Alternative providers of higher education: issues for policymakers

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About the Authors

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Foreword

Nick Hillman, Director of HEPI

This report brings together different sources of information on non-traditional higher education providers in England with a new insightful commentary and some lessons from abroad.

It shows this part of the higher education sector is much bigger than was thought until fairly recently. Indeed, from my old vantage point in Whitehall, I witnessed the surprise of civil servants back in 2012 when they received the results of their survey showing there were almost 700 alternative providers. Until then, the size, heterogeneity and importance of these institutions was underestimated in the corridors of power.

They have been the subject of constant scrutiny since, for example from the National Audit Office, the Public Accounts Committee and the media. The Higher Education and Research Bill is designed to transform their landscape once more – for example, by making it possible to achieve degree-awarding powers (on a probationary basis) immediately.

But not everything is clear. Exactly how the Office for Students will operate and who will head it up are as yet unknown. It is possible that non-traditional institutions will suffer from no longer coming under the oversight of the Department for Business, or they could benefit from being the responsibility of the Department for Education. Either way, intractable problems remain for now, such as a lack of support for innovative provision, including accelerated degrees.

While we cannot even agree on what these institutions should be called – they are variously known as 'alternative', 'challenger', 'private', 'independent' and 'non-traditional' providers – we may at least be able to agree on what the main challenges and opportunities are.

Contents

Introduction

This paper examines some of the concerns that have been raised in recent years about alternative providers (APs), discusses their place in the English higher education system and asks whether the Higher Education and Research Bill responds adequately and appropriately to the opening of the higher education system to new kinds of alternative providers.

It also questions whether the relevant lessons from the United States and Australia have been learned.

The paper primarily focuses on England rather than the other parts of the UK, although the lessons apply more widely.

Understanding the providers

Alternative providers are a fast moving and complex group of heterogeneous organisations. Three recent surveys have revealed more about them.[1] However, even these reports have not covered all alternative providers since many did not provide the required data. For example, only 63 of an estimated 732 alternative providers replied to the most recent Higher Education Statistics Agency (HESA) survey.

The alternative providers are hard to classify because they have different legal forms, different objectives and different target audiences. They provide a diverse range of academic offers and have a variety of organisational arrangements. They have also been subjected to extensive external pressures in recent years. Many have closed or merged, while some have grown dramatically, fuelled by the availability of more student loan finance for their students. A survey for the Department for Business, Innovation and Skills (BIS, 2016) shows the variety of characteristics:

- 'catch-up' for profit;
- sub-degree colleges;
- generalist colleges, serving both undergraduates and postgraduates;
- small specialist, not-for-profit colleges;
- exclusively postgraduate small specialists;
- for-profit providers focusing on international students;

- for-profit distance learning; and
- campuses overseas.

What we know about alternative providers

Number: BIS found 732 institutions (BIS, 2016). An earlier study by the same Department counted 670 (BIS, 2013). In both cases it was suggested that some smaller institutions (<50 students) might have been excluded, as neither data collection exercise was thought to be fully comprehensive. Many (114) of those surveyed in the 2012 fieldwork had either closed or ceased to offer higher education by 2014 (BIS, 2016).

Size: In 2014, nine alternative providers had over 5,000 students and over half of alternative providers with a known size had under 100 students (BIS, 2016). In 2012, five providers had more than 5,000 students and 35 had over 1,000 (BIS, 2013).

Students: The research for BIS (2013) reported that in 2012 there were approximately 160,000 students in the 670 alternative providers. By 2014, the number had increased from an estimated 245,000 to 295,000 higher education students.

Student domicile: There has been a change in student domicile since 2011 from being largely international to mostly domestic. The HESA survey found that 88 per cent of students in the 63 alternative providers were UK-domiciled in 2014/15.

International students: In the 2013 survey by BIS, around half the alternative providers had obtained a Tier 4 licence from the Home Office allowing them to recruit international students. However, the number of international students in the APs has fallen in recent years.

Legal entities: The situation is complex. Most of the alternative providers are corporate bodies, and many are limited by guarantee. Some are subsidiaries of international corporations or UK-based private equity companies. Many of the limited companies that own alternative providers are private and family owned. Some of the alternative providers are charities. Three organisations, the University of Buckingham, the London Institute of Banking and Finance and the College of Estate Management, have a Royal Charter, while Ashridge Business School was originally established by an Act of Parliament. Two alternative providers with taught degree-awarding powers, the University of Law and Arden University, are owned by Global University Systems, a company based in the Netherlands.

Age of the institutions: A majority (63 per cent) of those surveyed in 2014 had been operating for more than 10 years (BIS, 2016). The great bulk of those that had commenced in the last 10 years were for-profit, while most of those with at least 20 years' experience were not-for-profit.

Location: Most providers are located in London and the south-east of England. Only 4 per cent, 2 per cent and 1 per cent are based in Scotland, Wales and Northern Ireland respectively, since higher education policies in those jurisdictions do not favour alternative providers.[2] Several alternative providers in England are campuses or branches of international universities, including Amity University, Ashridge Executive Education (part of Hult International Business School) and the University of Chicago Booth School of Business. Richmond, the American

International University in London, has US accreditation but no degree-awarding powers in the UK.

Level: The BIS 2016 survey showed that in 2014, alternative providers offered full and part-time courses at Levels 4 to 7 (from sub-degree to postgraduate). Over half of the 276 providers surveyed offered postgraduate provision, often on a part-time basis.

Accreditation: Nine alternative providers have taught degree-awarding powers.[3] All the other alternative providers that offer higher education qualifications have academic or professional partners that offer them franchises or validate their programmes and issue their awards to students.

Subjects taught: Business and Management was the most popular course in the alternative providers surveyed in 2014 at Higher National Certificate (HNC) and Higher National Diploma (HND) and postgraduate levels, while at first-degree level the most common area was arts and humanities.

Academic year: Around two-thirds of alternative providers offer a standard academic year from September to July; however, one third have multiple or flexible starting dates. This complicates HESA's annual data collection exercise.

Diversity: Only 23 per cent of students in the 276 alternative providers surveyed by BIS (2016) were under the age of 20 at the age of entry. This compares with 37 per cent in the publicly-funded sector. There was also a difference by ethnicity – 46 per cent of students at alternative providers were non-white compared with 19 per cent in the publicly-funded sector.

HESA's survey of a smaller and later sample found that 61 per cent of students were non-white.

Finance: According to the Register of HE providers at the Higher Education Funding Council for England (HEFCE), 122 alternative providers in England have courses that have received specific designation as being able to receive student loans from the Student Loans Company (SLC). Their data show that the number of alternative provider students seeking loan finance was just under 50,000 students in 2013/14. There was a fall in these numbers in 2014/15, largely due to BIS's introduction of student number controls (just as they were being lifted from other higher education providers).

Cost to the Student Loans Company: Between 2010/11 and 2014/15, the sums paid to alternative provider students for maintenance loans grew from £58 million to £207 million, but peaked at £292 million in 2013. For tuition fee loans, the growth in the same period was from £36 million to £175 million, but this figure peaked at £236 million in 2013.[4] The average sum in loans paid to alternative providers' students was £9,290 in 2014/15 – lower than the £10,240 for publicly-funded universities.

Tuition fees: Fees vary widely from £2,000 to £12,000 per course (BIS, 2016). Where a course is 'designated' and able to access student finance, a loan cap of £6,000 applies.

Offshore activity: All the large alternative providers (5,001+ students) and half of those with 1-5,000 students offer higher education outside the UK either through distance learning or at an offshore campus.

Governance: There is no common model of governance. The bulk of the smaller alternative providers work through corporate boards, often dominated by the family of the founder. A small survey of alternative providers' governance in 2014 showed that academic matters were either covered within the main board agenda or through a separate academic committee reporting directly to the board.[5]

Not included above are the operations of overseas providers without a legal entity in the UK that are offering distance learning or face-to-face courses to English citizens without UK-approved certification. Very little information is available on these providers.

From a student's perspective, alternative providers will often differ from more traditional higher education institutions in the following ways:

- flexible entry dates – sometimes three times a year or rolling enrolment;
- more evening and weekend teaching;
- accelerated learning, in some cases facilitating speedier progression to Master's level;
- limited facilities, with campuses often based in office–style accommodation;
- academic awards from different bodies;
- little or no residential accommodation;

- undeveloped student union representation, with little affiliation to the National Union of Students (NUS);
- teaching-heavy staff with less time for research;
- a higher proportion of practical courses, often with a vocational rather than an academic orientation; and
- part-time teaching staff, who are often in employment elsewhere, including in publicly-funded institutions.

There have been significant changes in the number, size and market focus of alternative providers in recent years. While the number of alternative providers has grown overall, within this total there has been a large number of closures: between 2012 and 2014, 114 alternative providers either closed or stopped offering higher education (BIS, 2016). In addition, there has been a reduction in providers seeking to recruit international students only. This is largely due to tighter controls imposed by the Home Office and the greater attraction of the UK/EU market due to the availability of more student loan support.

At the more well-known institutions, there have been some notable changes. The University of Law has changed hands twice in the last 10 years and is now owned by a multinational corporation based in the Netherlands. This company has also recently bought Arden University (formerly RDI), which only gained university title in 2015 and taught degree-awarding powers in 2014. Ashridge Business School has merged with an American institution, the Hult International Business School, to become Ashridge Executive Education.

The wide diversity among alternative providers makes it difficult to describe them as a coherent sector. This has implications for regulation:

- the number of very small providers suggests regulation should contain *de minimis* provisions to avoid an excessive burden on these providers;
- 'one size fits all' legislation is inappropriate;
- where the legal ownership of an alternative provider resides outside the UK, there are additional challenges;
- legislation may be required to protect English students studying in the UK for foreign awards from foreign providers (including those based in the EU after Brexit); and
- any regulation of alternative providers must not assume the classic public higher education model of operation with one single accreditor as the norm.

Since 2012, the Quality Assurance Agency (QAA) has been undertaking quality reviews of alternative providers for various purposes. It has developed a special Higher Education Review (Alternative Providers) quality assurance process modelled on a similar exercise for publicly-funded institutions and it has undertaken checks for BIS, HEFCE and the Home Office. A recent report (QAA, 2016) summarises the findings from 27 reviews of alternative providers in 2013/14 and 2014/15 and records a wide range of outcomes.[6] It found 16 of the 23 alternative providers reviewed had positive outcomes for students, but the other seven, being newly established with no university partner, did not perform so well. In addition, 238 out of 459 providers studied since 2012 no longer seek QAA approval because they have merged, closed down or do not want Tier 4 sponsorship or Student Loans Company finance.

Problems and criticisms

The growth in alternative providers has not been without problems and critics. The two main areas of concern relate to the cost of alternative providers' students accessing publicly-funded student finance and the quality of education.

In December 2014, the National Audit Office produced a highly critical report on financial support for students at some alternative providers.[7] It found some EU students had been receiving support to which they were not entitled, drop-out rates of 20 per cent at some alternative providers and inadequate systems for recording approved courses.

In February 2015, the Public Accounts Committee criticised BIS for losing control over public funding:

> *Between 2010/11 and 2013/14, the number of students claiming support for courses at alternative providers rose from 7,000 to 53,000. Over the same period, the total amount of public money paid to students at alternative providers, through tuition fee loans and maintenance loans and grants, has risen from around £50 million to around £675 million.*[8]

The Public Accounts Committee criticised the lack of an adequate regulatory framework for overseeing alternative providers, a failure to note warning signs about the quality of the provision and BIS's inability to say whether public money had been wasted, as well as the lack of data on the performance of alternative providers and the quality of student outcomes.

In March 2015, the Competition and Markets Authority examined the existing regulatory framework. It concluded that it needed reform due to inconsistencies in the quality assurance of different types of provider and the risk that the framework was restricting market entry and expansion in some cases.[9]

The emergence of internationally-based owners of alternative providers is causing some concern due to difficulties in obtaining accurate information on their finance and governance.

These concerns imply that there are potential risks to students, to taxpayer funds and to the reputation of the UK higher education system. In the absence of any legislation in the 2014/15 period, BIS and HEFCE organised some stop-gap measures to tighten the regulation of providers, but it has been clear ever since the 2010 reforms that the only long-term solution is a new regulatory system.[10]

The Higher Education and Research Bill

The higher education white paper of May 2016, *Success as a knowledge economy*, set out the Conservative Government's objectives.[11] It identified weaknesses in the higher education system – such as poor access for young people from disadvantaged backgrounds, inflexible courses, a lack of innovation, skill shortages and dissatisfaction with aspects of the student experience. The white paper said, 'At the heart of this lies insufficient competition and a lack of informed choice.'[12] It suggested that greater competition would be achieved by encouraging new providers to enter the system, while student choice would be enhanced by the availability of better information, particularly through a proposed Teaching Excellence Framework (TEF).[13]

The white paper also proposed three types of higher education provider.

1. **Basic providers** which want recognition, but do not want access to government funding or a Tier 4 licence from the Home Office.

2. **Approved providers** which can access public funding and obtain a Tier 4 licence. Their students' tuition fee loans would be capped at £6,000, but fees could be at any level (as now). Success in the TEF would allow the loan cap to rise with inflation.

3. **Approved (fee cap) providers** where a fee cap of up to £9,000 would apply and students could access tuition fee loans of up to £9,000. Again, the fee cap would rise in line with inflation, subject to performance in the TEF. Providers

in this category would be eligible to receive grant funding for teaching and research. This category is envisaged as covering all traditional universities and some alternative providers.

The present *ad hoc* regulatory Operating Framework introduced in 2013 arguably makes it difficult for alternative providers to enter the market.[14] As an example, Stockwell shows how new providers require a QAA report, two years of audited accounts and an operational record of 12 months before being able to offer domestic students student loan support. The search for a validating partner can also be difficult.[15] Since this involves seeking validation of their courses from an existing university, applicants can meet what Stockwell calls 'a cycle of conservatism' that militates against innovative or radical new approaches to learning and teaching.[16]

There are seven key objectives from the white paper relating to alternative providers that the Higher Education and Research Bill is intended to achieve:

1. to develop a better common regulatory framework – both for overall supervision and quality assurance;

2. to ensure new regulatory systems deliver better financial control;

3. to provide an equitable, if not a level, playing field for the regulation of all providers;

4. to provide incentives and encouragement for new entrants;

5. to provide students with more options by encouraging competition in the market place;

6. to broaden participation by encouraging both public and private providers to attract more under-represented students; and
7. to encourage alternative providers to innovate and challenge existing providers.

We assess below whether the proposed legislation and the policies on which it is based are likely to achieve these objectives. As part of this, we discuss lessons from the USA and Australia.

The regulatory framework

The Operating Framework does not cover all providers. For example, it excludes:

- those not funded by HEFCE;
- those with courses not designated for student support; and
- those whose provision is not validated by a UK higher education institution or other recognised awarding body.

Since the Operating Framework only covers some of the 700+ providers, the challenge is how the Bill should embrace a larger proportion of these providers.

The proposed regulatory framework in the Bill strengthens with each level, as Table 1 shows.

Table 1: Regulatory obligations for the three categories of alternative provider

	Registered Basic	Approved	Approved (fee cap)
Courses must meet national standards	*	*	*
Compulsory subscription to the Office of the Independent Adjudicator	*	*	*
Must meet quality assurance framework standards		*	*
Must meet financial sustainability, management and governance standards		*	*
Must meet requirements concerning student rights as consumers		*	*
Must adhere to the good practice framework of the Office of the Independent Adjudicator		*	*
Must agree an Access Agreement with the Office for Students			*
Must operate within the HE Code of Governance			*

Summary of regulatory changes outlined in the Bill

At the risk of over-simplification, the regulatory provisions of the Higher Education and Research Bill are compared with the status quo for the establishment and operation of an alternative provider.

Creation of a legal entity wishing to offer higher education in England: No change, but the provider must meet the national standards.

Registration as a provider: Voluntary registration of those with designated courses in the UK Register of Learning Providers was managed by HEFCE. In future, the Office for Students and providers will decide which of three categories to register under. Conditions and registration fees will apply.

Suspension of registration: The Office for Students will be able to suspend a provider if conditions of registration are not met. It may also de-register a provider permanently.

Ability to launch courses with an accreditation partner: No change, but the Office for Students could be given reserve powers to validate taught awards or foundation degrees.

Ability to obtain taught degree-awarding powers: In the past, this could be a six-year process involving Whitehall and HEFCE. In future, the Office for Students will be able to award foundation or taught degree-awarding powers to alternative providers for a three-year probationary period from the day they launch. It will also be able to revoke such powers once they are awarded.

Ability to obtain university title: Previously, the process and criteria were set by the Department for Business, Innovation and Skills (since renamed the Department for Business, Energy and Industrial Strategy) and administered with the help of HEFCE and the QAA. In future, the Office for Students could obtain the sole right to award or revoke university title.

Designation of regulated courses for receipt of student loan funds: This process was set by BIS and administered by HEFCE in conjunction with the QAA and the Student Loans Company. It will, in future, be done solely by the Office for Students.

Regulation or control of tuition fees: There is no control over tuition fees at alternative providers currently, but in future Approved (fee cap) providers will be subject to a cap of £9,000 a year, plus an inflation adjustment depending on performance in the TEF.

Ability to recruit international students: Approved and Approved (fee cap) providers may apply to obtain Tier 4 sponsorship from the Home Office.

Ability to access public funds for teaching and research: Alternative providers have been unable to obtain public funds for teaching or research. The Bill gives the Office for Students the power to give funds to any registered Approved (fee cap) provider for teaching and enables Research England to fund research in Approved (fee cap) providers.

Requirement to agree Access and Participation Agreements: Alternative providers have not previously had a relationship with the Office for Fair Access (OFFA), but providers that opt for Approved (fee cap) status will need to submit Access and Participation Agreements to the Office for Students.

Requirement to subscribe to the Office of the Independent Adjudicator: This is already a requirement of all those on the HEFCE Register, and will in future be a condition for any registration with the Office for Students.

Publication of general information, such as on student numbers and graduation rates: This has been required of all those on the HEFCE Register and will become a condition of registration with the Office for Students. The Office for Students may also require this from an unregistered provider.

Publication of annual report and accounts: This has not been a formal HEFCE requirement, but it will be a mandatory condition of registration with the Office for Students.

Review of the quality of higher education: Reviews have been undertaken by the QAA and, in future, a registration condition of the Office for Students may require the quality or standards 'to be of a particular level'. This will be assessed by its designated agent for quality assurance reviews.

Monitoring of a provider's governance documents and practice: At present, applicants for degree-awarding powers and university title have to undergo a check on their governance. In future, such checks will apply to Approved and Approved (fee cap) providers with increasing rigour.

Student protection plans: At present, Tier 4 checks require providers to have arrangements allowing students to complete their course if the institution closes. Having a student protection plan will now be a requirement of the Office for Students applying to all providers with publication of the plan a registration condition.

Powers of entry and inspection: Should there be breaches of conditions, the Office for Students will have the power to enter and inspect any provider in order to protect taxpayers and students.

The legislation is limited to those providers that register with the Office for Students and some alternative providers may choose not to register, even if their awards are validated by a recognised body.

Interrogating the Higher Education and Research Bill

Is it too detailed? The Office for Students has been given broad powers, such as defining the conditions it sets for registration and setting quality standards for the designated quality assurance body to follow. One area where the level of detail may turn out to be overbearing is on access and participation. For example, there seems to be a lack of future-proofing in the specific requirements on the Office for Students over how greater participation and access are to be achieved.

Is it too centralised? There are only a few areas where governing bodies are given discretion in how they interpret conditions. On areas such as the annual monitoring of registration renewals and the transparency of data it is likely that the Office for Students will have a greater workload than HEFCE, probably resulting in a heavier compliance burden.

Are there gaps? The Bill does not cover all providers operating in England and therefore offers no protection to English students studying for overseas awards, whether face-to-face in England or online. There will continue to be an unregulated sector of higher education in England, as registration with the Office for Students is optional.

Since, as is usual for primary legislation, the Bill is silent on many points of detail, it is unknown how the Office for Students will decide on appropriate standards of good corporate and academic governance for the Basic and Approved categories of provider. For those in the Approved (fee cap) category, the Higher Education Code of Governance produced by the Committee of University Chairs is defined as the standard. However, this does not fit neatly with some alternative providers that have wholly commercial private sector structures.

The Australian model of threshold standards for governance is worth examining, although agreeing exactly what good governance comprises will continue to be a challenge.

Will it protect the reputation of English higher education?
By applying the same regulatory standards and processes to all higher education providers and by allowing the level of scrutiny to be based on risk, the way is open for the Office for Students to take a flexible approach. Small new alternative providers entering the sector will be under greater scrutiny than ancient foundations. The designated quality assurance agency will take the same line when reviewing quality outcomes.

In 2014, Nick Hillman suggested that there was 'unfinished business' as regards higher education legislation.[17] His paper discussed eight 'pinch points' in detail – six of which related to alternative providers. He asked whether a new legal framework for higher education should 'deliver the long promised level playing field with identical rules for all' or 'introduce a new regulatory regime that aims to provide equitable (rather than equal) treatment to different sorts of providers'. In the Bill, the first of these two options seems to have been adopted. However, its detailed interpretation by the Office for Students could still allow the second route, since there are references that allow the Office for Students considerable discretion in determining registration conditions for different types of providers, in waiving particular conditions and assessing whether the ongoing registration conditions are proportionate to the regulatory risk.

The proposal that new providers should be able to obtain probationary taught degree-awarding powers from day one places a heavy burden on those making the decision to approve such an application. How will they assess the promises of an eager but unknown provider with no track record? What expertise will be needed to delve into ownership, finance and governance arrangements as well as quality assurance?

It is central to the Government's arguments that alternative providers can sometimes deliver higher education that is more flexible, more relevant and cheaper than in the publicly-funded sector. Setting the cap on student loans for Approved providers at £6,000 embodies this belief.

This differential loan cap means some of the larger not-for-profit providers undertake research and will be offering 'research-informed teaching', yet will continue to be ineligible for public research funding. Conversely, some traditional universities might look jealously at the right to charge uncapped fees.[18]

In summary, can one say that the Higher Education and Research Bill is likely to achieve the Government's objectives, as described above?

Objectives	Will the Higher Education and Research Bill achieve this?
Developing a common regulatory framework	Yes
Improving oversight	Will depend on the monitoring of the registration conditions and the Office for Students' capability to act on any failures.
Providing an equitable playing field	Yes, depending on the Office for Students' discretion in applying the registration conditions.
Encouraging market entry by new providers	Possibly, but there are no specific incentives. Some barriers have been removed; however, the hurdles that remain could be burdensome, especially for the smallest providers.
Encouraging competition in the market place	In the disciplines and cities where alternative providers operate, they may well provide competition. Outside London and the south east and in STEM subjects, the competition will be more limited. Smaller alternative providers often provide specialist niche courses that are not available in the publicly-funded sector.
Broadening participation by attracting under-represented students	The Bill's emphasis on Access and Participation Agreements may help identify the success of alternative providers in achieving this. However, this will only be available for alternative providers with Approved (fee cap) status.
Encouraging alternative providers to innovate and challenge others	Easing market entry may encourage investment, but Australian evidence suggests this policy objective may not be achieved by legislative intervention.

Quality, student satisfaction and widening participation

There is limited evidence about the quality of what alternative providers offer. The summary by the QAA of the findings from 27 institutional reviews of alternative providers, referred to earlier, was not wholly positive.[19]

The BIS (2016) review of alternative providers included some evidence on student satisfaction. Overall, 75 per cent of full-time students and 82 per cent of part-time students were satisfied with the quality of their course, lower than the overall figure of 86 per cent from the 2016 National Student Survey for publicly-funded providers. Also the BIS survey reported that almost half of leavers (46 per cent) say they would be likely to choose a different institution if they were making their decision again.

A recent report from the Centre for Global Higher Education that studied alternative providers in six countries has a critical conclusion on quality in the private sector:

> *There is very limited evidence to suggest that the presence of the private sector, in the countries studied, has improved the quality of provision or driven down prices in either the public or private sectors. Indeed, relative to the public sector, the quality of provision in the private sector is often found wanting, while tuition fees are usually higher.*[20]

The report emphasises the importance of students having access to information on the quality of provision at alternative providers, if they are to make an informed choice – echoing recent US policy decisions on the Gainful Employment Rule and the College Scorecard. This focuses attention on the clauses of the Higher Education and Research Bill relating to the collection and publication of information about registered providers. Very little is known currently about alternative providers' academic performance, but this should become available for some of those registered with the Office for Students when the Bill becomes law. This will enable Ministers to assess how effectively alternative providers are challenging existing providers. It would also make it possible to copy the Gainful Employment Rule. The conjunction of low employment data and high default or poor loan repayment rates would send warning signals (for alternative and traditional institutions alike), at least after controlling for the characteristics of different student bodies.

The BIS (2016) survey of alternative providers has positive statistics on their contribution to widening participation. Survey respondents contained 58 per cent mature students (compared with 36 per cent in publicly-funded higher education institutions); 46 per cent were from an ethnic minority (compared to 19 per cent); and 15 per cent had a disability (compared to 9 per cent). Alternative providers have a higher proportion of part-time students in their population than traditional providers too. The Centre for Global Higher Education report confirms the positive contribution of alternative providers to widening participation in several (though not all) of the countries studied (for example, not Australia).

In view of the limited size of the alternative sector in England and the fact that many of those who teach in it have moved across from the publicly-financed sector, there may be little scope for large-scale innovation that has real impact. The preponderance of alternative providers in London and the south-east also suggests competition is limited geographically and to a small number of disciplines, such as business and management subjects. The role of regulation in directly encouraging competition is limited, but it can remove barriers, deliver common standards and ensure better information about outcomes for applicants.

Lessons from the USA

Private, non-profit higher education in the United States grew when the nation was developing, a pattern that is being repeated in other parts of the world today.[21] The US tops other countries in terms of the absolute number of student enrolments in higher education not funded by the state. Private higher education plays a large part in the US higher education system: in 2016, the Council for Higher Education Accreditation reported that of the 7,459 accredited degree-granting and non-degree-granting institutions participating in the federal Title IV (Student Assistance Program), 2,039 institutions were public, 1,964 were private non-profit and 3,680 were for-profit.[22] Perhaps partly because of the longevity of its private higher education sector, the US also has more elite or world-class private non-profit higher education institutions than other countries. However, this monopoly may be challenged over time as experts report on the global growth of semi-elite private institutions that increasingly compete with public universities just below the top tier.[23]

In the first decade of this century, the main story of US private higher education was the rapid growth of for-profit or proprietary post-secondary institutions. In 1999/2000, there were 721 Title IV two and four-year degree granting for-profit institutions in the US; by 2012/13, there were 1,451.[24] In 2000, there were just over 450,000 students enrolled in for-profit degree-granting institutions; by the high point of 2010, there were over two million enrolled students.[25] This growth was fuelled by large for-profit chains, such as the University of Phoenix, with multiple campuses and online provision that were responding to an under-served market of working adult learners.[26] Yet since 2010, for-profit enrolments have declined each year. The University of Phoenix, for example, now has 175,000 students from a peak of 460,000 in 2010 and has reduced the number of its campuses from 91 to 67.[27] In 2016, after 22 years as a publicly-traded company, Apollo Education Group, the parent company of the University of Phoenix, was put up for sale to a group of private investors.

The Observatory on Borderless Higher Education's analysis of the rise and fall of the for-profit private higher education sector is instructive.[28] Growth through the 1990s was fuelled by demand from non-traditional students (by age and background) and demand for flexible provision (part-time, distance-learning and career-focused education). The rise of online learning and the hype of the dotcom period, according to Garrett, gave the sector 'an aura of innovation and promise' that was popular with investors, students and state authorities. The larger education businesses undertook concerted political lobbying which secured a relaxation of recruitment rules, permission for wholly distance-learning institutions to receive federal student aid, and access to other financial aid for educating military personnel and veterans. Some of these education businesses shopped around for accrediting agencies that were perceived to have less stringent standards, moving their headquarters to the state where the accreditation was administered. Gaining accreditation from an approved accreditation agency provided access to federal dollars for student aid as well as formal recognition of qualifications gained by students. From 2000 to 2010, the largest education businesses became billion dollar enterprises and US for-profit higher education climbed to a 10 per cent market share.

This rapid growth raised controversy and was noted by the federal Department of Education.[29] Questions were raised about academic quality and student outcomes, including high drop-out and poor graduation rates among for-profit providers. Misleading advertising and deceptive recruitment practices came under scrutiny. An investigation by the Government Accountability Office found a widespread problem of deceptive recruitment practices in the for-profit sector, including misleading claims on graduate earnings.[30]

In 2010, the Department of Education published a 'Summary of New Final Regulations on Program Integrity'.[31] These included: tighter regulations on misleading or overly aggressive recruitment practices; clarifying state responsibilities; ensuring that only eligible students received federal funds; clarifying which courses were eligible for federal aid; and ensuring the amount of aid that is appropriate. The new regulations also included a measure to hold programmes accountable for preparing students for gainful employment. The new 'Gainful Employment Rule' uses employment and loan repayment metrics to evaluate student outcomes and will determine entitlement to federal financial aid. It was proposed in 2010, revised in 2014 and will come into force in 2017 and is likely to affect the private for-profit sector in particular.[32] This is because student loan debt – and loan defaults – have been higher among graduates of for-profit institutions than among those from public and private non-profit providers.[33]

The Gainful Employment Rule shows that, while Title IV Programs had long been concerned with expanding access to higher education, emphasis has spread to include the quality of education as well as labour market outcomes. As part of this, President Obama's College Scorecard initiative now provides data on access, affordability and outcomes for students for two audiences: students, their families and advisers; and researchers, policymakers and others interested in institutional performance.[34] In contrast, the UK's Key Information Set (KIS) aims to provide applicants with informed choices about institutions.

Negative publicity, declining recruitment, constrained access to funding and increased regulation put financial pressure on for-profit providers. Several of the major chains – Career Education, Education Management Corporation and Kaplan – sold parts of their businesses. Meanwhile, Corinthian Colleges, one of the largest for-profit education businesses in the US, collapsed. In 2000, Corinthian had 44 campuses and revenues of $170 million.[35] By 2011, it had 114 campuses and revenues of $1.7 billion. The following year, it made a loss and was under investigation at state and federal levels for aggressive marketing tactics, exaggerated job placement numbers and altered grades and attendance details. In 2014, Corinthian Colleges announced that it was to fold, leaving 72,000 students adrift and US taxpayers with a liability for $1 billion of federally-backed loans. The Department of Education had to step in to oversee an orderly liquidation of several of Corinthian Colleges' brands.

Following the demise of Corinthian Colleges, the Department of Education set up an inter-agency task force to share information relating to oversight of for-profit colleges. Later, in February 2016, a new enforcement unit was established within the Department of Education charged with investigating misconduct at non-profit and for-profit colleges, imposing administrative actions against such colleges and resolving student loan debt relief claims linked to fraud. The Department also prompted state regulators to tighten their oversight of for-profit colleges.

This scrutiny was part of a broader push by the Obama administration to bring more consistency and rigour into the regulatory trio of state agencies, accreditors and the federal government. In June 2016, the Department of Education announced it would release data on the performance of accrediting agencies, including metrics such as graduation rates, debt, earnings and loan repayment rates. Subsequently, it recommended the termination of the major national accreditor (responsible for accrediting Corinthian Colleges), the Accrediting Council for Independent Colleges and Schools, claiming an abuse of public trust in relation to its accreditation decisions.[36]

As England redesigns the rules for alternative providers, policymakers should pay attention to the US experience. Kevin Kinser has usefully illustrated a 'Regulatory Cycle' in which for-profit providers present themselves first as 'knights' nobly fulfilling the public mission – for example, of expanding or widening access to higher education and training opportunities and delivering better employment opportunities for students.[37] At this point, providers tend to be trusted and there may be limited or inadequate oversight of their operations. Then some providers are perceived as, or become 'knavish', acting in their own self-interest, and this creates governmental and public mistrust, leading to greater regulatory oversight. This cycle is not helpful to students, taxpayers or providers and need not be inevitable. With many countries experiencing significant expansion of private higher education, guidance is available from the US-based Council for Higher Education Accreditation and UNESCO.[38] In relation to for-profit higher education and quality assurance, this guidance suggests:

- education models should drive business models rather than the other way around;
- public-private partnerships can be productive;
- government should focus on outcomes as well as access;
- it is important to distinguish clearly between ownership, management and academic operations;
- it is reasonable for governments to apply the same standards of transparency and disclosure to all higher education institutions; and
- there must be a balanced dialogue between for-profit providers and governments that focuses on student outcomes.

The summary finishes with a question: if quality assurance is partly about risk, are for-profit institutions inherently more risky than public institutions? The evidence from the US does suggest higher levels of risk for students, government and taxpayers arising from the practices of some for-profit providers. It also highlights that quality assurance processes designed to focus on educational matters are inadequate to address complex financial and governance issues. Some of the risks in the US are inherent to the US system, but many are more general and need to be managed and mitigated.

The major issues thrown up by the US experience include:

- the amount of public funding that can be accessed by providers for the recruitment of certain groups of students (initially unrelated to their successful attainment or employment outcomes);
- rapid growth of for-profit providers, which was initially disregarded as a risk factor;
- reliance on several different accreditation agencies, with varying standards and varied practices, based on different models of education and designed in many cases as voluntary self-regulation for quality assurance purposes;
- cases of sharp practice by large for-profit businesses to achieve commercial goals, including accreditation shopping, deceptive marketing and recruitment tactics, or change of status from for-profit to non-profit (arguably to reduce pressures on the business, but also to reduce the requirement for disclosure of financial information); and
- dedicated political lobbying to create advantageous operating conditions, particularly those linked to the rules governing access to public funds.

In a recent publication by the UK's Centre for Global Higher Education, researchers highlight further lessons for the UK from the US experience.[39] They note a variety of trade-offs that need to be assessed carefully by government, for example, between regulation and quality assurance regimes on the one hand and the ability of private providers to respond swiftly and flexibly to changing demand on the other, or between facilitating the expansion of private provision by allowing students access to financial support and ensuring this represents value for money. They also point to the importance of publicly-available data, including reliable information for students and technical information for policymakers and researchers. This enables them to assess the claims and contributions made by private providers on public policy goals such as improved quality of provision, widened access, lower prices, increased choice and educational opportunity and innovation.

Lessons from Australia

For several decades, Australia made a clear distinction between public and private higher education. From the 1980s, there was expansion of a comprehensive public and peripheral private sector. The common terminology indicated separation and difference. Much as private providers in the UK are described as 'alternative providers', Australian private providers were regarded as 'other'.[40] As Australia has a federal system of administration, state legislation (as in the US) was important: until 2010, each private provider had to adhere to regulations linked to their state-based location and to the type of education offered (vocational, higher, secondary or primary).

The states exercised two types of control: protectionism for titles of universities and degrees: and legitimisation of providers. The main aim of regulation was to protect university provision. Private providers could offer qualifications that were not called degrees or they could participate in the accreditation processes. This situation created a conundrum for providers: if they met the regulatory requirements, they could lose their private distinctiveness; if they failed to meet the requirements, they could lose market share. Levy has described the tendency to shape accreditation systems according to the norms of the public sector and to require private providers to conform as 'coercive isomorphism'.[41] As the regulatory framework is being developed in England, this is a potential issue to be watched.

Policy changes towards the private sector in Australia and in England since the 1990s have followed similar directions, with parallels to the US. Reforms under different jurisdictions over the past two to three decades have aimed to open the public higher education system to competition, privatisation and marketisation.[42] The introduction of FEE-HELP (the Australian student loan system) in 2005 gave a significant boost to the number of private providers in Australia, as loans were made available to pay full tuition fees in public and eligible private higher education institutions.[43] The stated policy aims were similar to those in England: to increase the diversity of the higher education system and promote wider choice for students. The number of institutions offering accredited higher education courses reportedly grew from 86 in 1999 to 150 in 2007, with consolidation bringing numbers down to 132 by 2011.[44] Estimates of student enrolments in 2007 were 53,000 students or 5 per cent of total enrolments.[45] The types of private higher education provider in Australia are as heterogeneous as those found in England and follow similar patterns. They include:

- religious colleges;
- niche providers;
- campuses of big multi-national, multi-sectoral and multi-disciplinary private for-profit companies;
- medium-sized multi-disciplinary and multi-campus colleges;
- pathway colleges (providing pathways to universities);
- Technical and Further Education (TAFE) institutes; and
- private vocational colleges offering some higher education.[46]

Following the tuition-fee policies, further deregulation of the higher education sector continued with a review of the National Protocols for Higher Education Approval Processes in 2000 (with Revised National Protocols introduced in 2007). The policy aim continued to be greater diversification of the system, but with a view to enhancing global competitiveness. A parallel development – again mirroring developments in the US and UK – was the growing commercialisation (or privatisation) of publicly-funded universities. Some universities created privately-funded entities attached to the public university in an effort to increase and diversify income streams in the light of reductions in public funding.[47] Differences between 'public' and 'private' became increasingly blurred. As Stanford comments:

> *Just as Australian universities are integrating privately funded higher education provision into their portfolio, so too is Commonwealth [federal government] policy increasingly integrating private provision into the higher education system.*[48]

In the Australian context, integration meant not only moving towards a single regulatory system for public and private higher education providers – in English terms, 'levelling the playing field' – but also shifting from state control to control at central government (Commonwealth) level through the new Tertiary Education Quality and Standards Authority (TEQSA), established in 2011.

The risks to the higher education systems of the UK and Australia that regulation is designed to address include risks to:

- students from poor quality provision;
- taxpayers in relation to government funding; and
- the international reputation of the higher education system.

The Australian mechanisms to control providers are institutional registration and course accreditation, continued from earlier regulatory regimes. From 2011, private providers were offered a new pathway to university accreditation. Melbourne College of Divinity, one of Australia's oldest theological colleges, was the first to gain such accreditation, becoming the University of Divinity and the first specialised university in Australia. This university accreditation (which is renewable following a successful review) gives eligibility to federal funding for research, Australian postgraduate research awards and international postgraduate research scholarships.

Since 2011, Australia has been introducing a new regulatory system which was approved in 2015: the *Higher Education Standards Framework (Threshold Standards)*.[49] The new Threshold Standards are enshrined in legislation (as are the powers of TEQSA) and they come into force from the start of 2017. They were agreed after extensive consultation with all providers and other stakeholders and have a strong focus on students' interests. Part A covers seven domains: student participation and attainment; learning environment; teaching; research and research training; institutional quality assurance; governance and accountability (including corporate and academic governance); and representation, information and information management. Part B covers the criteria for higher education providers. The opening paragraph of Part B signals the unity of the new system:

> *All providers of higher education that gain registration by TEQSA through meeting the Higher Education Standards Framework become 'Higher Education Providers'. This title*

signals to the public that the provider is a bona fide provider of quality higher education in Australia.[50]

Providers can seek approval for different categories of higher education provider. There are stringent criteria to achieve registration as an 'Australian University'. The higher education provider must:

- offer broad fields of study;
- have been authorised for at least five years to self-accredit at least 85 per cent of its total courses of study including Master's and Doctoral degrees in at least three of the broad fields of study;
- undertake research leading to the creation of new knowledge and creative endeavour at least in those broad fields where research degrees are offered;
- undertake sustained scholarship in all fields where courses are offered;
- offer an extensive range of student services;
- demonstrate engagement with local and regional communities; and
- demonstrate a commitment to social responsibility in its activities.

Equal stringency is applied for registration in the 'Overseas University' category. The higher education provider must be recognised as a university in its home country by an authority with standing and standards acceptable to TEQSA, and the higher education provider must meet criteria that are equivalent to those for the Australian University category.

At present, it would seem that the Australian government – with wide support from all types of provider – has gone further in protecting students, taxpayers and the international reputation of its higher education system than is currently proposed in the English context. It has also gone further in enabling the private sector to access research funding if relevant conditions are met. Nonetheless, many of the issues that have arisen in the US over for-profit providers have also been evident in Australia. Mahsood Shah and Chenicheri Sid Nair have found improvements are needed within private higher education providers on: institutional governance; academic leadership; investment in permanent staff and their development; investment in student support; and reduced reliance on international students.[51] In relation to accessing public funding and the welfare of students, alleged institutional abuses have also been noted and there has been volatility in the sector, with the closure of campuses or collapse of institutions, leaving students stranded.[52] It is clear that legislation is not a sufficient guarantor of student or taxpayer protection without monitoring practice, transparent data and quality-enhancement measures.

The Centre for Global Higher Education has drawn more general lessons for the UK from the Australian experience.[53] They note that access to federal and state-funded financial support has boosted expansion of the private sector. However, unlike the US, for-profit institutions in Australia have contributed relatively little to widening higher education participation for disadvantaged and low-income groups when compared to public sector providers. The researchers found private providers are more expensive, concentrate on recruiting international students paying full fees and lack the resources and infrastructure to support disadvantaged and academically weaker students. They also claim there is no evidence to suggest competition between universities has had a positive impact on quality and innovation. Among successful institutions, competition has produced replication of strategies aimed at enhancing or maintaining research levels and prestige. The main competition for students has been among institutions that cannot recruit sufficient students, producing increased marketing costs and lower admissions criteria with the potential to affect quality.

Competition and challenge for existing providers from private providers has been felt most keenly in Australia in the vocational education and training (VET) sector. There have been a series of scandals that echo many of the issues in the US and, indeed, in the UK in relation to HNCs and HNDs.

In 2009, a new system of vocational loans came into effect in Australia, putting vocational students on a more equal footing with university students who did not have to pay up-front fees. The VET FEE-HELP scheme for vocational education and training was expanded in 2012 by removing the original requirement for colleges to have credit transfer arrangements with a higher education provider (later, reportedly, seen as a mistake).[54] Between 2012 and 2015, the number of students accessing the scheme grew from 50,000 to over 270,000. There were reports of unscrupulous and dishonest recruitment tactics by private colleges: the Phoenix Institute, a large private provider, was shown to have lured vulnerable people onto online diploma courses they would never complete. Phoenix was later deregistered and subsequently shut down. In 2015, the

Abbott Government placed an emergency freeze on VET FEE-HELP loans and announced a redesign of the scheme. In early 2016, the Australian Competition and Consumer Commission launched court proceedings against the Australian Institute of Professional Education for engaging in unconscionable conduct and misleading students.[55] In October 2016, the Government announced that the VET FEE-HELP scheme would be shut down and replaced by a new, less-generous scheme.

The Australian Government appear to have learnt the lesson – as in the US – that access to public funding for new providers needs to be more tightly controlled and monitored than was originally envisaged.

Conclusion

Given that the English alternative provider sector is so broad, with at least 600 organisations, it will be a challenge for the Office for Students to capture most of the key providers in its registration and monitoring processes. HEFCE has overseen about 160 English higher education institutions (excluding HE in FE) that are generally well-established and with substantial administrative capacity. The alternative provider sector is different, with a large number of small providers and less information available about what they do. The Impact Assessment estimates that as many as 553 providers will be 'outside the system' in 2018/19 compared with 207 in the three categories within it.[56]

The Centre for Global Higher Education's six-country survey of alternative providers contains some important lessons. If a government wishes to facilitate the expansion of higher education by encouraging alternative providers, it should:

- ensure that students' investment in higher education represents value for money;
- regulate to ensure that providers do not abuse publicly provided funds; and
- ensure that students' access to financial support represents a good use of public money.

It is not absolutely clear that the Higher Education and Research Bill provides the information needed to answer these points fully. While the legislation will go some way towards meeting the Government's policy objectives, policymakers should note the following points.

1. The Bill does not compel any certification or even a log of foreign providers operating in England.

2. There is no mention of applying a *de minimis* principle to very small alternative providers or any suggestion of a less rigorous set of registration and reporting conditions for them.

3. The Bill does not propose that the Office for Students should link alternative providers' student outcomes, as measured by graduate employability, and the students' investment in loans for maintenance and tuition.

4. As the new regulatory framework will only apply in full to providers applying for Approved (fee cap) status, there will still be limited information about the alternative provider sector as a whole.

5. The new regulatory framework will be labour-intensive for the Office for Students – the Impact Assessment estimates that it will oversee 580 institutions in 2018/19, rising to over 800 ten years later – which may be hard to manage, leading to reputational risk for the whole UK higher education sector.[57]

6. It is instructive that 95 per cent of the new entrants to the market in the last five years have been for-profit providers. In the USA, such providers have invested heavily in marketing and adding to shareholder value rather than strengthening their academic offering.

7. Regulation must be adaptable to changing circumstances – and is only useful if there is the capacity and capability to enforce the rules rigorously. The Office for Students must be ready to change its regulatory framework and funding approach in response to new pressures as they arise.

8. The current proposals for probationary taught degree-awarding powers for new market entrants are particularly high risk.

The Government's aim of encouraging new entrants to offer healthy competition and innovative practice remain long-term targets. But they are not guaranteed to be achieved through the policies and associated legislation currently in train.

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In this HEPI paper, two authors with considerable expertise in evaluating higher education systems around the world assess higher education institutions that are not funded directly by taxpayers – known in the UK as alternative providers.

Since the start of the century, alternative providers have been growing rapidly. This raises a number of important policy questions – particularly in relation to access, quality and outcomes.

This pamphlet:

- assesses the current state of play;
- looks at the lessons from the USA and Australia; and
- makes some policy recommendations for the future.

It rejects the overly optimistic idea that alternative providers are always beneficial and the overly pessimistic that they always cause problems. Instead, it provides a more considered and useful critique and calls for regulation to respond as the higher education sector continues to evolve.

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