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What is wrong with franchise provision?

Professor Nick Braisby, Ian Harper and Professor Damien Page

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BUCKINGHAMSHIRE NEW UNIVERSITY
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About the Authors

Professor Nick Braisby is the Vice-Chancellor of Buckinghamshire New University.

Ian Harper is the Commercial and Business Development Director of Buckinghamshire New University.

Professor Damien Page is the Deputy Vice-Chancellor of Buckinghamshire New University.

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Introduction

Franchise provision is an established part of the UK higher education landscape. Franchisors enter into agreements to allow other providers – franchisees – to deliver all or part of an educational programme that the franchisor approves and owns. This has traditionally allowed providers without their own degree-awarding powers at least the following benefits:

- offering provision in localities less well-served by higher education;
- a transfer of knowledge and expertise from the franchisor, especially in relation to quality and standards;
- less burdensome entry into the market facilitated by the established administration and infrastructure of the franchisor; and
- access to staff development and the research expertise of the franchisor.

Franchisors also benefit through at least the following:

- widening access to their own degrees;
- a transfer of knowledge and expertise from the franchisee, especially in relation to delivery models;
- helping to raise standards across the sector; and
- raising awareness of the franchisor's brand and identity.

Yet in spite of these benefits, franchise provision has very recently come in for much criticism and questioning from government, regulators and policy commentators. Most recently, the National Audit Office has considered that there is a risk of fraud and abuse of student loan funding at franchise providers and has made recommendations to strengthen assurance.[1] But most of these recommendations concern the Department for Education, the Office for Students and the Student Loans Company, especially the ways in which they should better coordinate their activities. Notably, the Office for Students is recommended to raise awareness amongst franchisors of the risks and benefits of franchise provision, and to share with them good practice, especially in relation to student recruitment in this part of the sector.

These recommendations, while falling short of immediately placing new requirements on providers, will however only add to the pressure that is currently building for the sector to demonstrate that it can manage franchise provision better. Franchise provision will need to meet ever-increasing assurance requirements, including the need to protect public funds from the risk of fraud and students from the risk of mis-selling. If the sector fails to respond to this challenge, there is a real risk that the franchise baby will be thrown out with the bathwater. All that is good about franchise provision could be lost.

This paper therefore seeks to address two central questions:

i. What is good and bad about franchise provision?

ii. What should be done about it?

It proposes two key developments:

i. a robust sector-owned code of practice to be adopted by franchisors; and

ii. rapid, light-touch and low-cost regulation to ensure that franchisees are incorporated into a new section of the Office for Students' Register.

These would be significant developments, and perhaps not universally popular, but our argument is that without these essential controls the sector will not be able to provide clear assurances that it is managing franchise provision to safeguard the public interest, including the interests of students.

The paper is in three parts.

Chapter 1 outlines data and evidence from within the sector and from our own institution, Buckinghamshire New University, which shows the benefits of franchise provision as well as some of its challenges.

Chapter 2 considers what franchisors and franchisees could do differently to give greater assurance to stakeholders that the investment from the public purse is warranted, protected and used for the purpose for which it is intended – and is delivering benefits for students and for society. It also considers things that are currently difficult for providers to do without further reform but which would provide even greater levels of assurance. We offer these considerations as a sketch of a future code of practice for the sector to follow.

Chapter 3 considers the benefits and pitfalls of further regulation and argues for two reforms which would give greater levels of assurance – a new and robust sector-wide code of practice supplemented by a limited extension of quick and light-touch regulation.

The Conclusion offers remedies in the context of the prescription in the Higher Education and Research Act (2017) that the sector be encouraged to compete and to collaborate. We argue that through franchise provision the sector has responded positively to the Government's wish to see greater competition. But giving stakeholders even greater levels of assurance will require providers to place a fresh emphasis on the Act's other injunction – to collaborate.

1. Franchising

Franchise provision has recently attracted much interest from the media, higher education policy experts, the Office for Students (OfS), the Government and the National Audit Office. In many respects, this area of the higher education sector captures in microcosm some of the broader concerns about the sector as a whole – pockets of apparent poor quality, growth in foundation years, expansion of Business and Management provision – all driven by an underlying concern to ensure the public money that flows into higher education is spent effectively on the purposes for which it is intended.

Yet franchise provision delivers many benefits too. Our University has supported franchise provision for a long time. We do so in part because of our values and mission: we treasure inclusion and diversity within our community and have always regarded opening the doors of higher education to people who might otherwise appear to be shut out as one of our core purposes. As a result, a high proportion of our students are taught at partner colleges. So if franchise provision is a source of concern, then institutions like our own have a responsibility to address them. We believe that, above all, what is needed is a sector-owned solution and we hope this paper will help generate discussion on what that solution should be.

At the heart of franchise operations is a relationship – between franchisor and franchisee. For many institutions which operate these relationships, they are an essential part of their business model and, as in any business relationship, what is needed above all is stability.

But franchise provision has changed significantly in the past few years. Data from the Office for Students show that in 2021/22 the number of students in subcontracted-out franchise provision amounted to 110,570 or 4.6% of all registered student numbers, against a corresponding figure of just 51,340 or 2.5% in 2018/19.[2] More than 90% of this growth came from full-time undergraduates. Indeed, considering only full-time undergraduates, between 2018/19 and 2021/22 the numbers in franchise provision grew by an extraordinary 165.2% − from 34,040 to 90,270 − against growth of 9.2% in the sector as a whole.

There are at least three drivers of this change.[3] In policy terms, one is financial, one is political and one is social.

Financial Context

Subcontracting-out provision can bring a new income stream that a provider is not able to tap easily by acting alone and, as domestic tuition fees have continued to fall in real-terms, more and more providers are identifying the need to increase income from other sources. Even more may start to consider franchise provision given recent volatility in the international student market and the strong association for many providers between their international student numbers and their overall financial health.

According to the Key Financial Indicators from the Higher Education Statistics Agency (HESA), the financial health of individual providers deteriorated markedly between 2018/19 and 2021/22. In 2018/19, 398 providers were, on average, reporting a surplus before pension adjustments of 1.98% of total income. In 2021/22, 534 providers were, on average, reporting a deficit before pension adjustments of -3.09%.

More recent analysis by PwC that was commissioned by Universities UK (UUK) shows 40% of providers are forecasting a deficit in 2023/24. And a sharp decline in international recruitment suggests that number could swiftly rise to 80%.[4]

From the perspective of Buckinghamshire New University, this is certainly not the whole story, nor even its greatest part. Higher education is now a more open sector. Perhaps the most intriguing statistic above is that the number of providers making financial returns to HESA has increased by 34% in just three years.

Market Entry

The Higher Education and Research Act (2017) was motivated in part by the Government's desire to offer students more choice in how their higher education is delivered and by what kinds of institution.[5] Indeed, Section 2 of the Act places a 'General duty' on the Office for Students 'to promote quality, and greater choice and opportunities for students' and 'to encourage competition between English higher education providers'. As the Act makes clear, this includes choice from among a diverse range of provider types. This was, in fact, one of the amendments the Government introduced in response to parliamentary scrutiny. Speaking to Universities UK in February 2017, Jo Johnson explained the thinking behind the Bill. Key was his desire to increase flexibility in how and where people could access higher education. He also explained his view that market entry – new institutions delivering higher education – was a key driver of excellence in the system as a whole.[6]

Much of this will be well known, but there are two aspects which deserve closer attention: the quality threshold for new institutions, which Jo Johnson made clear should be set high; and the need for the Office for Students to have regard to the benefits for students and employers resulting from collaboration between higher education providers.

The White Paper *Success as a Knowledge Economy* made the point even more clearly: 'Making it easier for [new and innovative providers] to enter and expand [the higher education market] will help drive up teaching standards overall'.[7] Anticipating that some new entrants would still prefer to enter higher education through partnering with an established provider, the White Paper said: 'So we also need to make it easy for high quality providers to get their provision validated by another provider if they wish, and in so doing introduce more flexibility, competition, and choice into the system.'[8]

While we expect few providers will have been re-reading the White Paper when taking decisions about collaborative provision, it is indisputable that existing providers of higher education have been expected to facilitate new entrants to the market. Moreover, failure to do so might even be viewed as anti-competitive: the White Paper intended the Office for Students to have the powers to designate a 'validator of last resort' in case existing providers failed to play their part.[9] But as the recent report of the House of Lords Industry and Regulators Committee makes clear, some feel it is still too difficult for new providers to enter the market, with Lord (Jo) Johnson arguing the current system remains 'an inherent brake on innovation and competition'.[10]

Widening Participation

The *Success as a Knowledge Economy* White Paper had a multi-part subtitle: *Teaching Excellence, Social Mobility and Student Choice.*

The document said:

> *But there is more to be done for our university system to fulfil its potential as an engine of social mobility, a driver of economic growth and cornerstone of our cultural landscape. Access remains uneven, with young people from the most disadvantaged backgrounds 2.4 times less likely to go into higher education than the most advantaged.*

The White Paper also made plain that the prime means of improving social mobility was to be the new legislation's provisions to reform the market and improve competition.

So, if franchise provision arguably offers students greater choice of how and where to study, what are its benefits to social mobility?

The university sector has been focused for many years on widening participation in higher education, removing barriers that prevent some communities and demographic segments from accessing higher education. This is not, of course, the same as social mobility, but it is one possible means to promote it. Unfortunately, even with widening participation, there is no single clear and comprehensive dataset that fully answers the contribution of franchise provision for the sector as a whole. For Buckinghamshire New University (BNU), however, we can give an unqualified answer: our experience and data tell us that franchise partners significantly widen participation in higher education.

Three indicators stand out.

i. We ask our students whether they are the first in their family to study at university. Of students taught and registered at BNU, 51% tell us they are. However, when we ask our students taught at franchise partners the same question, 78% indicate they are the first in their family to attend university.

ii. BNU is unusual in attracting a high proportion of mature learners. 62% of students taught and registered at BNU enter as mature learners. However, of our students registered at BNU but taught at a franchise partner, that number rises to 95%. Within Business and Management, 73% of BNU taught and registered students are mature learners while at our franchise partners 98% of students are mature.

iii. The Index of Multiple Deprivation (IMD) measures local areas within England by their level of deprivation. The population is evenly distributed among quintiles, so 20% of the population live in areas classified as IMD quintile 1, the most deprived parts of the country, and 20% of the population reside in quintile 5, the least deprived parts. Four-in-10 (39%) students studying Business and Management taught and registered at BNU come from IMD quintiles 1 and 2, but this figure rises to seven-in-10 (69%) for students taught at franchise partners.

While these data are compelling, perhaps more telling are the stories told by our students studying at franchise partners. Having spoken to many of these students, we know most did not believe they had the option to pursue more traditional routes into higher education, in spite of all the efforts of traditional universities to reach out to underrepresented populations. Many chose to study at a partner college because they could not uproot themselves in order to move closer to a university. Local provision is often their only option and we know our partners pride themselves in offering truly flexible delivery, allowing students to fit study into increasingly complex lives.

Some of our partners allow students to choose their teaching days and offer a pattern of teaching on Saturdays and Sundays, enabling students to continue with Monday to Friday paid employment. Many students told us they chose to study Business and Management because they saw that as a means to obtain the skills needed to realise their long-term ambitions of starting their own business.

Student Outcomes

If institutions franchise their provision for reasons of finance, market entry and widening participation, what of Jo Johnson's other expectation, that new entrants should enter the market already meeting high-quality standards?

On the face of it, franchise provision appears to have a problem. The Office for Students's Student Outcomes dashboard shows student outcomes tend to be worse for students taught at franchise partners on the Office for Students' Register.[11] Take continuation: students taught and registered at the same provider have a continuation rate of 90.9%; but students taught at a provider different from the one with which they are registered continue at a rate of 80.2%, just above the threshold set by the Office for Students, but possibly a cause for concern.

We need to acknowledge problems openly and honestly but we do need to keep them in perspective. First, note that there are other large gaps between the continuation rates for different kinds of student not apparently connected with franchise provision. For example, the continuation rate for Health and Social Care students in the UK is 85.0% yet Economics students continue at a rate of 95.2%. If we think that students taught in franchise provision should continue at the same rate as the rest of the sector, what sense do we make of subject differences such as these, often found within the same institution?

There are many other important and sizeable differences in student outcomes that need to be considered, ones which link to students' personal characteristics. The continuation rate for Black students, for example, is 86.2%, yet White students continue at a rate of 91.5%. IMD quintile makes a difference too with 5% fewer students from quintiles 1 or 2 continuing compared to students from quintiles 3, 4 or 5. Similarly we see a gap of 5% for students eligible for Free School Meals; disabled students have a slightly lower continuation rate than non-disabled students; and males have a lower continuation rate than females. Finally, and perhaps most striking of all, is the effect of age. Whilst 92.3% of students under the age of 21 on entry into higher education continue with their studies, that falls to 85% for those who entered between the ages of 21 and 30, and 84.3% for those older than 30 years-of-age.

These data tell us that, right across our sector, providers find that recruiting different kinds of students has a direct bearing on their outcomes. That is, other things being equal, providers that predominantly recruit mature students, for example, will have poorer continuation outcomes. We might expect these factors to be broadly additive too, so providers operating in the intersection of these demographic factors – perhaps recruiting predominantly Black, mature students from IMD quintiles 1 and 2, with eligibility for Free School Meals – may well have student outcomes far below those of providers that tend to recruit white 18-year-olds from more affluent families living in less deprived neighbourhoods.[12]

We therefore have two opposing effects. Widening participation speaks to the need to recruit students from among the most disadvantaged pockets of society; but we know that to do so makes it more difficult to meet the same high levels of student outcome. Nick Hillman has made a similar point in relation to the jobs market. He notes that disadvantaged students have poorer employment outcomes than middle-class students – is this a problem for the higher education sector to solve, or a challenge to the graduate jobs market?[13]

So what sense should we make of the suggestion that franchise provision is poor quality when compared to the rest of the sector? At the very least, we can see that the criticism is not straightforwardly true. The quality operated by franchise partners needs to be understood in the context of their patterns of recruitment; a point not lost on the Office for Students, which has clearly stated the need for context to be considered in making judgments about quality:

> *the OfS will consider whether there is evidence available to the OfS that the provider's context means that any outcome data that is not at or above a relevant numerical threshold is justified, in that it nevertheless represents positive outcomes for students.*[14]

But quality also needs to be understood in relation to market entry too – while we do not want to see new entrants dilute the sector's enviable reputation for quality, it is surely unrealistic to expect new entrants to operate from the very start with the same high quality as established providers.

If it would be wrong to conclude simply that franchise provision with poorer student outcomes is of poorer quality, one thing we know from experience at BNU is that effective collaboration between an established higher education institution and its franchise partners can lead to dramatic improvements in student outcomes.

BNU has always produced strong student satisfaction, typically between 2 and 5 percentage points ahead of the sector when averaged over all questions in the National Student Survey. We think this is a manifestation of something we believe to be true: that over many years we have developed and embedded a clear understanding of what is needed to meet and exceed students' expectations. But new market entrants, almost by definition, are unlikely to be in such a strong position. In 2018, one of our newer partner colleges (Partner X in the table below) was struggling with their National Student Survey scores, trailing the sector average by a disappointing 24 percentage points. We invited the partner to join the University's National Student Survey group. We also put in place a Strategic and Operations Board to coordinate our work with this partner which ensured that relevant quality and operational matters had been considered, actioned or escalated. This helped develop an excellent partnership between the two organisations, enhancing learning, joint working and sharing of good practice. The result has been a dramatic improvement in the student experience at the partner. In sum, through purposeful working with the partner, putting in place mechanisms for close collaboration and sharing our established understanding and practice of what works, we saw a transformation in the student experience. Within a couple of years, Partner X had reduced the gap with the sector to around 7 percentage points; and, in the last couple of years, the gap has been closed almost entirely, with average satisfaction (or positivity) just 0.2 percentage points below the sector average, and above the positivity scores for many more established institutions.

Table 1. Improvement in Percentage Positive Student Satisfaction through partnership

Year	Partner X	Sector	Difference
2018	53.79	78.23	24.44
2019	57.54	78.30	20.76
2020	70.80	77.88	7.08
2021	66.37	71.98	5.61
2022	72.86	73.04	0.18
2023	79.68	79.92	0.24

We feel these arguments reinforce the idea that franchise provision needs to be nurtured and developed, that it is an effective means of entry to the market for innovative providers with a focus on flexible delivery and widening participation, and that, by working with established institutions, these newer providers can deliver even more strongly for disadvantaged students.

While we accept that a focus on student outcomes necessarily puts into the spotlight those partnerships which have not yet fully developed and evolved, we believe the sector would benefit from clarity from regulators and the Government. Is franchise provision viewed as the sector embracing new entrants to the market positively, thereby promoting competition and, in turn, enhancing student choice and driving up excellence in the sector as a whole? Or is it seen as a potential quality problem, enabling providers to enter the market that lack the track record of high-quality standards that more established providers can evidence?

We think the right resolution to these questions is that:

a) franchise provision is a good thing, enabling competition and market entry;

b) franchise provision must be delivered in a way that gives assurance in relation to quality; and

c) quality needs to be understood contextually in relation both to patterns of student recruitment and in relation to a provider's status as a new market entrant.

In the second part of this paper, we expand on what institutions could do in order to provide greater assurance to stakeholders that the investment from the public purse is warranted, protected and used for the purposes for which it was intended, producing benefits for students and society.

2. Assurance

Chapter I of this paper shows franchise provision is both a source of benefit for UK higher education – widening participation and offering innovation, flexibility and market health – and a source of concern for government, regulators and policy advisers. We believe it falls to our University and those similarly engaged in franchising to try to address those concerns. In this part, we outline a framework of checks and balances that we believe has the potential to do this.

At BNU, we have recently been putting in place a new style of relationship with our franchise partners, asking them to engage with us more deeply and with more focus in a way that is proportionate to perceived risk. In this, we have tried to apply lessons from the style of regulation introduced by the Office for Students and the style of inspection operated by Ofsted under the appropriate version of their *Education Inspection Framework*.[15] We believe that in being seen to operate a set of stricter controls, we can give assurance that our franchise provision is being governed and managed responsibly.

Our starting position has been to assure our stakeholders that public money is being used sensibly and for the purposes for which it is intended. We recognised our previous approach – inspired by the Quality Code and a HEFCE-style of regulation – simply left too many questions unanswered. We do not pretend that our new approach is complete; we continue to reflect on what more we can do and to think critically about whether we can give the assurance we need to as fully as we wish. We think it is essential, however, to engage with franchise partners to understand their different business models rather than simply require them to adapt to a traditional university way of doing things.

Another key aspect of the framework is to assure each of our franchise partners that we believe they uphold our quality standards or have a clear agreed action plan in place which will ensure they meet them. We believe this assurance is needed in order to give each of our franchise partners the confidence to continue in a relationship with ourselves that is central to their business model.

We have therefore started to put in place a new approach to franchise relationships and a new inspection-based framework to generate the assurances we seek. Here are just some of the elements in this framework.

What we do

- **Admissions criteria:** We ensure the entry criteria for franchised provision are the same as those for our directly-taught applicants on the same programmes.
- **Annual monitoring:** We conduct a comprehensive and forensic assessment of each franchisee's operation by both the partner and the University, accompanied by a Teaching Excellence Framework-style rating and requiring a documented improvement plan for any provision not rated Gold.
- **Applicant offers:** We control admissions decisions with franchise partners, putting forward eligible candidates for scrutiny by our admissions staff, who determine whether a candidate will be offered a place.
- **Attendance:** We have put in place frequent in-person visits from University staff to verify student attendance records. This goes beyond simply counting students; we use the opportunity to verify students' identities and have conversations with them to assure ourselves about their continued engagement in study.
- **Contracts:** Our contracts with franchise partners include clauses on quality assurance, attendance, admissions and enrolment, staffing, marketing, monitoring and compliance and 'step-in rights' whereby the University can take effective control of aspects of the franchise operation if we are not confident it is being delivered in the right way.
- **Due diligence:** We undertake a comprehensive due-diligence check on franchise partners, examining their company structure, finances, insurances, policies, ownership, governance, oversight and management of academic quality, staffing, premises and student support. Due-diligence checks are then conducted on an annual basis or more frequently as needed.
- **Executive oversight:** We have created an executive-level post with responsibility for the quality, size and shape of franchise provision as well as other business-to-business relationships.

- **Finances:** We carefully scrutinise the finances of franchise partners to ensure we can satisfactorily answer the question as to whether public funds are used for the purposes for which they are intended.
- **Governance:** Franchise provision features regularly on our University Council's agenda.
- **Houses of Multiple Occupation:** We have introduced limits on the number of applicants or students living at the same address in order to safeguard against potential fraud.
- **International:** We heavily restrict recruitment of international students at franchise partners.
- **Interviews:** University staff meet with students studying at franchise partners to examine their reasons for studying, to verify their identities and to confirm suitability and eligibility for study, including English language requirements.
- **Partner Boards:** We hold regular operational Boards for each partner to document progress, challenges, actions being taken and the impact on quality outcomes.
- **Partnership strategy:** We have created a partnership strategy to govern partnership numbers. This clearly articulates the purposes, benefits and perceived risks of engaging in franchising.
- **Reporting:** We receive comprehensive annual reports from each franchise partner.
- **Risk registers:** We hold an institutional risk register that clearly reflects the overall risk of franchise operations. We also hold a risk register which assesses the current level of risk for each franchise partner. The latter register is comprehensive, including 34 dimensions of commercial, compliance, general and quality assurance risk. It is reviewed and considered at each meeting of the University Partnership Board.
- **Student number controls:** We have implemented a system of student number control to ensure stability in the partner's and University's overall number of registered students and also to ensure that individual partners are able to balance growth aspirations with quality requirements.

- **Student protection:** We hold franchise partners to our Student Protection Plan, ensuring that students are protected from course or campus closures, financial distress or market exit.

- **Student Support:** we provide extensive support to our students taught at franchise partners, supplementing local provision, to ensure students have excellent access to student services, library services, digital and IT support and the Students' Union.

- **Teach-out periods:** Our contracts require both parties to engage in teach-out periods following termination of recruitment. Upon termination, a formal and mutually agreed exit strategy is drawn up, implemented and monitored.

- **Termination:** Our contracts allow either party to exit an agreement with no fault at 12 months' notice.

- **Travelling distance from campus:** We are introducing limits on the travelling distance from the partner's campus of applicants' or students' term-time addresses.

- **University Partnership Board:** Our academic governance structure includes a partnership board, chaired by a member of the University's executive team, which obtains assurance on the arrangements in place for each franchise partner.

What we want to do next

The preceding section gives an indication of the range of work being undertaken by BNU, and no doubt by others too. We are also looking to introduce further checks and balances to provide assurance that franchise relationships are not transient and transactional but have a greater longevity and strategic purpose than might otherwise be the case.

- **Collaboration with other franchisors:** We will seek to collaborate actively with other franchisors in relationships with our franchisee partners, to promote a common understanding of the franchisee's business model, risks and benefits and to harmonise working practices across each franchisee's awarding partners. This collaboration might extend to joint inspection, where an inspection team visiting a partner might include colleagues from multiple higher education institutions

(HEIs). This is an important consideration in reducing the inspection burden of partners with multiple awarding bodies, but also to generate a collective understanding of what constitutes good practice.

- **Implementing an Ofsted-style inspection regime:** We should borrow from and adapt the *Education Inspection Framework* when judging our partners' activities and performance. Short-notice risk-based inspections at partner premises, carried out by an expert team, will gather evidence, triangulate, moderate and draw conclusions as to a partner's effectiveness. Activities at inspection would include, but not be limited to, observation of teaching and learning, interviews of students and staff, quality and availability of resources, student support in practice and examination of records pertaining to attendance, engagement and academic progress.
- **Strategic alignment:** We will seek to deepen our franchise relationships, ensuring they are strategically aligned, especially to bring benefits to franchise partners in the areas of staff development and research.
- **Risk register:** We will seek to engage with each of our franchisee partners in order to better understand their perceptions of risk, ensuring that this is informed by good practice in relation to the management and control of risk.

What we want to do but cannot do alone

Franchise provision has for too long operated within the sphere of competition among providers, but we believe that this ultimately places students, franchisors and franchisee providers at risk of unnecessary instability. We recently heard from one franchisee (not one of our partners) who was decrying the vulnerability of their institution because its viability was entirely dependent upon the franchisor who could withdraw from the relationship at any point (with a period of notice). How can it be in the interests of the sector or of students taught within the sector for franchisees to be so vulnerable to the changing business priorities of franchisors? Instead, we see a need for the sector to collaborate in order to establish new ways of managing franchise provision to provide greater levels of confidence to franchisors, franchisees, students and regulators.

Specifically, we would like to strengthen the assurance of the quality of franchise provision but, where competition among franchisors and franchisees makes this more difficult, we would like to:

- promote the conditions for stable trading;
- introduce restrictions on the use of domestic agents, akin to the code on the use of international agents introduced by the British Universities' International Liaison Association (BUILA);
- introduce contractual obligations to improve quality indicators to at least above the Office for Students' thresholds within a fixed period from the start of the contract – these periods may need to be different for different indicators, noting that continuation, student satisfaction, degree completion and graduate outcome indicators can lag intake by several years;
- reduce the burden on franchisees of meeting multiple requests from their franchisors, allowing them more time and resource to spend on improving quality outcomes;
- scrutinise the financial accounts of each franchise partner;
- have visibility of the perceived risk identified by the Office for Students for each franchise partner, where relevant;
- extend the periods for termination and teach-out, enabling partners to plan more effectively and better manage student experience during these periods;
- for each franchise partner, understand the perceived risks identified by their franchisors;
- for each franchise partner, understand the business plan held by each of its franchisors;
- manage competition among franchisors and franchisees to ensure greater stability in the system; and
- establish a national minimum or threshold set of services to be made available to students in franchise provision (either by the franchisor or franchisee).

3. Further regulation or a code of practice?

The second chapter of this paper established that providers such as BNU already make substantial investments to assure the quality of their franchise provision. But it also established that even more needs to be done, much of which is beyond the powers of individual institutions to do alone.

We believe the above framework, subject to debate and discussion, could serve as the basis for a code of practice for the sector. But why is a code of practice necessary? Could these requirements not become part of a framework of additional regulation operated by the Office for Students? In this final chapter, we want to expand on the reasons why we believe further regulation cannot in and of itself be the answer, and why close coordination among higher education institutions is also essential.

Franchise relationships require stability in order to improve quality outcomes and to protect the student experience. We believe this calls for new sector-wide arrangements. Introducing these would send a strong signal nationally and across the globe that the UK manages franchise provision effectively to high-quality standards.

To see why this might be the case, consider a couple of hypothetical examples.[16] Each involves a franchisee or franchisor acting alone, determining its course according to its own best interests but with little regard for the impact on other franchisees or franchisors. We make the case for effective and close collaboration, something at which all universities are adept. Collaboration involves a trade-off; institutions recognising that acting together brings individual benefits even if it constrains individual freedom. We believe working collaboratively in the case of franchise provision will more effectively safeguard the interests of students, funders, stakeholders and, ultimately, the sector itself.

Example 1: Change of Franchisor

In this example, a higher education institution (call them University 1) has a significant and long-standing contract with a sub-contracted franchisee (Franchisee A). University 2 becomes aware of this arrangement and attempts to secure the contract themselves. We know from experience that sometimes this happens for reasons of financial challenge at University 2, but of course it may happen because of a change of strategic direction related to widening participation or expanding higher education provision in particular localities.

It can also happen of course at the instigation of the franchisee: Franchisee A might seek to exit its relationship with University 1 in order to develop a more beneficial relationship with University 2. The benefit might be seen in better commercial terms or perhaps different processes or reporting requirements such as might come from a move to less costly and lighter-touch monitoring of quality.

In this case, there are few options available to University 1. It could attempt to meet the new contractual terms offered by University 2. By and large, these terms will not be known and so they will be in a weak position to negotiate with Franchisee A. In cases where the new franchisor, University 2, offers a weaker quality regime, there is no palatable option, other than to persuade Franchisee A of the wisdom of the current (more arduous or more costly) arrangements.

This movement between franchisors might be regarded as healthy competition between higher education institutions, much as the Higher Education and Research Act (2017) encourages. Certainly, if University 1 is otherwise financially strong and can afford to lose a significant contract, then perhaps we need not pay this movement much attention. But just as University 2 may seek to benefit from a new income stream, strengthening its finances, so University 1 will experience just as sudden a reversal, weakening its financial position.

We believe that, looking at the sector from the outside, this kind of movement appears as unhealthy competition – an institution (University 2) placing its own interests above those of the sector as a whole. Such a move may have no benefit for students or do nothing to further protect them. It may add no long-term stability to Franchisee A; indeed, it can only introduce instability to University 1. It may do nothing to enhance quality. Indeed, University 1's long-standing investment of time and other resource into Franchisee A will be lost. The fact that franchise arrangements can change so quickly may ultimately serve as a disincentive towards such investments in quality improvements in the future. Even teach-out arrangements, so important to protect existing students and ensure smooth transitions, can be undermined. We know from experience that students may feel pressure to transfer from University 1 to University 2. The impact on students and existing franchise partners can be real and rapid.

We do not mean to suggest that transfers in contractual arrangements should not take place, merely that a whole system perspective suggests mechanisms should be in place to ensure they happen for the right reasons and under the right circumstances. Above all, students must be protected and reasonable stability for providers should be preserved.

Example 2: University Exit

In this example, suppose University 3 exits an arrangement with Franchisee B, leaving University 4 as its only remaining franchise relationship. In this case, University 3 may have determined for its own reasons that it is in its interests to exit the relationship with Franchisee B. Although this action presumably works for University 3, delivering strategic or business benefits, consider the implications for Franchisee B and University 4. Further suppose that the two franchisors registered similar numbers of students for the franchisee.

Under the exit arrangements, Franchisee B has just a few options:

i. persuade University 4 to double its student numbers in order to maintain the size and shape of Franchisee B’s business;

ii. accept that its franchise business will need to shrink by 50%; or

iii. successfully identify a new franchisor with which to partner.

Under all three options, the actions of University 3 create difficulties for both Franchisee B and University 4.

Under the first option, University 4 would need to accept a significant increase in student numbers, probably within 12 months. This might cause difficulties in relation to its own strategic or operational plans – does it have the requisite number of staff to maintain and assure the quality of a newly expanded relationship?

If University 4 does not accept an increase in students, then Franchisee B has an unpalatable choice: either quickly identify another franchise partner, perhaps having to accept whatever terms are on offer; or shrink.

Shrinking the business would of course have consequential impacts on University 4. It would impact the numbers of staff employed by Franchisee B, possibly compromising quality; it may impact the range and quality of student services on offer, likely worsening the student experience for all students, and not just those registered with University 3. There may even be impacts on the size of Franchisee B's estate, possibly leading to campus closure and invoking the Student Protection Plan of University 4. In the worst case scenario, Franchisee B may find its business model simply does not work for such a drastically reduced student number. It may be forced to enter administration and exit the market.

What starts as, seemingly, a sensible strategic or operational decision by one franchisor suddenly becomes a question of market exit with the remaining franchise partner (University 4) having to activate its Student Protection Plan.

What is needed?

These simple examples show that higher education institutions in franchise relationships need to act differently. Quite simply, they need to act together in the interests of the greater good of students and the sector as a whole.

At the heart of our proposal is the idea that, for each franchisee, there should be a consortium comprising the franchisee and all of its extant franchisor partners and that – collectively – the consortium should act in concert, coordinating and harmonising the arrangements. Responsibility for leading and administering the consortium might be shared or could fall to the largest franchisor.

Such consortia would be responsible for implementing a robust operational and quality related framework. We suggest the specific points in Chapter 2 of this paper could serve as the basis for a sector code of practice for such frameworks. Importantly, consortia would need to manage entry-and-exit arrangements collaboratively. How might such consortia act differently in the two examples above?

In the first example, the existing consortia, which might comprise just the Franchisee A and University 1, would by dint of adopting the sector-wide code of practice be open to new franchisor relationships. Importantly, the existing consortium could not prevent Franchisee A and University 2 entering into a contractual arrangement, but the exit of the existing franchise partner

(University 1) would be managed over a longer period of time, perhaps in a period of say three years. This would give University 1 more opportunity to effect changes to its business plan and, through the consortium, also allow more time for University 1 and University 2 to consider if they could both continue as members of the consortium. Knowing that a contract could not be lost so quickly would allow all consortium partners to identify an arrangement of greater mutual benefit.

In the second example, the sector-wide code of practice would place responsibilities on University 3 to give advance notice to the consortium of its intention to exit the existing arrangement and give a much longer period of notice, again say three years. This would give Franchisee B more time to identify alternative arrangements, and more time for University 4 to manage the potential impacts on its business. Although members could not be forced to continue in a contractual relationship, by adopting the code of practice and accepting that exit from a relationship will not be quick, there would be a greater incentive on consortium members to engage in long-term thinking before entering a relationship and to put more effort into improving existing relationships rather than seeking to leave them.

In addition to those elements of a code of practice sketched out in Chapter 2, we believe there are additional requirements that such a code should contain in order that consortia become practical. These are as follows:

- franchisors should not enter into franchise relationships unless they agree to follow the code of practice;
- franchisors should ensure that each of their franchise relationships is overseen by a consortium, even if this consists only of the franchisor and franchisee;
- franchisors must be prepared to accept the responsibility of acting as a consortium lead and administrator;
- franchisors must publish, in an agreed format, summary details of all their franchise relationships, including memberships of consortia; and
- consortia must be open to other institutions joining the consortium as future franchisors.

What can the regulator do?

The preceding section explains what the sector might do to provide additional safeguards and assurances in relation to franchise provision. But how much of this could be done by the regulator?

There are undoubtedly things that the regulator will need to do to play its part in such new arrangements, but it should be clear that additional regulation in and of itself is not the answer.

The Office for Students regulates individual providers on the register. In the examples above, it would regulate Universities 1, 2, 3 and 4 separately. If University 3 wishes to exit a partnership arrangement, it can do so – the regulator might consider the extent to which this is based on sound governance and management, and what impact it might have on students. It would be determined to ensure that the franchisor's Student Protection Plan was being followed and that it was fit for the purpose. But to our knowledge, the regulator would not necessarily consider the impact on Franchisee B nor on University 4. Nor do we think it would have the powers to direct University 3 to continue with its franchise arrangements for the good of the stability of this part of the sector. What is needed to manage the examples we have considered is a relationship with multiple providers simultaneously and this is beyond the current model of regulation.

Nevertheless, registration of franchisee institutions would be welcome as would some additional light-touch regulation of franchisors.

We envisage the Office for Students opening a new part of its Register for those institutions who act as franchisees. For each franchisee, the Office for Students would collect a minimal set of information required to support due diligence – for example, ownership, finances, governance arrangements, registered offices and campus locations. We believe it is in the interests of the sector for all franchisees to be on this Register, and hence for the code of practice to prohibit franchise operations with institutions not in this part of the sector. For this to be effective, the Office for Students would need to facilitate light-touch, low-cost and rapid registration for franchisees, noting that many providers are not satisfied with the current speed shown by the regulator.[17] But failure to establish rapid and light-touch regulation of franchisees would make it more difficult to introduce the reforms suggested in this paper.

For each franchisor institution, the Office for Students would add to its Register entry a list of its current franchisee operations, cross-referenced to the franchisee part of the Register.

Finally, we have one additional request of the regulator – that it makes available to franchisors (that is, under our proposals, to members of consortia), any identified risks in relation to each franchisee with which they partner. We know the Office for Students has previously adopted the position that the risk profile of an institution should not even be shared with the institution itself. But we believe it is unhelpful for the regulator to express concerns about franchise arrangements in general while possibly holding pertinent information about risk relating to franchisees and not share that information with a franchisee's franchisor partners.

There will be some who are surprised that we argue for some (limited) extension of regulation, and we recognise this will not be comfortable for many. However, we believe the challenges of franchise provision need to be met head on in order to preserve this important and long-standing part of the higher education landscape. If all of this could be done without any extension of regulation, then so much the better, but we do not believe this is realistic. Of far greater concern should be the extension of regulation that might follow should the sector fail to address the challenge of franchise provision.

Conclusion

In this paper, we have argued that there is much of benefit in franchise provision. It delivers the Government's stated aims of enhancing choice and flexibility and widening participation, and ultimately promoting social mobility. But there are legitimate questions for those in franchise relationships. There are questions to be asked about student outcomes, although it is far from straightforward to infer from these that there is a problem with quality. Instead, we argue the real challenge is to be found in the requirements of the Government and the Office for Students for institutions to act in competition.

We believe the solution is a strong sector-wide and sector-owned code of practice that requires higher education institutions to work together in the wider interests of students and stakeholders, including government and regulators. This would see higher education institutions establish effective consortia for each franchisee, simplifying and coordinating the multiple demands they place on franchisees, and strengthening the requirements to enhance quality and promote stability. Consortia do not act against the spirit of the Higher Education and Research Act (2017): they are not a barrier to effective competition between higher education institutions. Instead, they respond to another injunction within the Act, one added as a result of the Government's consultation.

Provision 2(1)(c) states that the Office for Students must have regard to:

> *the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers.*

We put forward our proposals in this spirit. Perhaps in regard to franchise provision, the focus on competition has actually been unhealthy, and that the best way of managing the health of the higher education sector is to support new entrants more effectively, creating stable conditions under which they can establish themselves and the quality of their delivery. We believe that successfully managing franchise provision in the future requires much greater appeal to collaboration.

Endnotes

1 National Audit Office, *Investigation into student finance for study at franchised higher education providers*, 2024

2 Size and shape of provision data dashboard, Office for Students: https://www.officeforstudents.org.uk/data-and-analysis/size-and-shape-of-provision-data-dashboard/

3 We should note too a similarly dramatic decline in sub-degree provision. However, the available data do not appear to determine whether the expansion in franchise provision partially explains or is explained by this decline. See Gareth Parry, Arti Saraswat and Anne Thompson, *Sub-bachelor higher education in the United Kingdom*, Quality Assurance Agency, 2017 https://www.qaa.ac.uk/docs/qaa/about-us/sub-bachelor-higher-education-in-the-united-kingdom.pdf.

4 PWC, *UK Higher Education Financial Sustainability Report*, 2024 https://www.pwc.co.uk/government-public-sector/education/documents/higher-education-financial-sustainability-report.pdf

5 Higher Education and Research Act 2017 https://www.legislation.gov.uk/ukpga/2017/29/section/2/enacted

6 Department for Education, Jo Johnson: speech to UUK annual conference, 7 September 2017 https://www.gov.uk/government/speeches/jo-johnson-speech-to-uuk-annual-conference

7 Department for Business, Innovation and Skills, *Success as a Knowledge Economy: Teaching Excellence, Social Mobility & Student Choice*, 2016, p.9 https://assets.publishing.service.gov.uk/media/5a7f3f67ed915d74e62294af/bis-16-265-success-as-a-knowledge-economy.pdf

8 Department for Business, Innovation and Skills, *Success as a Knowledge Economy: Teaching Excellence, Social Mobility & Student Choice*, 2016, p.32 https://assets.publishing.service.gov.uk/media/5a7f3f67ed915d74e62294af/bis-16-265-success-as-a-knowledge-economy.pdf

9 Department for Business, Innovation and Skills, *Success as a Knowledge Economy: Teaching Excellence, Social Mobility & Student Choice*, 2016, p.32 https://assets.publishing.service.gov.uk/media/5a7f3f67ed915d74e62294af/bis-16-265-success-as-a-knowledge-economy.pdf

10 House of Lords Industry and Regulators Committee, *Must do better: the Office for Students and the looming crisis facing higher education*, 2023 https://committees.parliament.uk/publications/41379/documents/203593/default/

11 https://www.officeforstudents.org.uk/data-and-analysis/student-outcomes-data-dashboard/

12 While an intuitively compelling observation, unfortunately none of the publicly available data sources allow for this kind of analysis.

13 Nick Hillman, 'In the search for jobs, should disadvantaged students behave more like middle-class students … or should the labour market change?', HEPI Blog, 21 December 2023 https://www.hepi.ac.uk/2023/12/21/in-the-search-for-jobs-should-disadvantaged-students-behave-more-like-middle-class-students-or-should-the-labour-market-change/

14 Office for Students, *Consultation on a new approach to regulating student outcomes: Analysis of responses to consultation and decisions*, 2022, p.163 https://www.officeforstudents.org.uk/media/20226350-1141-4956-acf3-064c859aa69d/regulating-student-outcomes-analysis-of-responses.pdf

15 Ofsted, *Education inspection framework*, 2023 https://www.gov.uk/government/publications/education-inspection-framework/education-inspection-framework-for-september-2023

16 While hypothetical, these are grounded in reality, having occurred in the recent experience of our University's partnership provision.

17 Nick Braisby, 'Improving the quality of the assessments of quality', Wonkhe, 7 February 2024 https://wonkhe.com/blogs/improving-the-quality-of-assessments-of-quality/

Franchised provision of higher education has been under the spotlight in recent times. Without shying away from the challenges faced by those delivering successful franchise arrangements, this paper shows how important franchising can be in extending access to higher education.

The authors explain what protections need to be in place to ensure franchise arrangements work out for students. They end with clear recommendations to encourage more collaboration between franchisors, franchisees and regulators, such as the Office for Students.

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