students, new technologies and new

institutions. New providers can potentially contribute to the UK higher education sector and become high-quality institutions in their own right. Our aim should be to lay the foundations for a new provider sector that could one day become world class. Minimum criteria and consequences for poor provision are crucial, but equally important is a supportive on-boarding process that encourages new providers and maximises their chances of success. New providers are communities of students and teachers, as with all other higher education institutions, and it is only right that they should have a supportive and fair opportunity to become successful and make a positive contribution.

6. Students' unions

Emma Sims, Vice President, Liverpool Guild of Students

In November 2015, social media was filled with messages of support for, and examples of, the fantastic work that students' unions do. #LoveSUs, a campaign led by the NUS, set out to highlight the importance and value of students' unions, as well as the positive impact they have not only on students, both collectively and as individuals, but also on the wider community and educational landscape.

The #LoveSUs campaign was not just a day of appreciation. It was the start of the movement's answer to the question posed by the higher education green paper on students' unions:

Question 20. What steps could be taken to increase the transparency of student unions and strengthen unions' accountability to their student members?

Not only do students' unions, as charities, have particular responsibilities to undertake in these important areas but, as democratic institutions dedicated to representing their members, they strive to innovate on doing this better. As Vice President of Liverpool Guild of Students, I hope to offer some examples of the work that we undertake to develop and deepen our democratic accountability and transparency.

While the green paper question focuses on these two areas, our work goes beyond that of representing our members; we help them adapt to university life, develop new skills and be active citizens. Using the Guild as a case study, I will seek to develop an understanding of the wider role of students' unions,

demonstrating the way in which we work with institutions, our members and other stakeholders. I believe this provides evidence of the vital role that students' unions play within the higher education sector and for society more widely.

Liverpool Guild is devoted to the educational interests and welfare of its members and is an independent representative body at the University of Liverpool, representing over 24,000 students. We are an Incorporated Charity and a Company Limited by Guarantee without Share Capital, which means we are registered with the Charity Commission. We take our responsibilities as a charity seriously, ensuring we have sound procedures and practices in place to achieve our charitable objectives and remain legally compliant and financially sustainable.

Each year, the student body elects four Student Representative Officers in a campus-wide ballot, who lead the Guild for a year. They are members of the Guild's Board of Trustees, which is responsible for ensuring the organisation remains fit for purpose, and for setting the strategy of the organisation in consultation with senior staff. The Student Representative Officers are joined on the board by four student trustees and four external trustees. All new trustees undergo a comprehensive induction programme to ensure they are aware of their role and responsibilities, and feel able to undertake their role.

We are a large students' union. The Guild employs around 70 career staff, and over 100 student staff. The range of work is vast – at the Guild, we facilitate hundreds of student-led activities every week, through 200 societies, student committees for halls of residences, 800 course representatives and 230 volunteering

opportunities in the community. While we are bigger than many other student unions, the values that underpin our work are common to every other students' union in the UK. Our core values include being inclusive and innovative, but also transparent and accountable.

We are just one students' union but are coordinated in the work we do. As a member of the NUS, we are part of a tight-knit community of students' unions across the UK, undertaking similar innovations and sharing best practice every day. We influence and shape the policy that NUS creates, and we hold NUS officers to account, feeding our members' views into the national picture, making sure the work the NUS does reflects what our students want.

In 2014, the Guild took part in a research project led by the NUS to look into students' union democracy. The report based on the research, *Democracy is dead! Long live democracies!*, highlights four areas that are key to creating an effective democracy: inclusiveness; transparency; popular (student) control; and considered judgement. Over the last couple of years, we have undertaken extensive work to develop and deepen our democratic structures to ensure that we are reaching all of our members. The new structure places an emphasis on equality and diversity in democracy, and looks at innovative ways of involving a truly reflective range of students' voices.

Our new structure is called 'Change It'. This allows any one of our members to submit an idea on any topic (the Guild, the University, the community) through an online form on our website. These are then submitted to a meeting called Guild Summit. The Summit is made up of 50 students, randomly

selected based on the demographics of our student body. For example, 55 per cent of our students are women so 28 of the 50 will be women. This is applied for a number of characteristics, including: ethnicity; age; and students with caring responsibilities. This ensures we have a diversity of voices in the room and we ensure that diversity is heard by using consensus decision-making techniques, facilitating discussion of proposals in such a way that everyone feels comfortable voicing their opinion. The room is encouraged to come to a consensus on the decisions being made – this ensures that we are not perpetuating the voices of a vocal minority, but really putting the power to make decisions in the hands of students.

We hold the Summit four times a year, with an additional extraordinary meeting to discuss motions for the NUS National Conference. As we randomly select 50 students each time, this allows the opportunity for 250 students to take part in our decision-making process. Anyone can come and observe the meeting and minutes of it are shared on our website and through an e-mail that goes to all 24,000 students. If anyone is unhappy about a decision that has been made through the Summit, they can appeal it by petition – which triggers a Preferendum – a vote amongst our entire student body. A Preferendum is a referendum, but rather than just the binary ‘yes’ or ‘no’, it includes other options too. You rank your preferences, encouraging thoughtful decision-making and considered judgement.

The outcomes of all decisions at Summit are updated on our website, ensuring the entire process is open and student-facing. The structure takes power away from the four student officers to ensure that we are making decisions based on what

our members want. Democracy at the Guild has never been more active, with ideas submitted tenfold up on the last year without the structure. However we accept, as with all students' unions, that more can be done – we are constantly updating and evolving our processes to make them as transparent as possible. Currently, we issue regular updates about where our work is up to, and students do not hesitate to let us know when they dislike something we are doing. To improve on this, we are now developing scrutiny panels, who will meet quarterly with each officer to ensure that we are doing our work in the way our members have asked us to, as well as progress meetings if members feel that work is not being done.

We also have financial transparency, and hands-on student input through our Societies' budget allocation. This is called 'Spend It'. Spend It uses the principles of participatory budgeting to distribute funds. Societies are encouraged to submit bids, outlining what they need the funding for. They are then invited to present their ideas at a meeting, where members of other societies can ask questions and scrutinise their bids, before deciding whether to award the money requested. The group have the power to make a full award, a partial award or no award. Last year, successful bids included funding for school outreach activity, purchasing Dictaphones for media societies, providing activities for students at our London Campus and enabling students to perform at the Edinburgh Fringe Festival.

The work we have undertaken offers just a snapshot of the kind of work students' unions all over the UK are developing. Students' union democracy has been innovating and evolving for many years, leading the way on processes such as online

voting, to ensure that our structures are accessible and focussed on how our members want to engage.

The important role students' unions play has been recognised in the green paper, and this has been welcomed by the movement. Being able to represent students' interests through a student-led union is something that I believe makes student unions valuable, and also makes academic engagement really meaningful.

At the Guild, like many student unions, we run the course representative system in partnership with our institution, holding a regular committee with joint membership where we oversee the system. For us, this means we elect and train 800 reps from across the University. Our course reps represent the views of students on their course to their department throughout the year. Running the course rep system through the Guild, independently from the institution, is crucial to the engagement of students on their courses. Being able to openly express opinions, and receive honest feedback has been key for the quality enhancement of some courses.

Our course reps undertake what we call 'enhancement projects', where they pick a topic, either based on NSS scores or on qualitative feedback they have received from their peers, and work with their department throughout the year to complete the project. Last year, for example, our History department did an entire project on sense of course identity when they realised their students did not feel like they 'belonged' to the department. In Engineering, students worked with staff to broaden the range of careers sessions and talks, to give students access to a wider understanding of career opportunities available to them.

The green paper also recognises the important work that promoting 'other services' does. The use of this mysterious 'other' seems to hint that there may be a lack of awareness about the breadth of activity that students' unions do. There is mention of funding that the government have given the NUS, such as for the campaign to increase voter registration before the general election, but it does not go much further.

The 'other', put shortly, is the work we do with the wider community, the personal development we offer our students through volunteering, the support we provide for students throughout their time at university and the campaigns we run to fight for the things that matter. At the Guild, we work closely with local organisations and the city council on everything from anti-sexual harassment campaigns to ensuring student accommodation in the city is fit for purpose. We sit on residences groups in the areas with high numbers of students to make sure that the mutual benefits of students living in the city are recognised and realised.

In partnership with our university, we facilitate student volunteers to work with schools in low-participation neighbourhoods. We work with primary, secondary and sixth-forms to teach pupils about what being at university is like, about both the academic and wider experience. We run three programmes: Science in Schools and Green Schools, which talk about science and sustainability respectively; and our Societies in Schools programme, where university students from societies can go and talk about what they do. For example, this year our Aspiring Solicitors Society will lead a lesson where pupils are introduced to the law profession and given a taster of different

types of law. We also run a volunteering platform through our website – it currently holds 230 different volunteering opportunities in the local community, ranging from helping clean parts of the River Mersey to being a mentor for looked-after children.

All of these activities are student-led, providing important opportunities for personal development outside of the lecture theatre, but this is just the work with the wider community. The co-curricular activity and networks of support, facilitated by the union, that occur for students while they are studying are wide-ranging, with societies covering every kind of interest from beekeeping to accounting, from halls groups and student-led campaign teams. There is something for everyone.

One thing I know personally is the hugely positive impact students' union can have on students, both collectively and as individuals. If it were not for joining a student society, I would not have finished university; I would have left after my first year, struggling with poor mental health. Towards the end of my first year I joined a society that became my support network. They got me out of the house and doing things that I enjoyed, and they made me feel like I belonged in Liverpool.

The national #LoveSUs activity has taught me that my experience is not unique. It is not even unique to the Guild – every year, we get messages and cards from students telling us that their club or society was their family at university, and that they would not have stayed here otherwise. It is this sense of belonging and support that is so key to understanding the value of students' unions. It is not easily quantifiable or easy to

explain – and it is certainly not something that the NSS can pick up – so it often gets overlooked.

A low sense of belonging is often cited as one of the key reasons students drop out of university. That is increased if you are a student at high risk of dropping out because, for example, you have a mental health disability. Both the Prime Minister and the green paper set out a clear focus on widening participation in universities, talking not only about entry but about ensuring that students from disadvantaged backgrounds are supported throughout their course and helped to find employment afterwards. Given these students are at the highest risk of dropping out of university, they could benefit from a stronger sense of belonging. Now seems a good time to consider the networks of support that students' unions provide and if they can create the sense of belonging that will keep these students at university.

The impact that students' unions have spreads much wider than the public, and many in Westminster and Whitehall, think. The student movement is working hard to prove the difference we are making in the world. The value benefits individuals, our communities and the national educational landscape.

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Bahram Bekhradnia

The echoes of the past in the higher education green paper seem almost accidental and do not reflect much institutional memory. This explains why HEPI has chosen to respond to the green paper's proposals by asking some experienced people with deep roots in the higher education sector to reflect on the proposals. On the pages inside, we have:

**Graham Gibbs on teaching;
Bahram Bekhradnia on research;
Roger King on regulation;
Gary Attle on consumerisation;
Roxanne Stockwell on new providers; and
Emma Sims on students' unions.**

It is time for a new legal framework for higher education, but we need to ensure it improves the quality of the sector rather than inadvertently harming it, and the authors' proposals are aimed at ensuring that happens.

HEPI was established in 2002 to influence the higher education debate with evidence.

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