



Higher Education Policy Institute

Where do we go from here? Quality assurance in English higher education

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Quality assurance of higher education in the UK

The relationship between regulation and quality assurance of higher education in the UK has a long and complicated history, which contributed to the foundation of the UK Quality Assurance Agency for higher education (QAA) in 1997. The QAA, a global leader in quality assurance and standards in higher education, has two unique features. The first is that its remit extends into the regulatory borders of the home nations, higher education being a devolved matter, encompassing the entire UK. This is significant as some comparable higher education systems in nations with devolved higher education policy (such as Canada and the United States) do not have the benefit of a common set of quality assumptions. This common set of assumptions for internal and external quality assurance is articulated in the UK *Quality Code*.

The second unique feature is that the QAA, and its common set of quality assumptions, is the product of negotiation between the public interest and higher education providers themselves. This 'co-regulatory', sometimes known as 'shared responsibility', approach to regulation has been a feature of the pan-UK approach to regulating higher education and has been augmented for many years by meaningful involvement of current and recent students in quality assurance activities.

The Higher Education Research Act (2017)

Protection for shared responsibility of quality assurance and standards is articulated in the Higher Education Research Act (2017), sometimes known as HERA, which reconfigured the regulatory architecture for England in response to the significant changes to the financing of higher education introduced in 2012 with a £9,000 domestic undergraduate fee cap (increased to £9,250 in 2017) coupled with income-contingent loans.

The new maximum fee level, increased from a previous cap of £3,290, included a plan for radically reducing operating grants from government via the Higher Education Funding Council for England (HEFCE). In addition to aiming for a reduction in public spending, one of the policy objectives of this shift from operating grants to student fees, underpinned by a student loan programme featuring income-contingent loan repayment after graduation, was to compel the English higher education sector to respond to student demands by

creating a market of provision with providers competing for student fees. At the time of the introduction of the new fee level, universities and other higher education providers expected to receive more operating funding via student fees than they could previously access through operating grants. The market was also encouraged by the removal of student number caps.

An outcome of the shift from funding higher education by public grants to student fees was the pre-HERA regulatory architecture, led by HEFCE, could no longer operate effectively. HEFCE's primary regulatory levers, such as enrolment-led operating grants to universities, were effectively neutralised with the main source of operating funding moving from grants to student fees. Furthermore, an increase in so-called 'alternative' higher education providers – private institutions able to recruit domestic students and attract student fees as well as often recruiting overseas students – represented a section of higher education in England over which HEFCE had no regulatory jurisdiction.

With the introduction of the higher fees, it was widely expected that increased regulation of universities would follow. The Coalition Government at the time had been badly affected by the political fallout from the introduction of higher fees and had no appetite to legislate. By the time of the 2015 General Election there were, in effect, three official lists of higher education providers in England: one of higher education institutions overseen by HEFCE; another of alternative providers by the Department for Business, Innovation and Skills (BIS); and the third by the Home Office relating to visa sponsorship eligibility.

Each of these registers had different purposes and aims, with little clear articulation between them. For example, the Department for Education wanted to 'let a thousand flowers bloom' with providers joining (and potentially exiting) the sector driven by student demand, whereas the Home Office wanted to close what it saw as poor-quality providers. The principal common feature of these three registers was that the QAA carried out reviews on providers on each register and these reviews were conducted against the expectations of the UK *Quality Code*, providing not just a consistency across English higher education but across the UK.

HERA introduced a new regulator and legal framework for regulation of higher education in England. It created the Office for Students (OfS), designed to serve as a market regulator acting in the public and students' interests by requiring the maintenance of quality and providing assurances on the efficacy and health of higher education providers. The policymakers behind HERA wanted the OfS to promote choice and diversity of higher education provision in England and empowered the new regulator to bring together most, if not all, of the information on the three pre-existing registers.

The new legal framework provided new regulatory levers, beyond withholding operating grants, with the creation of a recognised Register of higher education providers and membership on the Register being a pre-condition for any organisation's students to qualify for student loans, to sponsor international students for study visas and to access other sources of funding, among other privileges. There are two categories of registered provider: 'Approved' and 'Approved (fee cap)', the former restricting a provider's students to lower fee loans, exempting the provider from the need to have an approved Access and Participation Plan as well as excluding them from research and teaching grants. The OfS codified membership on the Register with a series of 'conditions of registration' ranging

from quality and standards to financial health, good governance, and commitment to access and participation objectives.

Protection for shared and independent Quality Assurance

However, while giving responsibility for ensuring higher education providers meet public expectations of quality to the OfS, Ministers recognised that judgements on quality and standards in higher education should be shared with the sector itself, where expertise exists and where shared responsibility had served the state, students, and the collective reputation of England's higher education sector domestically and internationally.

Consequently, HERA enables the continued existence of shared responsibility by allowing the OfS to work with an independent 'designated quality body' (DQB), appointed by the Secretary of State for Education. The DQB, while independent and helping ensure quality decisions are taken fairly and avoid potential political interference, is expected to work closely with the OfS. Moreover, the OfS can issue directions to the DQB about its assessment functions.

HERA describes the DQB as having a direct link to the existing higher education sector while being capable of making judgements without fear of undue influence from individual providers and free from potential political interference. HERA Schedule 4, Section 4 defines the organisation eligible to serve as DQB:

... if the body satisfies conditions A to D.

(2) Condition A is that the body is capable of performing the assessment functions in an effective manner.

(3) Condition B is that—

(a) the persons who determine the strategic priorities of the body represent a broad range of registered higher education providers,

(b) the body commands the confidence of registered higher education providers, and

(c) the body exercises its functions independent of any particular higher education provider.

(4) Condition C is that the body consents to being designated under this Schedule.

(5) Condition D is that the body is a body corporate and is not—

(a) a servant or agent of the Crown, or

(b) a body to which the Secretary of State appoints members.

This definition of the DQB includes two key aspects:

- 1. Independence:** HERA implies that the DQB, as the default quality assurance advisory body, has a certain level of independence and places value on that independence, even though the OfS is legally required to hold the DQB to account for its assessment functions.

- 2. The ‘confidence of registered HE providers’:** This could be interpreted in a few ways, including that the DQB has a level of expertise in its functions that is difficult to challenge. It may also mean the sector trusts the impartiality of the DQB. The independence of the DQB, and the trust of the sector in the DQB, are important considerations as to why the DQB is a key element of the English higher education *Regulatory framework*.

In the absence of an organisation eligible to serve as the DQB, HERA allows the Secretary of State to permit the OfS to assume these functions, with protections for institutional autonomy and recognising sector expertise in the setting of standards.

The Designated Quality Body and restrictions on the OfS

Assuming the Secretary of State for Education can appoint a qualifying organisation, Section 27 of HERA is designed to ensure the OfS could not unilaterally decide to take all quality and standards functions in-house, which would end the shared approach to quality and standards.

When a qualifying DQB as defined by the Act has been designated, it is this body that should be responsible for the assessment of standards in higher education in England. Section 27 states:

(2) *“The assessment functions” are—*

(a) the functions of the OfS under section 23 (assessing the quality of, and the standards applied to, higher education), and

(b) the functions of the relevant body under section 46 (advice on quality etc to the OfS when granting degree awarding powers etc).

(3) *Where a body has been designated under Schedule 4 to perform the assessment functions, the functions under section 23—*

(a) so far as they relate to the assessment of the standards applied to higher education provided by a provider, cease to be exercisable by the OfS, and

(b) otherwise do not cease to be exercisable by the OfS.

Protections for institutional autonomy

Multiple sections of Part 1 (Sections 2, 36, 74, 77, 85) of HERA provide protection for university autonomy. The Act recognises the importance of putting a barrier between the regulator, which may be subject to political pressure or interference, and issues like standards of admission and degree standards, two essential planks of institutional autonomy.

Standards, as applied to higher education institutions, is a concept often closely linked to institutional autonomy and academic judgement. Consequently, HERA rightly limits the scope of powers the OfS may exercise in this space by directing the OfS to apply ‘sector-recognised’ standards and the OfS could only adopt such standards if they accord with guidance determined by persons representing ‘a broad range of higher education

providers' and commanding 'the confidence of registered higher education providers' (HERA Part 1, Section 13, Paragraphs 2 and 3, and Section 23 paragraph 3).

These elements of HERA make clear the expectation for the sector to determine what constitutes 'sector-recognised standards' in English higher education. These limits on the judgement and powers of the OfS further cement the necessity of sector input in the English higher education *Regulatory framework*, and the importance of the DQB to the OfS when executing its statutory responsibilities.

Interpreting the role of the OfS

On 20 July 2022, the QAA announced that it would be stepping away from the role of DQB to avoid risking its registration with the European Quality Assurance Register for Higher Education (EQAR), which was under threat as a consequence of the approach to quality assurance being pursued in England. The UK government is a member of EQAR and it is a basic principle of European Standards for quality, which UK Ministers have continued to endorse, that agencies have to be able to operate independently. The QAA's role as DQB continues until 31 March 2023.

The impending resignation of the QAA as the DQB may ultimately eliminate the need for the OfS to consult with an independent quality assurance body. In fact, many of the controls and restrictions placed on the OfS in relation to quality and standards are not enforceable in the event the Secretary of State is unable to appoint an organisation eligible to serve as the DQB.

However, the sector might expect the OfS would rely on, and consult with, the QAA on quality and standards issues before 31 March. Yet the OfS conducted two major consultations on proposed changes to the quality and standards requirements of the existing *Regulatory framework* for English higher education, the first launched in November 2020 and the second in July 2021. In both cases, the consultations had clear implications for quality and standards assessment in higher education and the sector would have expected the DQB to be directly involved in the formulation of the consultations' proposals.

The sector would no doubt prefer the OfS to work closely with a DQB on the development of policy issues, but there is no obligation placed on the OfS to consult with the DQB on issues of policy. QAA demitting its role as DQB raises questions about the nature of the relationship between the OfS and the QAA, meaning the principle of protecting regulation of quality and standards from political interference articulated by HERA may not be assured.

Independence

It is apparent from reading Hansard on Parliament's consideration of the Higher Education and Research Bill that Ministers and Parliament anticipated a partnership between the OfS and its designated bodies. This point was emphasised in an unprecedented joint letter on 12 January 2023 from four of the higher education representative and mission groups to the Chair of the Education Select Committee, Robin Walker, expressing concern with the DQB's responsibilities being taken on by the OfS:

The need for an independent body to assess quality and standards was stressed by the Lords during the passage of HERA and ultimately resulted in the Government amendment to introduce the DQB function. If the OfS were to take on DQB responsibilities permanently it would lead to a loss of independent oversight of quality assurance in England and go against international standards.

It is difficult for those outside the relationship to see the partnership evidenced from the approach the OfS has taken on quality oversight.

While it may exist, this would be an obvious area for any forthcoming review of HERA by Parliament – or indeed if the OfS ever ended up in Court being challenged on its interpretation of HERA, this Parliamentary record would have significance.

Conclusions

Having been enacted back in 2017, HERA is now overdue for a formal review to ensure its effective implementation. This review should include consideration of the OfS and execution of its statutory responsibilities under HERA. Given the QAA's announced demission of its role as DQB, how the OfS has managed its relationship with the DQB, and whether this has been in keeping with both the letter and spirit of HERA, should be a focus of any such review.

There remains a broader issue of the international perception of UK higher education. Whether or not the Secretary of State for Education is able to identify a new DQB, or if the OfS takes quality assurance functions 'in-house', any role the QAA had in uniting standards across UK higher education will have been compromised.

To date, the UK has enjoyed a strong international reputation for higher education provision. This can only be diminished with England abandoning a common agency for quality and standards. This is very poor timing just as the UK needs to be maximising the impact of our world-leading sectors, including higher education. If the UK seeks to leverage the major role our higher education providers play in trade and diplomacy, one would expect government to seek to ensure a regulator works to maintain and support the strength of the sector.



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