

# An effective regulatory framework for higher education:

A policy paper

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## Contents

	<i>Page</i>
1. Executive summary.....	2
2. Introduction.....	7
3. Background to the higher education sector and the regulatory environment .....	11
4. Characteristics of the higher education sector .....	17
5. Impact regulations have on the supply side of the market .....	20
6. Impacts regulations have on the demand side of the market.....	37
7. Conclusion .....	41
Annex 1: Changes made to the Key Information Set since the Call for Information .	44

## 1. Executive summary

- 1.1 The UK benefits from a higher education (HE) sector with a well-deserved reputation for excellence in providing high quality and internationally respected HE. International league tables highlight the reputation enjoyed by UK universities, with four featuring in a recent ranking of the world's top 20 universities, and eight in the top 50.<sup>1</sup>
- 1.2 HE plays a crucial role in the UK economy. It contributes to local and national economies through creating jobs, contributing to economic, social and cultural development,<sup>2</sup> delivering skilled workers into the wider economy, and contributing to export earnings.<sup>3</sup> HE providers offer learning opportunities to students to engage with ideas across a wide range of disciplines. This improves their life chances and earnings and benefits society. UK HE providers generated an income of £30.7 billion in 2013/14,<sup>4</sup> with over 2 million students enrolled at their institutions.<sup>5</sup>
- 1.3 In recent years, there has been a major change in the way that undergraduate education is organised and delivered in England. The most notable reforms have been to the financing of undergraduate courses, a liberalisation of student control numbers, and the introduction of measures aimed at improving access to, and the quality of, information about courses and the wider learning experience. In addition, by raising the tuition fee loan available to students at privately-funded providers (also referred to as alternative providers) to £6,000, the sector has been opened up to new entrants.
- 1.4 As a result of these reforms, student choice and competition now play a more significant role in the sector, with a greater share of providers' funding coming directly from student fees (rather than being directly funded by government) and more freedom for HE providers as to the number of undergraduate places they can offer. The government envisaged that greater supply-side diversity, greater choice and innovation and an enhanced role for students in determining the range and type of learning available would drive up the quality of provision in HE.

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<sup>1</sup>See the [Times Higher Education – World Reputation Rankings 2015](#).

<sup>2</sup>See also the Department for Business Innovation & Skills (BIS) report [Things we know and don't know about the Wider Benefits of Higher Education: A review of the recent literature](#) (October 2013).

<sup>3</sup>Universities UK estimated that, as an export industry, HE was worth £10.7 billion in 2012. See Universities UK, [The Funding Environment for universities 2014, International Students in Higher Education: The UK and its competition](#) (September 2014).

<sup>4</sup>See Higher Education Statistics Agency (HESA), [Income of Higher Education Providers in 2013/14](#).

<sup>5</sup>HESA states that total number of enrolments at UK HE providers stood at 2,299,355 in 2013/14, including over 1.7 million undergraduate students.

- 1.5 Within the HE sector, competition and choice can play an important role in helping to deliver high-quality and student-focused services, provided they are implemented in a way which recognises the unique features of the sector.<sup>6</sup> The HE sector in England is to a large extent already characterised by healthy competition between providers who compete with each other for the best students and research funding and provide innovative teaching for students. Such competitive dynamics have increased in recent years, with a diverse range of HE providers increasingly competing for students, resources and funding; and increasing student expectations.
- 1.6 The government's 2011 White Paper 'Students at the heart of the system'<sup>7</sup> outlined a vision for a new regulatory framework which would reflect the increasingly competitive and diverse HE landscape. However, no subsequent legislative changes were made, which has resulted in discrepancies and gaps in the way the regulatory framework applies to different types of HE providers. As a result, there is widespread expectation across the sector that the current regulatory arrangements will be reformed in due course and that legislation will be forthcoming to put the regulation of the sector on a more secure footing.<sup>8</sup>
- 1.7 The Competition and Markets Authority (CMA) launched this project following the findings of the Office of Fair Trading's (OFT) Call for Information on the Higher Education undergraduate sector in England (CfI) published in March 2014,<sup>9</sup> which recommended that the CMA should help develop proposals to improve the regulatory framework.<sup>10</sup> The OFT highlighted that the current system of regulation is increasingly at odds with a system that is now largely based on competition and student choice via tuition fees rather than direct government funding through the Higher Education Funding Council for England (HEFCE). The OFT report identified several issues which suggested that the regulatory framework does not work in the interests of students, including the lack of competitive neutrality or 'level playing field'.<sup>11</sup>

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<sup>6</sup> See OFT1214, *Choice and Competition in Public Services* (March 2010).

<sup>7</sup> BIS White Paper, *Students at the Heart of the System* (June 2011).

<sup>8</sup> See for example, Higher Education Policy Institute (HEPI), *Unfinished Business?: Higher education legislation* (February 2014); or Report of the Universities UK Regulation Task and Finish Group, *Quality, equity, sustainability: the future of higher education regulation* (February 2015).

<sup>9</sup> See OFT1529, *Higher Education in England – An OFT Call for Information* (March 2014).

<sup>10</sup> The OFT also recommended that the CMA take forward work on clarifying HE providers' responsibilities under consumer protection law. See the [Higher education: consumer protection review](#) case page: the CMA has published [guidance to providers and students on how the consumer protection laws apply to HE providers](#) (March 2015).

<sup>11</sup> The defining characteristic of competitive neutrality is that no firm should have a competitive advantage in a mixed market purely as a result of its ownership or control. When considering competitive neutrality, we are interested in differences in costs or other parameters of competition which stem solely from differences in ownership or control. These might include, for example, differences in regulation, tax treatment, or public service obligations. Competitive neutrality does not mean that no firms can enjoy a competitive advantage. Competitive

- 1.8 The CMA project was therefore launched in order to assess whether the increased role of choice and competition is creating benefits for students and whether the current regulatory landscape is assisting that process or holding it back. The paper makes a series of recommendations to the government and the sector about how the regulatory framework could be better designed to ensure the potential benefits of choice and competition are maximised.
- 1.9 The CMA has identified a number of problems affecting the demand and supply side of the HE sector that stem from the existing regulatory framework. Such problems have arisen largely because the current regulatory framework has evolved around the expenditure and protection of public money, which is increasingly at odds with a sector which receives most of its income from students (underpinned by publicly subsidised loans). Now is a good time, therefore, to reform the regulatory landscape to focus primarily around the risks to the quality of the learning experience. The problems we have identified are as follows:
- There are gaps in regulatory oversight and discrepancies in the application of regulatory sanctions, resulting in different types of HE providers being quality assured in different ways (or not at all). As the incentives on providers to provide a quality service are not consistent and poor quality provision may not be swiftly addressed in some providers, there is a real risk that some students are less well protected against poor quality provision than others.
  - The current regulatory framework may be restricting entry and expansion, in particular as increasing public and regulatory scrutiny of institutional performance and oversight arrangements make it increasingly risky for HE providers with degree-awarding powers to validate a new entrant's courses.
  - Some aspects of the way that courses are provided are restricted by the rules around student loans, potentially holding back innovation.
  - There is no comprehensive sector-wide 'exit regime' which might mean students are not protected if a course closes or a provider fails.

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advantages can occur for a number of reasons, for example as a result of the size of the business. For example, large blue-chip companies will be able to borrow money at a lower interest rate than a small firm which has recently started operations. This difference in the cost of borrowing reflects the expected risk of a firm failing and is not related to competitive neutrality. Competitive advantages can exist at the same time as competitive neutrality. For example, it is possible for there to be competitive neutrality and for a particular firm to still have lower costs because of more efficient production techniques. For more discussion about competitive neutrality see OFT1242, [Competition in mixed markets: ensuring competitive neutrality](#) (July 2010).

- Information provided to students to enable them to make informed choices is improving, but could be even better.

1.10 To address these concerns we are recommending that the regulatory framework is reformed based on the following principles:

- **Regulate for a baseline level of quality.** In order for all students to have assurance about the quality of their HE provider, a gateway for operating in the sector should be established across the whole HE sector. In order to pass through the gateway and be able to operate in the sector all providers should meet a baseline level of quality.
- **Apply a strict cost-benefit assessment to ensure the baseline level of quality is kept to a minimum to promote competition.** The baseline should be kept to the minimum level needed to provide assurance to students that governance, transparency, student redress and consumer protection standards have been met, whilst still allowing scope for providers to compete to provide a quality learning experience above the baseline.
- **Additional regulation above the baseline should not signal different levels of quality or create an unlevel playing field.** The framework needs to avoid regulatory rules attached to other public policy objectives (eg public finance management or migration control) creating a ‘tiered’ system which signals to students that providers bound by additional rules offer better quality. Ways of ensuring this are for the use of public money to be assured separately from the baseline quality assessment and for the system to be ‘competitively neutral’ so that different types of providers have the opportunity to be bound by the same rules.
- **Maintain a risk-based approach to the frequency and intensity of regulatory review.** Options to inform the risk-based approach include making more use of student complaints data and closer scrutiny of providers with high non-completion or dropout rates.
- **Relate sanctions to risks facing students rather than institutional type.** The sanctions that are applied by the regulator should be designed around the risks facing students rather than the public funding risks attached to the differing types of provider delivering the course; and the sanctions that are applicable to providers with equivalent powers should be made more competitively neutral.

1.11 It is also important that regulatory rules and funding requirements allow new and innovative approaches to the delivery of high quality HE provision, such

as online and accelerated learning. We recommend that BIS examine how degrees structured in an alternative way could be supported financially by introducing more flexibility into the yearly funding rules.

- 1.12 We are grateful to the many individuals and organisations who have helped us develop our understanding of the sector and the way it is regulated. We are presenting these recommendations for change to the regulatory framework with the aim of improving outcomes for students. We will work with the government and the sector to help them develop and introduce a firmer basis for regulation of the sector as soon as possible.

## 2. Introduction

- 2.1 In this paper we have considered the impact regulations have on student choice and competition in the HE sector. In conducting our assessment, we have examined the extent to which HE regulations are designed to ensure competition works in the interest of students.<sup>12</sup>
- 2.2 On the supply-side of the HE sector we have explored whether regulations should be reformed to better protect students and incentivise quality, facilitate entry and expansion, encourage innovation and manage exit by HE providers across the sector at large. Our discussion of these issues is outlined in section 5 below.
- 2.3 We have also explored the impact regulations have on the demand side of the HE sector by following up on a number of recommendations the OFT made to help ensure students are enabled to make well-informed choices, which would help to create a positive competitive environment. Our discussion of these issues is outlined in section 6 below.
- 2.4 Our assessment is based on the views voiced by stakeholders at a CMA roundtable held in October 2014, our desk-based research into the way the current regulatory framework operates, and our bilateral engagement with key stakeholders in the sector.

### Scope

- 2.5 The focus of both the OFT's CfI and the CMA project have been on undergraduate provision in England. HE policy is a devolved matter, with choice and competition being a more integral part of undergraduate HE policies in England than in other parts of the UK. However, should governments in the devolved nations want to introduce similar elements in any reforms to their HE sectors, the CMA will be able and willing to advise such governments on the considerations to take into account based on its analysis of the regulatory framework in England.
- 2.6 Our definition of undergraduate HE is based on BIS' definition<sup>13</sup> and includes any courses between levels 4 and 6 (or equivalent) on the Framework for Higher Education Qualifications and/or the Qualifications and Credit

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<sup>12</sup> The CMA has not considered the impact that non-HE regulations have on the providers. These include requirements from employment, planning, health and safety, freedom of information, data protection, public interest disclosure, and environmental legislation.

<sup>13</sup> BIS, *Privately funded providers of higher education in the UK* (June 2013), pages 20 to 21.

Framework/National Qualifications Framework,<sup>14</sup> which distinguishes between first degree (such as bachelor degrees)<sup>15</sup> and sub-degree HE (which includes CertHE, DipHE, HND, HNC, foundation degrees and professional qualifications).<sup>16</sup>

- 2.7 Our review focuses on the impact that the structure and scope of some regulatory rules have on competition and student choice. We are not commenting on the performance of individual regulators, nor whether the machinery of the regulatory landscape (that is where and with who responsibilities lie) is fit for purpose. We consider that these are areas where other players in the sector are better placed to act.<sup>17</sup>

## **Government policies on managing public finances and migration control**

- 2.8 HE is a sector where different government policy goals have created a complex regulatory landscape for HE providers to operate in. These include policies to expand the sector, to manage the public finances, and to control migration. This paper does not consider government interventions designed to manage government liability (for example, the tuition fee and loan caps,<sup>18</sup> and the student number caps) and to control migration (for example, the Home Office's policy on the recruitment of international students). We have focused our limited resources on areas where there is more immediate potential for change and therefore where we consider the CMA would have the greatest impact.<sup>19</sup>
- 2.9 Nevertheless, as a general principle, the CMA considers that student choice and competition between providers of HE is likely to work best where the regulatory and funding arrangements do not discriminate between different providers. While we recognise that policy makers may face differing, and sometimes conflicting, policy objectives in designing the regulatory framework, we recommend any future reform to the funding arrangements should seek to minimise differences between different types of providers.

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<sup>14</sup> For details about these frameworks please see [different qualification levels](#) on GOV.UK.

<sup>15</sup> This normally equates to level 6 in the Framework for Higher Education Qualifications and includes any equivalent professional qualifications. This category includes degrees validated by non-UK universities.

<sup>16</sup> This normally equates to levels 4 and 5 in the Framework for Higher Education Qualifications and includes any equivalent qualifications validated by non-UK universities.

<sup>17</sup> See [CMA Prioritisation Principles](#).

<sup>18</sup> There are differences in access to student loan funding depending on the type of HE providers: whilst students at alternative providers can only access £6,000 student loans (if they are on a course with specific course designation), students at traditional providers can access up to £9,000 provided they sign an agreement with the Office of Fair Access.

<sup>19</sup> The CMA has to prioritise its work on the basis of its 'prioritisation principles', including whether the CMA's work is likely to lead to successful outcome. See [CMA Prioritisation Principles](#).

Competitive neutrality is important because if providers face different regulatory costs, sanctions and rules that are related to the type of provider they are, rather than the quality they offer or the risks they pose to students and the wider sector, they may struggle to innovate and compete with other types of providers through no fault of their own.

## **CMA's mission and powers**

2.10 The CMA's mission is to make markets work well for consumers, businesses and the economy, including markets where governments seek to pursue public policy objectives. The CMA has a range of powers it can use in pursuit of its mission, including powers to advise government on how its policy objectives can be achieved in a manner which supports the effective functioning of markets.<sup>20</sup> The CMA advises government both when the stated policy objectives are to introduce more choice and competition into a sector (as has been the case in HE), but also when the government is seeking to achieve other objectives which might have an unintended effect on competition.

2.11 In assessing markets where there is strong public policy interest, the CMA is building on a legacy of thematic and sector specific markets work conducted by the OFT and the Competition Commission.<sup>21</sup> As a result, the CMA has experience and understanding of how such public markets operate which it can use to advise government and public bodies to ensure competition is leveraged in a way that works well for citizens and taxpayers.

## **Structure of the paper**

2.12 The structure of our paper is as follows:

- Section 3 provides the background to the higher education sector and the regulatory environment.

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<sup>20</sup> One of the CMA's functions, under section 7 of the Enterprise Act 2002, is to provide information and advice to government on competition and consumer issues. As such, we have a dedicated advocacy team whose role is to strengthen our relationships with government departments and other stakeholders to help preserve and promote competition in markets and to increase awareness of consumer protection issues. This includes ensuring that regulation does not unnecessarily or disproportionately restrict competition, but instead achieves the best possible outcomes for consumers. The government's strategic steer to the CMA reiterates the importance it attaches to the CMA acting to challenge and advise government about the role it plays in markets.

<sup>21</sup> For example, the OFT conducted market studies in [pharmacies](#), [dentistry](#) and [local bus services](#). The local bus market study led to a market investigation conducted by the Competition Commission. Relevant thematic work conducted by the OFT includes OFT1059, [The economics of self-regulation in solving consumer quality issues](#) (March 2009), OFT1214, [Choice and competition in public services – a guide for policy makers](#) (March 2010); and OFT1531, [Competing on Quality: a literature review](#) (March 2014).

- Section 4 outlines the characteristics of the HE sector.
- Section 5 provides our assessment of the impact that the current regulatory arrangements have on the supply side of the market.
- Section 6 provides our assessment of the impact that the current regulatory arrangements have on the demand side of the market.
- Section 7 sets out our conclusions.

### 3. Background to the higher education sector and the regulatory environment

- 3.1 The regulation of HE has many different facets and combines self-regulation,<sup>22</sup> co-regulation<sup>23</sup> and regulation by independent bodies. The current framework for regulation by independent bodies (hereafter referred to as the 'regulatory framework') and the landscape in which HE operates is complex. BIS sets the regulatory framework within which HE providers operate, with advice from public bodies such as HEFCE. HEFCE's objectives are to safeguard the interests of students and to ensure effective use of public funds.<sup>24</sup> A number of bodies are involved in this regulatory framework and they have specific responsibilities in the areas of academic quality and enhancement, financial sustainability and good governance, access to HE, information provision, and student complaints and redress.
- 3.2 Following the 2010 Browne Report on HE funding and student finance,<sup>25</sup> the government made significant changes to the way the HE sector is funded in England, notably:
- The raising of the tuition fee cap to £9,000 for HEFCE-funded providers (also referred to as traditional providers), with a requirement for those charging above £6,000 to meet conditions on widening participation and fair access.<sup>26</sup>
  - A cut in government's direct spending on HE, which fell largely on the teaching grants provided by HEFCE.<sup>27</sup> This shift in funding means that HE teaching is now principally supported by tuition fees.<sup>28</sup>
  - Full access to tuition fee loans (and maintenance loans and grants) for students of traditional providers and up to £6,000 for students of

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<sup>22</sup> The operation, governance and management of an HE provider can give students and the public confidence. All providers demonstrate accountability through their published data and information such as annual reports, corporate governance statements and financial accounts. This is a form of self-regulation. See HEFCE, [Operating Framework for Higher Education](#).

<sup>23</sup> There is also a long-established tradition among HE providers of collaboration for academic, business and other purposes; for example, universities and colleges rely on external examiners from other universities to scrutinise their assessment processes. So, although they are autonomous and in competition with each other, there is voluntary co-regulation. See HEFCE, [Operating Framework - Regulatory building blocks](#).

<sup>24</sup> HEFCE's aims are to distribute public money for higher education to universities and colleges in England, and to ensure that this money is used to deliver benefits to students and the wider public. For more information see the [HEFCE website](#).

<sup>25</sup> The Browne Review, [Securing a sustainable future for higher education](#) (October 2010).

<sup>26</sup> Alternative providers are not subject to a tuition fee cap.

<sup>27</sup> HM Treasury, [Spending Review](#) (2010).

<sup>28</sup> HEFCE's annual grant letter from BIS sets out HEFCE's allocations for funding HE, and the government's priorities for the coming year. The government's teaching funding priorities for 2015/16 are the funding for high cost subjects, widening participation, and small and specialist providers. See [Funding for higher education in England for 2015-16: HEFCE grant letter from BIS](#).

alternative providers whose courses are designated for student support, with repayments for loans deferred until after graduation, subject to income levels reaching £21,000 per year.

3.3 A number of regulatory reforms have since followed, in order to adapt to shifting market forces and the priorities of the government. In particular:

- Increased information for students via the introduction of Key Information Sets (KIS) data in 2012.
- The introduction by HEFCE of the Higher Education Review (HER), a more risk-based approach to quality assurance of HE<sup>29</sup> focussing the effort of the Quality Assurance Agency for Higher Education (QAA) where it will have the most impact and giving students power to hold universities to account.
- A recent announcement by BIS that the HER will become the common review framework by the QAA to be applied to all HE providers which are within the regulatory framework.<sup>30</sup>
- The gradual lifting of student number caps for certain providers, culminating in the complete lifting of the caps for traditional providers and those alternative providers with degree-awarding powers which have specific course designation.<sup>31</sup>

3.4 Nevertheless, the regulatory landscape remains complex. Not all HE providers that operate in England are covered by the regulatory framework. Those that are subject to the regulatory framework are so by virtue of having one or more of the following: degree-awarding powers, the right to use the 'University' title, HEFCE funding, designation for student support purposes, partnership with another UK HE provider with degree-awarding powers to deliver courses, and a license to recruit international students. HEFCE has sought to define these 'gateways'<sup>32</sup> and the forms of associated regulation in an 'Operating Framework' for the sector, which explains how HE providers are

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<sup>29</sup> See HEFCE, [Regulation and assurance](#); and QAA, [Higher Education Review](#).

<sup>30</sup> See higher education minister, Greg Clark's [statement to parliament](#) (January 2015), outlining steps to improve regulation of alternative providers.

<sup>31</sup> Student number caps will be removed for the traditional providers and alternative providers with degree-awarding powers (that have courses designated for student support) from 2015/16. BIS will allow providers offering validated degrees the flexibility to increase the number of students they recruit by up to 20% in 2015/16. BIS will also allow providers with a strong performance to expand, while reducing student numbers for other providers. See Greg Clark's [statement to parliament](#) (January 2015) and BIS' announcement and consultation, [Further measures to drive quality at alternative providers of higher education](#) (March 2015).

<sup>32</sup> See HEFCE, [Gateways for higher education providers](#).

held to account and regulated in England.<sup>33</sup> HEFCE has also introduced a register, which is a directory of HE providers regulated in England.<sup>34</sup>

- 3.5 However, despite attempts to consolidate the gateways and different forms of regulations that have developed over time, there are discrepancies and gaps in the way the regulatory framework applies to different types of HE providers. There is also no single regulator with regulatory oversight of all the HE providers in England. Although the government consulted on a new role for HEFCE as independent lead regulator for HE in England, legislation did not follow.<sup>35</sup>
- 3.6 As a result, different regulations apply to the different types of providers, depending on whether they are designated for HEFCE-funding (ie traditional providers) or not (ie alternative providers). Whilst the former are regulated by HEFCE, the latter are subject to requirements set out by BIS, but only to the extent they are designated for student support. As the regulatory framework is largely attached to funding, many alternative providers which are not in receipt of student support are outside the regulatory framework and therefore not subject to any external regulation of quality assurance.<sup>36</sup>
- 3.7 There continues to be widespread support for legislative changes to reflect the increasingly diverse range of providers that operate across the HE sector.<sup>37</sup> There is widespread recognition that the legislation in force, the Education Reform Act 1988, the Further Education Act 1992, the Teaching and Higher Education Act 1998, and the Higher Education Act 2004, and the associated regulatory system, were designed for a different, less competitive operating environment. Particular concerns have been raised about:
- **The regulatory landscape becoming increasingly complex and difficult to understand.** Universities UK has recently highlighted that the regulatory framework is a complex one with multiple actors and lines of regulation and accountability across different providers. It argues that from a student and public perspective, this presents difficulties when

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<sup>33</sup> See HEFCE, [Operating framework](#).

<sup>34</sup> See HEFCE, [Register of Providers](#). The register only lists the HE providers regulated in England which have one or more of the following features: receive direct public grants for HE, have courses which have been specifically designated by the government as eligible for the purposes of English student support funding; are HE providers (HEIs); and have the right to award one or more types of UK degree. At the time of publication, there are 132 providers that can award UK degrees, 103 providers with official university status, 121 HEIs, 207 further education colleges (FECs) providing HE, 337 providers in receipt of government grants for HE, 104 privately-funded providers with specific courses designated for student support in 2014/15, and 213 providers accredited for initial teacher training.

<sup>35</sup> See BIS, [A new fit for purpose regulatory regime for the higher education sector](#) (August 2011).

<sup>36</sup> The Higher Education Commission has noted that 'with every month that passes, there are new alternative providers offering HE in England that are not being picked up by the current regulatory framework'. See Higher Education Commission, [Regulating higher education](#) (October 2013).

<sup>37</sup> See for example HEPI, [Unfinished Business?: Higher education legislation](#) (February 2014).

seeking information or reassurance as to the authenticity, quality and sustainability of a provider in the system. Further, it suggests that complexity also presents significant challenges for governance and coordination of regulation and its relationships between individual players within it.<sup>38</sup>

- **Imbalances and gaps in the regulatory landscape.** The Browne Review<sup>39</sup> and the subsequent White Paper, 'Students at the heart of the system',<sup>40</sup> voiced concerns about discrepancies and gaps in the regulatory landscape and advocated a single, transparent regulatory framework for all providers in the HE system (including further education colleges and alternative providers) in order to provide a level playing field for all providers. The Higher Education Commission also raised similar concerns in 2013<sup>41</sup> over the growing unregulated sector for HE that may be offering insufficient protection to students, with the potential to damage England's reputation as a leading provider of HE. It recommended a common regulatory framework which would require all HE providers with a physical presence in England to be registered with a lead regulator.
- **Concerns that regulations primarily aim to mitigate risks to the public purse.** The Higher Education Commission also observed that the current regulatory framework places precedence on the financial motives for regulation and argued that HE providers should not be forced to abide by rules and compliance only because they receive taxpayer's money.<sup>42</sup> The HEPI also pointed to a number of outstanding concerns about the complexity, coverage, powers, risks, accountabilities and costs/detriments of the current regulatory framework.<sup>43</sup>
- **Weak regulatory oversight of alternative providers.** University Alliance has highlighted that the absence of legislation has meant that some problems relating to regulation are being resolved in an ad hoc way.<sup>44</sup> It noted that HEFCE is severely limited in its ability to make requirements on the alternative providers designated for student support

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<sup>38</sup> See Report of the Universities UK Regulation Task and Finish Group, *Quality, equity, sustainability: the future of higher education regulation* (February 2015).

<sup>39</sup> See The Browne Report, *Securing a sustainable future for higher education* (October 2010).

<sup>40</sup> See BIS White Paper, *Students at the Heart of the System* (June 2011).

<sup>41</sup> Higher Education Commission, *Protecting students, encouraging innovation, enhancing excellence* (October 2013).

<sup>42</sup> *Ibid.*

<sup>43</sup> HEPI, *The future regulation of higher education in England* (March 2014).

<sup>44</sup> Universities Alliance, *How do we ensure quality in an expanding higher education system?* (May 2014).

purposes,<sup>45</sup> despite the very substantial sums of taxpayer-backed loans flowing to these providers. The National Audit Office (NAO) has also identified a number of concerns relating to the abuse of financial support provided to students attending some alternative providers.<sup>46</sup>

- **A need for better student protection.** Which? has recently argued that the regulatory framework is no longer fit for purpose<sup>47</sup> and suggested that, with students now incurring tens of thousands of pounds worth of debt to complete their studies, there needs to be a strong regulator to protect students.
- **A need for better awareness of consumer law obligations.** The CMA has published advice for the UK HE providers on their obligations under consumer protection law.<sup>48</sup> The CMA has also published materials for students and their advisers to raise awareness of their rights, which should help drive compliance.<sup>49</sup>

3.8 The government has recently announced a range of new measures and a consultation on the regulation of private providers to address the concerns of the NAO and the House of Commons Committee of Public Accounts (PAC),<sup>50</sup> and to provide assurance of quality and course eligibility for students at alternative providers in receipt of student support.<sup>51</sup>

3.9 Ongoing sector initiatives for regulatory reform include HEFCE's review of the provision of information about HE,<sup>52</sup> as well as its quality assessment review and consultation.<sup>53</sup>

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<sup>45</sup> There are currently 104 alternative providers which have specific courses that are eligible under student support regulations for 2014/15. See HEFCE [Register of HE providers](#).

<sup>46</sup> See NAO, [Investigation into financial support for students at alternative higher education providers](#) (December 2014). The key findings of the NAO investigation included EU students at some alternative providers claiming or attempting to claim student support they were not entitled to, high dropout rates at some alternative providers with no defined level of acceptable dropout rate. The NAO also found that 20% of higher national students recruited by alternative providers and claiming student support may not have been registered with the qualification awarding body in 2012/13.

<sup>47</sup> Which?, [A degree of value: Value for money from the student perspective](#) (November 2015).

<sup>48</sup> See CMA33, [Higher education: consumer law advice for providers](#) (March 2015).

<sup>49</sup> See CMA33(a), [Higher education: Undergraduate students: your rights under consumer law](#) (March 2015).

<sup>50</sup> See PAC's report, [Financial support for students at alternative higher education providers](#) (February 2015).

<sup>51</sup> See Greg Clark's [statement to parliament](#) (January 2015) outlining steps to improve regulation of alternative providers. The government is now consulting on three further proposals "aimed at improving the overall outcomes for students and value for money" at alternative providers, building on those already announced in January: a minimum English language requirement, requiring private colleges to provide the same Key Information Set to students as universities with direct public funding, and linking student number controls to "performance" on quality and student retention. See BIS' announcement and consultation, [Further measures to drive quality at alternative providers of higher education](#) (March 2015). These new measures follow BIS' introduction in 2014 of measures to raise the standards and accountability requirements for alternative providers seeking access to student funding through 'specific course designation' requirements. See BIS, [Alternative providers: specific course designation - guidance for providers: criteria and conditions](#) (August 2014).

<sup>52</sup> See HEFCE, [Review of the provision of information about higher education](#).

<sup>53</sup> See HEFCE, [Review of quality assessment](#).

- 3.10 The CMA agrees that further revisions to the current regulatory framework are needed to reflect the challenges placed on HE providers by greater diversity of provision, the shifting funding arrangements and priorities of government. The aim of such revisions would be to incentivise quality, protect students and provide greater competitive neutrality between the different types of HE providers.
- 3.11 Our report aims to contribute to the current debate, specifically focusing on how the current regulations prevent or inhibit choice and competition working well. We have looked at the impact the current regulatory framework has on providers' incentives to compete for students and the role the regulatory framework plays in enabling students to make informed choices about the range of providers across the HE sector.

## 4. Characteristics of the higher education sector

4.1 Competition and choice play an important role in helping to deliver high quality and consumer-focused services, including in public markets,<sup>54</sup> provided they are implemented in a way which recognises the unique features of these markets.

4.2 The HE sector in England is to a large extent characterised by healthy competition between providers.

- On the supply side of the market, HE providers have a strong reputational incentive to provide high-quality education. Providers appear to be actively competing with each other for the best students, particularly at the pre-application stage of the application process. Providers compete directly for students through open days, taster sessions, outreach, prospectuses and marketing materials. Providers also indirectly compete for students by seeking to build their reputation and to achieve high rankings in league tables which, in turn, students use as proxies when choosing between providers and courses. Many providers are also used to competing for research funding and seek to attract good research ratings in the Research Excellence Framework.<sup>55</sup> Such competitive dynamics have increased in recent years as the sector has witnessed an expansion in the number of traditional and alternative providers competing for students.
- On the demand side of the market, students paying for their tuition fees are likely to have increasingly high expectations for their investment, a feature that has changed the dynamic of the relationship between HE providers and their students.<sup>56</sup> HE providers appear to be responding to pressures from students to provide innovative forms of teaching, such as making more materials and courses available online.

4.3 Whilst the sector demonstrates a healthy competitive dynamic, it also has a number of inherent characteristics which justify a need for regulation as a complement to the competitive process in order to ensure positive outcomes for students. These characteristics are as follows:

- **Student choice may not be sufficient to drive quality.** HE can be characterised as an 'experience good', that is, one for which the quality cannot be observed prior to taking the programme and cannot be easily

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<sup>54</sup> See OFT1214, *Choice and Competition in Public Services – A guide for policy makers* (March 2010).

<sup>55</sup> See *Research Excellence Framework*.

<sup>56</sup> See Which?, *A Degree of value: Value for money from the student perspective* (November 2014).

compared to other programmes on offer (as students only tend to take one undergraduate course in their lifetime).<sup>57</sup> The quality the student experiences is also dependent on ‘co-production’ – the investment by the student, teachers and of wider resources which is likely to be difficult to predict and determine before choices are made. The quality of HE is therefore difficult to predict, observe and define before students start studying. Students may therefore find it difficult to assess in advance the quality on offer and, as a result, may choose a course that does not meet their expectations.

- **High switching costs.** There are few ‘repeat purchases’ in the HE sector and therefore the scope for students to switch provider for their future purchases is far less than in many other markets. There are also high barriers to switching (for example, credits might not be transferable and students may have to incur high financial and social costs if they switch institution), which means that students are unlikely to switch during their ‘single purchase’ if they want to study an alternative programme, or the quality on offer does not match their expectations.
- **Increasing and diverse student expectations.** Shifts in the way undergraduate education is funded and a deregulation of student number controls have created a more demand-led system. With these developments are likely to come diverse and heightened expectations for reassurances on the quality and sustainability of HE provision.

4.4 Given these features of the sector, students face three key risks if the sector is unregulated. Students may not have confidence that they are choosing the right course to suit their expectations; providers may not be incentivised to provide a quality learning experience; and the overall reputation of the sector might be undermined. There is a case, therefore, for regulatory protection, in addition to consumer law protection, in the HE sector.

4.5 Nevertheless, it is important to get the design of regulations right. Badly designed regulation can stifle competition and ultimately lead to harmful outcomes for students. There are two ways in which the regulatory design can lead to harm in the HE sector:

- First, regulations that affect all providers could raise their costs which could potentially increase the price paid by students. Sector-wide regulations could also create barriers to entry and exit, potentially

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<sup>57</sup> D. Weimer and A. Vining go further and categorise HE as a ‘post-experience’ good, the quality of which can only be established well after it has been ‘consumed’, and perhaps not even then. See *Policy Analysis: Concepts and Practice* (1992). See also Roger Brown, *Competition and Choice in Undergraduate Education* (2012).

protecting incumbent providers from competitive pressures and reducing the number of courses available to students. Regulations could also make innovation more difficult by placing restrictions on the courses or ways of teaching that providers can adopt. Ultimately students could suffer due to higher prices, less choice or a poorer learning experience that would have been the case without the regulations.

- Second, regulations can affect some providers and not others. This may occur if regulations raise the costs of some providers relative to their competitors. Similarly, some types of providers may struggle to compete if they are prevented from gaining access to certain important resources due to the type of provider they are, rather than their historic or likely future performance. As a result, student choice and competition between providers delivering HE is likely to work best where the playing field, in terms of regulation, funding and information provision, is as level as possible.

4.6 Our review has therefore considered whether regulations in the HE sector are designed to address the risks outlined in paragraph 4.5 whilst, at the same time, not creating obstacles to competition for some or all providers, which may undermine the effective functioning of the HE sector.

## 5. Impact regulations have on the supply side of the market

5.1 In this section we look at the impact regulations and any gaps in regulation have on the supply side of the HE sector, namely:

- incentives to provide a quality learning experience;
- barriers to entry and expansion;
- innovation; and
- managing exit.

### Incentives to provide a quality learning experience

5.2 ‘Quality’ in the context of HE is difficult to define because what quality means is likely to be interpreted differently by different students, institutions, employers and the government. Students also might change their views about what quality means before, during or after their course. Given this complexity, the CMA has not attempted to define what quality means or to assess whether the current quality assurance regime is looking at the ‘right’ aspects of quality. Moreover, the CMA considers that any attempt to define quality by reference to a particular set of criteria carries, and needs to guard against, the risks of excessive or uneven regulation set out in paragraph 4.54.5.

5.3 The dimensions of quality assessed by the current regulatory framework are described by the operating framework as the ‘regulatory building blocks’, and include academic quality and enhancement, financial sustainability and good governance, access and participation, information provision, and student complaints and redress. These different dimensions are in place for different reasons and to satisfy the interests of different stakeholders (including government policy and finance objectives, students and the sector more broadly). Whilst we have not commented on these dimensions of quality, we note that as part of HEFCE’s ongoing quality assessment review<sup>58</sup> it will be important to maintain a focus on the aspects of quality that matter to students.

5.4 Our focus has been on whether the current structure of the external quality assurance regime<sup>59</sup> is designed in such a way as to incentivise providers to

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<sup>58</sup> See HEFCE, [Review of quality assurance](#).

<sup>59</sup> The [UK Quality Code](#) for HE sets out the expectations that all providers of UK HE are required to meet, and sets out the methods of scrutiny and criteria to be tested through reviews conducted by the QAA on behalf of HEFCE and BIS.

demonstrate quality as defined by the current regulatory framework and to protect students from poor quality.<sup>60</sup> Our assessment suggests that the current structure of the regulatory framework is creating the following risks to the quality of HE provision students receive:

- **Gaps in the scope of regulatory oversight.** Some providers are outside the scope of the current regulatory framework and therefore not subject to external quality regulation. This presents a significant risk that such providers may not be incentivised to provide quality or that poor quality is not addressed promptly. From a student perspective, this means that they are more likely to receive poor quality provision and less likely to benefit from regulatory intervention if quality falls below the levels they expected.
- **Discrepancies in regulatory oversight and sanctions.** Different types of providers within the scope of the current regulatory framework are subject to varying degrees of regulatory oversight and sanctions. Again, this results in some providers facing weaker incentives to provide quality and regulators having less powers to act on behalf of students and address concerns. Whilst students can go some way themselves in assessing quality, such gaps and discrepancies combined with the information asymmetries facing students means some students might experience levels of quality they did not expect.

5.5 These risks stem from the scope of regulatory oversight and the sanctions for failure varying depending on the type of provider and the funding it receives, rather than primarily the quality on offer to students. We have not identified any objective justifications, from a student perspective, for such uneven application of external quality assurance processes across the different types of providers.

### ***Gaps and discrepancies in the scope of regulatory oversight***

5.6 The extent to which a provider is monitored for academic quality and enhancement and financial sustainability, and is subject to access and participation, dispute resolution and information provision requirements, largely depends on whether or not the provider has:

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<sup>60</sup> The CMA did not consider in detail the components of the current quality assurance system (self-regulation and co-regulation), the methods of scrutiny and criteria applied by the regulatory bodies for quality assessment, or how the regulatory framework is and should be structured in terms of which providers have what regulatory responsibilities, nor did it assess the performance of the current regulatory bodies in the sector.

- access to HEFCE funds;
- degree-awarding powers (DAPs);<sup>61</sup>
- specific course designation (SCD), ie its students on ‘designated’ courses can receive student loans; and/or
- Highly Trusted Sponsor Status (HTSS), ie license to recruit international students.

### *Direct oversight*

- 5.7 HEFCE-funded providers, and those privately-funded providers with DAPs, SCD or HTSS are subject to direct QAA scrutiny, although as we outline below the sanctions facing these providers differ.<sup>62</sup>
- 5.8 The external quality assessment is currently undertaken by the QAA<sup>63</sup> on behalf of HEFCE, BIS and the Home Office (which have different policy objectives for requiring the external QAA scrutiny).<sup>64</sup> As a result of BIS’ recent announcement aimed at strengthening the quality assurance process around SCD, the HER has become the common review framework of the QAA in England.<sup>65 66</sup> The HER reviews the provider’s arrangements for maintaining the academic standards and quality of the courses it offers.<sup>67</sup> The review aims to inform students and the wider public about whether a provider meets the expectations of the HE sector for the setting and maintenance of academic standards, the provision of learning opportunities, the provision of information, and the enhancement of the quality of students’ learning opportunities.

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<sup>61</sup> In the UK, DAPs can be granted by either a Royal Charter, Act of Parliament or the Privy Council.

<sup>62</sup> The QAA’s quality assurance reviews build on HE providers’ own internal and external quality assurance arrangements, which include student feedback, corporate governance, internal and external peer review, external examiners, course validation, complaints and appeals procedures, annual monitoring processes, internal audit, and approval of validation and franchising arrangements with other providers.

<sup>63</sup> Quality assessment in the UK is currently conducted by the QAA under contract to the UK funding bodies, including HEFCE. The UK HE funding bodies are currently seeking views on future approaches to the assessment of quality in HE and intend to put their contract for quality assessment out to competitive tender. See HEFCE, [Review of quality assurance](#).

<sup>64</sup> While traditional providers are regulated by HEFCE (pursuant to the Further and Higher Education Act 1992), alternative providers with specific course designation are subject to requirements by BIS (as a condition of their designation), and those providers with HTSS are subject to requirements by the Home Office. Consequently, these three types of providers are subject to direct QAA scrutiny as part of the requirements imposed on them by HEFCE, BIS or the Home Office.

<sup>65</sup> See Greg Clark’s [statement to parliament](#) (January 2015).

<sup>66</sup> As part of the Home Office’s requirements to obtain a license to sponsor overseas students (Tier 4 HTSS) providers have to undergo a review of educational oversight by QAA – known as the HER (Plus) – which consist of the HER and a requirement to account for financial sustainability governance and management.

<sup>67</sup> See QAA, [Higher Education Review](#).

### *Indirect oversight*

- 5.9 In contrast, providers without any direct public funding, DAPs, SCD or HTSS are not directly scrutinised by the QAA under the current regulatory framework. These institutions are alternative providers without DAPs who may work in partnership with degree-awarding bodies (through validation or franchising) and/or other awarding organisations (such as Pearson) in order to deliver recognised HE courses. Under the current regulatory framework, degree-awarding bodies and awarding organisations retain responsibility for the academic standards of the awards granted in their names and for ensuring that the quality of learning opportunities offered is adequate to enable students to achieve the academic standards required for their awards.
- 5.10 The regulatory framework provides for an indirect external regulatory scrutiny of providers in validation or franchising partnerships. Such indirect scrutiny occurs through the QAA's scrutiny of their degree-awarding bodies.<sup>68</sup>

### *No oversight*

- 5.11 As explained in paragraph 3.4, some HE providers are not covered by the regulatory framework, and therefore not subject to external regulatory scrutiny. In particular, alternative providers with no SCD or HTSS which offer sub-degree courses accredited by awarding organisations are outside the external quality assurance regime. The regulatory arrangements for these types of sub-degree qualifications largely operate under a different regulatory system which does not provide for an external assessment of the quality of learning opportunities.<sup>69</sup>
- 5.12 There is currently no accurate number within the sector as to how many such privately-funded providers there are. A research by BIS evidenced the complexity of the privately-funded sector and identified over 674 alternative providers in the UK, not all of which are inside the regulatory framework.<sup>70</sup>
- 5.13 This regulatory gap creates a risk that poor quality provision by providers that are not subject to direct QAA scrutiny will not be noticed and addressed promptly, thereby causing detriment to students and the reputation of the sector. Such uneven application of the quality assurance regime also risks

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<sup>68</sup> As further explained in paragraphs 5.32 to 5.38, validated and franchised providers are indirectly scrutinised by QAA via their reporting arrangements to the degree-awarding bodies that validates and/or franchises their courses (who in turn will be directly scrutinised by the QAA).

<sup>69</sup> Awarding organisations for sub-degree level courses approve courses offered by providers if they meet the criteria set by the awarding body, who in turn have to meet the qualification standards set out by Ofqual and the Framework for Higher Education Qualifications. However, the quality of learning opportunities at providers of these sub-degree courses is not subject to any scrutiny by either Ofqual or the QAA.

<sup>70</sup> See BIS, *Privately funded providers of Higher Education in the UK* (June 2013).

distorting providers' incentives to provide quality. This can be illustrated by a hypothetical scenario where two students at two different providers study the same subject and receive equally poor quality of provision. The first student attends a HEFCE-funded provider (A), whereas the second student attends a privately-funded provider (B) without any DAPs, SCD or HTSS:

- The poor quality experienced by students at provider A may be picked up by HEFCE's engagement with the provider, if the issue falls within the scope of the UK Quality Code and is identified by QAA reviewers, or is picked up by the student complaining via the QAA Concerns Scheme.<sup>71</sup> The QAA will decide whether to launch an investigation within 12 weeks of a student complaining via the Concerns Scheme.
- In contrast, students at provider B are dependent on the oversight of their partnership arrangement to identify quality concerns. If provider B provides a validated degree, quality concerns may be identified through the annual monitoring of the provider by its degree-awarding partner.<sup>72</sup> However, at the extreme, students might have to wait up to six years for the QAA to pick up the concerns during its review of the validating institution, and even then the review only looks at the strength of the oversight arrangements in place. If provider B provides sub-level degrees as part of an arrangement with an awarding organisation, it will not be subject to any direct or indirect external scrutiny for the quality on offer. Students will not be able to complain directly to the regulator under the Concerns Scheme and the regulator will not look directly at their institution's performance.

### ***Discrepancies in sanctions***

- 5.14 The divergence in the application of the regulatory oversight is further exacerbated by different providers within the regulatory framework facing different sanctions for poor quality.
- 5.15 Under the current regulatory framework, key differences emerge in relation to the sanctions associated with a poor QAA review for providers with equivalent powers. Although HEFCE, BIS and the Home Office have powers at their disposal to sanction poor performance, which have financial and resource implications for a provider, the sanctions vary depending on the type of provider in question. The key points of variation in sanctions are illustrated in

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<sup>71</sup> QAA [Concerns scheme](#).

<sup>72</sup> Providers with DAPs who validate are subject to annual monitoring returns and have agreements in place with their validated partners to provide this information. Annual monitoring is not simply focused on academic standards but also addresses the student experience as part of QAA requirements.

Table 1. These main differences relate to the conditions attached to DAPs and student support funding which are different for traditional providers and alternative providers.

**Table 1: The application of sanctions across different types of higher education providers**

<i>Sanctions</i>	<i>HEFCE-funded HEIs</i>	<i>HEFCE-funded FECs</i>	<i>Alternative providers with SCD</i>	<i>Alternative providers with renewable DAPs</i>	<i>Providers without direct public funding, renewable DAPs, SCD or HTSS</i>
DAPs removed following poor QAA review	No – DAPs in perpetuity	Yes	Not relevant	Yes – DAPs renewed every six years	Not relevant
Subject to QAA judgements (via HER or Concerns Scheme reviews)	Yes	Yes	Yes	Yes	No, unless voluntarily sign up to QAA or are required to by representative body
Subject to HEFCE sanctions following poor QAA review <sup>73</sup>	Yes, ultimately funding can be removed	Yes, ultimately funding can be removed	No	No	Not relevant
Course designation removed by BIS following poor QAA review	Automatic course designation for student support is lost if HEFCE funding is removed	Automatic course designation for student support is lost if HEFCE funding is removed	Yes	Yes, if courses are designated	Not relevant
Provider can have HTSS removed by the Home Office	Yes	Yes	Yes	Yes	Not relevant

5.16 With respect to providers with DAPs, whilst HEFCE funded providers have to adhere to HEFCE’s policies on underperformance and ultimately face the risk of losing their HEFCE funding, they do not face the risk having their DAPs removed as they are awarded those powers in perpetuity regardless of how low quality falls. In contrast, alternative providers can be awarded DAPs for a period of six years which can only be renewed after a successful QAA review.<sup>74</sup>

5.17 With respect to designation for student support, BIS has the power to designate courses at alternative providers and can withdraw designation from courses that fail to comply with the terms and conditions attached to course designation, including a poor QAA review. BIS has recently tightened the designation process by requiring that alternative providers, unless they have

<sup>73</sup> HEFCE’s unsatisfactory quality policy only applies to traditional providers. This process starts to apply when a provider receives a published QAA review judgement or does not meet UK expectations in one or more areas. The first step in addressing the identified issues is led by the QAA. If this does not resolve matters then HEFCE will step in to take the lead: improvements will be expected and, in exceptional circumstances, sanctions may be applied.

<sup>74</sup> Alternative providers that have secured teaching DAPs in this way include Ashridge Business School, BPP University, the College of Estate Management, ifs University College, Regent’s University London and the University of Law.

DAPs, be re-designated every year.<sup>75</sup> In contrast, traditional providers have institutional designation for all their courses and are not subject to the annual reviews associated with course designation.

- 5.18 HEFCE's regulatory powers over traditional providers has been on the basis of it being a funding agency, with the ability to attach conditions to its financial allocations to institutions.<sup>76</sup> As the financing of HE providers moves away from recurrent taxpayer-funded grants from HEFCE towards a system based on student tuition fees, HEFCE's regulatory powers have become diminished. Therefore, whilst the regulatory framework does not currently attach any formal conditions to traditional providers' automatic institutional designation, a voluntary agreement has been put in place by the sector in order to ensure that the rebalancing of funding from HEFCE grants to tuition fees does not diminish the effectiveness of the current regulatory framework.<sup>77</sup>
- 5.19 There are therefore some 'equivalent' providers that are subject to different types of sanctions. The implication of the variation in oversight and sanctions is that some providers will face weaker incentives from the regulatory framework to provide quality for students and poor quality will not be swiftly addressed at some providers, thereby harming the students.
- 5.20 The variation in oversight means that different types of institutions face different costs in meeting the needs of regulators, for example administrative costs and senior management time. Furthermore, alternative providers are subject to higher QAA fees than traditional providers. Whilst the differences are unlikely to act as a barrier to entering the market, they appear increasingly unjustified in a sector where distinctions between different types of provider become increasingly blurred.

### ***Recommendations***

- 5.21 As explained in section 4, although we recognise that HE providers have a strong reputational incentive to provide high quality education and achieve high rankings in league tables, due to the inherent characteristics of the sector, we consider that regulation is necessary as a complement to the competitive process.

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<sup>75</sup> See Greg Clark's [statement to parliament](#) (January 2015).

<sup>76</sup> HEFCE-funded providers must meet the regulatory requirements laid out in the [Memorandum of assurance and accountability between HEFCE and institutions](#).

<sup>77</sup> The voluntary [Agreement on institutional designation](#) makes a more explicit link between the institutional accountability requirements attached to the HEFCE funding and automatic designation for student support.

- 5.22 The external quality assurance regime is currently designed around the institutions' exposure to public subsidy, rather than the risks to the quality of the learning experience. This system results in different providers being subject to different levels of scrutiny and sanctions which are not necessarily reflective of the risk to quality on offer, and in some cases no oversight at all. We are concerned therefore that providers' incentives to provide quality service are not consistent and that poor quality may not be swiftly addressed by some providers.
- 5.23 To address our concerns, we recommend that the regulatory framework is reformed based on the principles set out in paragraphs 5.24 to 5.28.
- 5.24 **Regulate for a baseline level of quality.** In order for all students to have assurance about the quality of their HE provider, a gateway for operating in the HE sector should be established across the whole sector. In order to pass through the gateway and be able to operate in the sector all providers should meet a baseline level of quality.
- 5.25 **Apply a strict cost-benefit assessment to ensure the baseline level of quality is kept to a minimum to promote competition.** It is not the place of a competition authority to prescribe what aspects of quality should form part of the baseline. However, it is important that:
- the baseline is kept to the minimum level needed to provide assurance to students that governance, student redress, consumer protection and transparency standards have been met, whilst still allowing scope for providers to compete to provide a quality learning experience above the baseline;
  - the government and/or regulator applies a strict cost-benefit assessment to proposals to be included in the baseline in order to ensure requirements are kept to a minimum. The criteria to assess the costs of a proposal could include both the direct bureaucratic cost and the likely impact on the number and range of providers and courses, the ability of providers to compete and their incentives to compete to offer innovative and high quality courses. Such costs could be weighed against the expected student benefit that could result from including the proposal in the baseline. The government and/or the regulator would need to apply such cost-benefit criteria to the HER in the event that it is proposed as the baseline regulatory requirement; and
  - as part of the transparency requirement, the regulator would assure the validity and accuracy of providers' information about the learning experience. The transparency and information requirements which would

form part of the baseline regulation and which the regulator would be responsible for assuring are outlined in section 6 and Annex 1, and include a greater emphasis on aspects of the learning experience and outcomes.

**5.26 Additional regulation above the baseline should not signal different levels of quality or create an unlevel playing field.** We recognise that the government needs to maintain further regulations on top of the baseline for other public policy objectives such as the assurance of public money (whether in terms of teaching and research grants or student support funding)<sup>78</sup> or migration control, and may need further conditions attached to acquiring DAPs or 'University' title. However, any regulation above the baseline needs to avoid creating a 'tiered' system signalling that lower tiers offer lower quality; and access to different tiers should not be dependent on providers' type. In order to achieve this we recommend that:

- the process for assuring the accountable use of public money is conducted separately from assessing whether providers meet the baseline level of quality. Keeping systems separate will allow scope for providers that do not have exposure to public money to enter the market;
- the scrutiny for the use of public money should focus on due process (such as fraud prevention and financial management), rather than wider aspects of quality (such as whether providers achieve certain job outcomes). Focusing such scrutiny on financial management will help to prevent providers being overly performance managed. Further, such focus will help to ensure access to public subsidy does not create a 'tiered' system whereby closer regulatory scrutiny signals higher quality (thus signalling that providers which do not want to or cannot be bound by public finance rules are seen to provide a worse offer); and
- to the extent possible, the system should be 'competitively neutral', meaning that different types of providers (including charities and private providers) that might be competing for the same students should have the opportunity to be bound by the same regulatory and funding rules.

**5.27 Maintain a risk-based approach to the frequency and intensity of regulatory review.** We recommend that the sector continues to develop and refine its risk-based approach to regulatory oversight, ensuring that the frequency and intensity of regulatory reviews are informed by the risks facing

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<sup>78</sup> The NAO's [Investigation into financial support for students at alternative providers](#) has recently highlighted the misuse of student support funding by alternative providers, which reiterates the importance of due process around the use of public subsidy (December 2014).

students, thereby deregulating to the extent possible the providers that can demonstrate low risk. Options to inform the frequency of review include making more use of student complaints data and closer scrutiny of providers with high non-completion or dropout rates.

- 5.28 **Relate sanctions to risks facing students rather than institutional type.** The sanctions that are applied by the regulator should be designed around the risks facing students rather than the public funding risks attached to the differing types of provider delivering the course. We also recommend that BIS considers making the sanctions that are applicable to providers with equivalent powers more competitively neutral. Options include extending the sanction of DAPs being removed or suspended to all providers with DAPs, and extending HEFCE's policy of dealing with poor performance to all providers.
- 5.29 We recognise that legislation would be needed in order to design a new regulatory system which adheres to these principles and to establish a regulator for the HE sector which has regulatory oversight of all HE providers. The CMA believes that any legislation a future government brings forward should adhere to these principles.

## **Barriers to entry and expansion**

- 5.30 Allowing entry and expansion to occur in the HE sector is an important part of ensuring a healthy competitive dynamic. In recent years the HE sector has witnessed an expansion in the number of new entrants and the number of students studying at alternative providers. The lifting of student number controls further creates the potential for existing providers to expand and for new entrants to win market shares. Whilst these changes should help to drive competition (provided entry is not at the expense of students getting the quality they expected), we have examined whether there are any residual barriers which mean entry and expansion continue to be unnecessarily restricted.
- 5.31 We have identified two issues which are creating, or could create, barriers to entry and expansion. These are:
- increasing regulatory scrutiny of institutional performance and oversight arrangements making validation increasingly risky; and
  - providers with DAPs potentially retreating from validation due to the threat of competition from validated providers.

## ***Scrutiny of validation***

- 5.32 As discussed in paragraph 5.9, HE providers that do not have DAPs but that wish to offer a course leading to an award from a degree-awarding provider may enter into a validation arrangement with that body.<sup>79</sup> The UK Quality Code explains that in a validation relationship, the degree-awarding body has ultimate responsibility for the academic standards of any awards granted in its name, and for the quality of the learning opportunities provided.<sup>80</sup>
- 5.33 Validation is an important route to market. HE providers do not qualify for taught DAPs without typically four years of experience in the market, meaning that validation is an important route to operating in the market. Validation is also important because many providers do not necessarily want to gain their own DAPs; therefore their business model is dependent of finding a partner with DAPs that is willing and able to validate their degrees.
- 5.34 During our roundtable, we were told that the QAA's increasing regulatory scrutiny of institutional performance and oversight arrangements is perceived as creating a reputational risk for the validating providers. Some providers said that, as a result, they are cautious of entering or continuing their validating collaborations. The caution stems from the UK Quality Code requiring that the validating provider is responsible for annual monitoring of its partnership arrangements and can receive a 'requires improvement' outcome in its HER if the QAA deems quality and standards at the validated provider are below what is expected.<sup>81</sup> However, whilst there is responsibility, the validator has no operational control over the validated provider to address problems affecting the quality of the learning experience. Problems may also not be identified until it is 'too late' and the validator receives a poor QAA review, triggering associated sanctions (such as, for example, losing its HTSS) and its reputation consequentially being damaged.
- 5.35 We were told therefore that the risk of accountability without control or confidence that the quality of the validated provider has been assured makes validation an increasingly less attractive proposition. In turn this creates uncertainty for the validated providers, making it difficult for them to plan ahead.

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<sup>79</sup> A validated course is described in the UK Quality Code for Higher Education as a module or programme which a degree-awarding body approves to contribute, or lead, to one of their awards. Students on the course normally have a direct contractual relationship with the delivery provider. See the [UK Quality Code](#).

<sup>80</sup> See the [UK Quality Code for Higher Education – Chapter B10: Managing higher education provision with others](#).

<sup>81</sup> The CMA notes that some validated providers have received poor QAA reviews in the past due to poor oversight of their validated providers, despite their own provision being considered by QAA of good quality.

5.36 We were told that the risks associated with validation are greater for validating providers which validate privately-funded providers that are not subject to the QAA quality assurance regime. More specifically:

- where the validated provider has SCD and/or HTSS, it will be directly subject to QAA scrutiny<sup>82</sup> and will therefore have an incentive to comply with the UK Quality Code; and
- where the validated provider has no SCD and/or HTSS, there is no requirement for it to be scrutinised by the QAA. Those providers that are not directly subject to QAA scrutiny will therefore have less incentive to comply with the UK Quality Code and the validating provider would therefore face less reassurance that quality will be upheld in the providers they validate.

5.37 There is some evidence to suggest the current regulatory framework is causing some providers to retreat from validating, although the overall number of validated degrees remains high. For example, several providers with DAPs told us during the CMA roundtable that the growing perceived risk associated with validation was resulting in providers reviewing their collaborative arrangements, with some partnerships being closed down. Some of the validated providers indicated that the uncertainty with regard to maintaining their validating partner makes it difficult to plan ahead, which risks making validation an unsecure route to market. We note however, that some recent retrenchment may be justifiable where poor performance is in evidence, which may impact negatively on the validator and on the student experience.

5.38 The scrutiny of validation arrangements appears therefore to be creating a risk that an important route to market will be affected, resulting in less entry, potentially innovation and fewer courses available in the sector.

### ***Competition from validated providers***

5.39 The providers that we spoke to told us that it is increasingly less attractive to validate an actual or potential competitor.

5.40 Institutions with DAPs do have an incentive to validate provision which is complementary to their own provision or could result in further demand for their courses. In addition, validation might be less of an investment when providers can draw on their own academic subject expertise to assess that

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<sup>82</sup> For providers without DAPs, the QAA scrutiny is concerned with the way in which these providers discharge their responsibilities within the context of their agreements with degree-awarding bodies and/or other awarding organisations.

quality and standards are met when validating such courses and programmes.

- 5.41 However, we were told that providers are likely to be more wary of validating courses which would result in their own student recruitment numbers being undermined. In the current HE climate, direct competition from providers without DAPs is increasingly becoming a factor being taken into consideration when deciding whether or not to validate. There is a potential risk therefore that validation, which is currently an important route to market for many providers, is cut off to current and new providers without DAPs.

### ***Recommendation***

- 5.42 Whilst we would not want to undermine 'good' retrenchment from a validation arrangement (because the provider is of poor quality), we do want to mitigate 'bad' retrenchment due to the regulatory framework making the exercise too risky.
- 5.43 The introduction of a baseline level of quality, which forms a gateway for the right to operate in the sector, should help to ensure that routes to market are not unnecessarily closed off to providers without DAPs. Accounting directly to the regulator for the quality of learning opportunities offered (rather than reporting indirectly via their validating institution) will give the validating provider more confidence and assurance about the quality of the providers they are validating. Such arrangements would still maintain the 'virtuous cycle' of validation whereby validating providers have a strong incentive to ensure their partners are performing against the quality and standards expected of their 'brand' and validated partners, in turn, have a strong incentive to meet their validating partner's expectations.
- 5.44 We do not consider it currently necessary to recommend interventions to address concerns that providers with DAPs will not validate their current or potential competitors' courses. This is because there are still many validation arrangements in the HE sector and providers can still 'shop' across the country to find partners with DAPs. However, we think it is important for BIS and the CMA to keep trends in the market under review and consider taking action if validation as a route is significantly cut off due to competition considerations on the part of providers with DAPs.

### **Innovation**

- 5.45 We have looked at whether the regulatory framework creates obstacles to the structural aspects of innovation: the pace and intensity of the course, the

location of the course, and the mode of study.<sup>83</sup> There have been innovations around the structural aspects of course delivery in recent years both in England and internationally, including the onset of Massive Open Online Courses and the development of e-advisory systems to help students find courses that meet their interests, which suggest that the regulatory environment does allow for innovation in the sector.<sup>84</sup>

5.46 Indeed, we have not identified any regulations that significantly affect the location of courses and the mode of study. Our assessment of the UK Quality Code has not identified barriers to innovation and to developing new approaches to teaching, such as providing online courses, or night-time learning and blending teaching with more practical aspects of learning. However, as the CMA's consumer compliance advice highlights, it is important that providers clearly communicate to prospective students the location and form the course will take.<sup>85</sup>

5.47 With regard to the pace and intensity of the courses, some concerns have been raised that the funding and student support system is potentially hindering innovation. Specifically, we have heard that there is little financial incentive on the part of traditional providers subject to the £9,000 per year tuition fee cap to provide two-year 'accelerated' degrees (which can be an attractive option for students and providers) as the potential fee income is currently capped at £18,000 for a two-year course.

5.48 With the funding restrictions as they are, unless the provider can take a third out of the costs of running a course, it is likely to be running an accelerated two-year course either at a loss or otherwise will be compromising quality. There is some evidence that accelerated courses actually cost more per year to put on, making such cost-reducing challenging. Findings from a HEFCE pilot scheme of accelerated learning<sup>86</sup> suggests that universities offering accelerated degrees have to bear the direct additional costs of:

- **student support throughout the summer:** summer learning might be particularly costly for providers that do not have salaried academics and where teaching and assessment is done by sessional academics being paid by the hour, thereby increasing the cost of provision;

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<sup>83</sup> In contrast with other aspects of innovation which occur within the provider such as developments in teaching methods and content.

<sup>84</sup> For an overview of recent innovations in HE please see the European Commission Directorate for Education and Training's [Study on innovation in higher education: final report](#) (2014).

<sup>85</sup> CMA33, [Higher education: consumer law advice for providers](#) (March 2015).

<sup>86</sup> In response to the government 2003 White Paper *The future of higher education*, HEFCE introduced a pilot scheme, [Flexible Learning Pathfinder Project](#), in 2008/09 to trial innovative forms of provision and delivery.

- **course preparation for distance and blended learning:** which some universities found to be more expensive than traditional face-to-face teaching; and
- **foregone revenues:** it also might be the case that teaching outside traditional term time risks closing off other revenue streams and research time. Further, having more teaching time may make a department less attractive to academics and so necessitates higher salaries to attract staff, although we have not compared salaries in detail.

5.49 In some circumstance therefore the cost per year of an accelerated degree is likely to be higher than the cost of a 'traditional' three-year degree and not be sustainable under the current £9,000 per year funding model.

### ***Recommendation***

5.50 We recommend BIS should examine how degrees structured in an alternative way could be supported by introducing more flexibility into the yearly funding rules. Whilst we note that accelerated degrees would still need to operate within the aggregated funding cap, there may be scope to allow more innovation whilst still maintaining public expenditure controls. Such degrees would still need to meet the baseline level of quality outlined in paragraph 5.24.

### **Managing exit**

5.51 There are a number of reasons why programmes, faculties or providers might exit the HE sector. They might either 'fail', as judged by the regulatory framework, or students may no longer want to study at the provider, or the provider may no longer wish to compete in that particular undergraduate market. Whilst these are longstanding risks that the sector has had to bear, as the sector becomes increasingly competitive, there is a greater risk that whole programmes and providers might leave the HE sector. Reasons include:

- the lifting of student number controls from 2015/16 for some providers<sup>87</sup> is likely to result in some providers finding it more difficult to attract sufficient numbers of students. In turn, this could result in some of these providers becoming financially unviable and needing to exit the market due to a shortfall in demand and lack of student recruitment;

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<sup>87</sup> See footnote 31 above.

- there has been an increase in the range of providers competing in the market, particularly amongst the provision of level 4 and 5 courses. Some new entrants into the market are for-profit providers which arguably might be more likely to exit the market should they find provision not as profitable as first anticipated; and
- as outlined above in paragraphs 5.32 to 5.41, providers with DAPs that currently or in the future might engage in validation of other providers face risks in doing so, not least because they need to assure the quality of provision at the providers they validate. Some providers with DAPs might therefore chose to withdraw from validation, which might result in the validated provider having to exit the market in the event it cannot find another provider willing to validate its courses.

5.52 Whilst the possibility and the threat of exit is desirable to ensure the sector remains competitive, such exit needs to be managed in ways which protect the student interest and do not result in students being without provision or unduly disrupted. Currently there is no formal or comprehensive arrangement to protect students in such circumstances. As a result, there have been calls within the HE sector for an exit regime to manage institutional failure and protect students.<sup>88</sup> HEFCE has recently held a series of roundtables to further the thinking around developing student protection in England in the event of course, institutional or corporate failure.<sup>89</sup> Outstanding issues centre on:

- **concerns that there is insufficient monitoring of financial sustainability.** In the past HEFCE and the Skills Funding Agency have had a long tradition of monitoring HEIs and FECs, detecting problems and taking mitigating actions which has served to protect the interests of large numbers of students. HEFCE has begun taking on the role of monitoring some alternative providers, but the system is not wholly embedded or comprehensive. There is a risk alternative provider failure will go unnoticed until significant disruption occurs;
- **student interests not being protected in the event of exit.** Insolvency is the responsibility of trustees/directors of the provider and the administrator, whose role, prescribed in law, is to rescue or restructure the business, and if this is not possible, to ensure the best outcome for creditors. It is possible that in the event of exit, such requirements take

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<sup>88</sup> See the Regulatory Partnership Group (RPG) Investigating Corporate forms: [Summary report of the Corporate Forms and Structures Working Group](#) RPG/36 (28 Feb 2014); currently the RPG is studying the options for possible arrangements in the event of corporate failure. Also see Higher Education Commission, [Regulating higher education](#) (October 2013) and a Report of the Universities UK Regulation Task and Finish Group, [Quality, equity, sustainability: the future of higher education regulation](#) (February 2015).

<sup>89</sup> HEFCE blog, [Student protection: what's to be done?](#) (January 2015).

precedence over the student interest in finding alternative provision at other HE providers and finding routes to complete their studies; and

- **disruption for students.** In the event of unexpected market exit, students would have to move to another institution, transfer student loans, change accommodation and re-locate. In addition, significant upheaval would affect the reputation of the HE sector.

### **Recommendation**

5.53 Given that increased innovation and competition brings with it the increased risk of market exit, a strategy should be put in place to protect students in the event that exit occurs. Whilst we are not making specific recommendations about how the regime should be designed, we advise BIS and HEFCE to take into account the principles outlined in the OFT's 'Orderly Exit' report when designing such an exit scheme.<sup>90</sup> These principles include:

- **mitigating the risk of service disruption** rather than the risk of exit/failure;
- **allowing for market entry** to new providers;
- **holistic market monitoring:** market trends can be identified early;
- **mitigating moral hazard:** providers should be incentivised to internalise the costs of failure;
- **preparing for failure:** plans should be put in place which allow providers to exit the market with minimal disruption; and
- **being adaptable to changes in the market:** the regime should be able to respond to long-term changes in market and service characteristics.

5.54 We would expect BIS to consider whether an exit regime should form part of any future legislative proposals to reform regulation in the HE sector.

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<sup>90</sup> See OFT1468, *Orderly exit: Designing continuity regimes in public markets* (December 2012).

## 6. Impacts regulations have on the demand side of the market

### Information to students

- 6.1 The OFT's Cfl highlighted that the factors affecting student choice vary between students. Students are also likely to be influenced by a range of different sources of information and advice, including their parents, peers, secondary school, open days, prospectuses and league tables.<sup>91</sup> Whilst recognising the diversity of factors influencing student choices, the Cfl sought to find out whether students can access, assess and act on comparable information about their prospective courses.
- 6.2 The OFT did so for two key reasons. First, if students can access information which allows them to understand clearly what providers offer, and the differences between these offers, they may make more informed choices. This in turn may improve student engagement, satisfaction, retention and success whilst at university and employability after university. Second, access to clear information which informs student choice can also help to drive effective competition between HE providers. If students are better able to choose providers that meet their preferences on the basis of actual information, as opposed to reliance on received wisdom or other factors, it may create an incentive for providers to be responsive to student preferences.
- 6.3 The Cfl recognised the wealth of information and choice tools already available in the HE sector. Students can refer to league tables, KIS and prospectuses; can visit providers (and in some cases attend 'taster sessions'), consult university websites and a variety of 'good university guides'; and may be able to access a careers adviser to help them make choices. Private initiatives also exist such as the Student Room, Push, BestCourse4Me.com and Which? University as evidence that the market responds to students' demand for information. Nevertheless, the Cfl made a series of recommendations about how information provision to students could be further improved. These recommendations are outlined in Annex 1.
- 6.4 The CMA's consumer protection law advice for UK HE providers should help providers, among other things, understand their obligations on supplying the

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<sup>91</sup> See OFT1529, *Higher Education in England – An OFT Call for Information* (March 2014), for an overview of the range of factors that affect student choice.

minimum legally required information to enable students to make informed choices about what and where to study.<sup>92</sup>

6.5 However, there is also an important role for the regulatory bodies (HEFCE, HESA,<sup>93</sup> QAA) in collecting information from providers, including but not limited to the information required under consumer protection law, and ensuring it is available to students in a comparable format.<sup>94</sup> Since the Cfl, the sector has made progress in improving the availability of information to students including:

- **Review of the information contained in the KIS:** HEFCE is currently working on plans to revise the KIS.<sup>95</sup> We encourage the sector to conduct this review as quickly as possible.
- **Plans to improve the availability of long-term employment data.** The Small Business, Enterprise and Employment Bill contains provisions which aim to provide new and improved information on learning outcomes by tracking students through education into the labour market; identifying which schools and colleges best enable their students to progress to positive destinations and sustainable employment; and giving a fuller understanding of the impact of education choices on lifetime labour market outcomes.<sup>96</sup> Additionally, in 2015 the UK Performance Indicators Steering Group will undertake a review of data collected by HESA on employment of leavers.<sup>97</sup>
- **Clarifying the description of accreditation:** HEFCE has asked accrediting bodies to check the accuracy of accreditation statements that are collected as part of the KIS<sup>98</sup>

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<sup>92</sup> See CMA33, *UK higher education providers – advice on consumer protection law* (March 2015).

<sup>93</sup> [HESA website](#).

<sup>94</sup> Whilst some providers are subject to other information reporting requirements, we have only looked at information requirements that are relevant to supporting student choice.

<sup>95</sup> See HEFCE, [Review of the provision of information about higher education](#), for more information about the review.

<sup>96</sup> See *Small Business, Enterprise and Employment Bill* and *Small Business, Enterprise and Employment Bill: impact assessments*.

<sup>97</sup> In 2013 the UK Performance Indicators Steering Group (UKPISG) commissioned [a review](#) of UK Performance Indicators collected by HESA. Membership of the UKPISG is drawn from government departments, the funding councils and representative bodies. As a result of the review a number of UKPIs will be subject to an in-depth review which will commence in 2015, including indicators relating to non-continuation rates and employment of leavers.

<sup>98</sup> See [Unistats and the Key Information Set](#).

## ***Improvements to Key Information Sets***

- 6.6 We recognise that many aspects of the information that, in the CMA's view, should be available in a comparable format to support student choice, is already made available via KIS, including course title, entry requirements, the award to be received on successful completion of the course, location of study, length of course, whether the course is accredited and by whom, tuition fees, and, if relevant, the awarding body or institution.
- 6.7 However, we recommend that as part of its review of the KIS, HEFCE continues to improve information provision about the learning experience, including who students will be taught by, staff to student ratios, the teaching methods and contact hours. The information about the aspects of the learning experience that we think should be made available to students in a comparable format is outlined in Annex 1. As the CMA has outlined in its advice on consumer protection law, it is a legal requirement to make some of this information available to students.<sup>99</sup> Nevertheless, there is still an important role for the regulator in ensuring the information set out in Annex 1, including that required by law, is made available in a comparable format.
- 6.8 We also recognise that the KIS does not stretch across the whole sector whilst being compulsory for some providers. Under the current regulatory framework, only HEFCE-funded providers have to take part in the KIS, although all providers have to comply with consumer protection law. Other providers can voluntarily sign up to the KIS provided their courses meet the eligibility criteria.<sup>100</sup> BIS estimates that data on courses at five alternative providers should be available on their own websites and on Unistats from September 2015. A further seven alternative providers have signed up and information should be available to prospective students from these providers in September 2016.<sup>101</sup>
- 6.9 Students considering courses which do not have KIS data can get information through the providers' prospectuses or by attending their open days, but they are not afforded the comparable, and increasingly useful information available about comparable courses within the current regulatory framework. As a result, it is difficult for students to compare and contrast information about 'non-KIS' providers, and for such providers to act as a source of competitive

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<sup>99</sup> See CMA33, [UK higher education providers – advice on consumer protection law](#) (March 2015).

<sup>100</sup> A lack of KIS data on a course does not reflect on the quality of the course. There are several reasons why some courses will not have the full KIS data to display. For example, newer courses may not yet have had the opportunity to collect student satisfaction data from the National Student Survey (NSS), or employment data from the Destination of Leavers from Higher Education; or courses may have too small a number of students for there to be enough responses to the surveys for the data to be statistically meaningful; or some private providers do not take part in these surveys or other national data collections. See: [Unistats – Key Information Sets](#).

<sup>101</sup> See BIS' consultation on [Alternative providers of Higher Education](#) (February 2015).

constraint on providers included in the KIS. Further, students may have less confidence in the accuracy and validity of the information provided by providers not included in the KIS.

- 6.10 We suggest therefore that BIS consider extending the scope of compulsory information requirements which help to inform student choice across the whole sector as part of any future legislative changes. Such requirements would form part of the baseline regulatory requirements outlined in section 5. We would also envisage the regulator and providers playing an ongoing role in assuring the validity and accuracy of such comparable information.<sup>102</sup>
- 6.11 We welcome BIS' recent announcement that, subject to consultation, it intends to extend the KIS requirements to alternative providers that fall within the scope of the current regulatory framework.<sup>103</sup> Nevertheless, we would envisage information requirements covering all providers in the sector as part of the future baseline regulation.

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<sup>102</sup> HEFCE and HESA require KIS returns to be signed-off by the head or acting head of the provider. The sign-off aims to provide assurances regarding accuracy and onward use of the data. As part of a QAA review, the accuracy of provider information can be further reviewed.

<sup>103</sup> See Greg Clark's [statement to parliament](#) (January 2015) and BIS' announcement and consultation, [Further measures to drive quality at alternative providers of higher education](#) (March 2015).

## 7. Conclusion

- 7.1 Not all markets and sectors need a system of regulation over and above consumer protection law to protect consumers. If consumers are well informed about what they are purchasing, and not at risk of being significantly harmed by poor quality, then the case for additional regulatory protection is unlikely to be very strong. In HE, it is difficult for students to assess the likely quality of a course before they start studying and students can also suffer in the longer term if they have made the wrong choice, or had a poor learning experience during their study. There is a strong case therefore for some regulatory protection in the HE sector even without considering the control of public subsidy for undergraduate HE.
- 7.2 Our review of the scope and structure of the current regulatory landscape applicable to the undergraduate HE sector in England has identified some providers that operate outside the regulatory framework and some that are only indirectly overseen by the regulator via their relationship with their validating institution. We are concerned that this patchy scope of the regulatory framework is creating, or could create, a number of risks for students.
- 7.3 Providers outside the scope of the regulatory framework may not be incentivised to provide a quality experience and there is no route through which concerns about institutional performance can be exposed and addressed. Ultimately, students are not offered the same protections as their peers studying at providers within the scope of the current regulatory framework.
- 7.4 Further, the regulatory framework does not directly scrutinise the performance of some providers without DAPs. As a result, it is becoming increasingly difficult for validating providers, who are accountable for the quality of their validated partners, to assure themselves that their partners offer suitable quality, particularly as the sector becomes increasingly diverse. Without reform, validation may become too risky an option and result in this important route to market being closed off to providers without DAPs.
- 7.5 To address these concerns we recommend the introduction of a baseline level of quality across the whole of the HE sector. Providers should be able to demonstrate that they meet the baseline in order to operate in the sector. Such a reform would help to assure students that they are receiving a minimum level of quality and validating providers to feel more confident about the quality of their validated partners.

- 7.6 In order for the new regulatory system to support an innovative and competitive HE system, it will be important to allow scope for providers to compete on the basis of quality over and above the minimum baseline requirements. The design of the reformed regulatory framework should be based on the principles set out in paragraphs 5.24 to 5.28 of this report in order to achieve such a competitive dynamic.
- 7.7 As part of the transparency requirements which would form part of the baseline regulation, we recommend that the sector enhances the information provided to students about the learning experience including who students will be taught by, the teaching methods and class sizes.
- 7.8 It is also important that regulatory rules and funding requirements allow new and innovative approaches to the delivery of HE provision, such as online and accelerated learning. We recommend BIS should examine how degrees structured in an alternative way could be supported by introducing more flexibility into the yearly student funding rules.
- 7.9 The CMA will work with the government to ensure that future legislative proposals adhere to these principles. Once a new regulatory system has been introduced, it will also be important for government and the regulator to keep the system under review and to track the impact reforms have on the sector.
- 7.10 Indicators that would suggest reforms are having a detrimental impact on the sector would include:
- a significant reduction in market entry and expansion, which may suggest the baseline quality has been set too high and/or that regulations in general are too costly and/or the validation rules are too burdensome;
  - an increase in complaints from providers which suggests the regulatory framework are making it difficult to compete; and
  - a reduction in validation arrangements which may signal a need to return to the issue of validating competitors.
- 7.11 In contrast, indicators that would suggest that the reforms are having a beneficial impact on the sector would include:
- increased innovation in terms of the methods of teaching, pace and forms of delivery, and location of providers; and

- continued or increased level of student satisfaction as measured by the NSS – including indications that concerns raised by students are being addressed promptly.

7.12 We hope this paper provides policy makers with a useful guide on how to introduce regulatory reforms which support healthy choice and competition in the HE sector that work for the interests of students.

## Annex 1: Changes made to the Key Information Set since the Call for Information

Comparable information the OFT identified as important to inform student choice <sup>104</sup>	Extent of information gap on Key Information Sets (whole/partial)	Status of progress to become a regulatory requirement
<b><i>Information about the learning experience</i></b>		
Staff to student ratio	Not currently available.	The ongoing KIS/Unistats review will look at class sizes. The QAA also published guidance on this for providers to outline what they should publish. HEFCE will follow up on response to QAA guidance in early 2015.
Teaching methods (for example seminar, tutorial)	Covered by QAA guidance and some info on KIS.	HEFCE will examine if students want more information about teaching methods in the KIS.
Who the students will be taught by	Covered by QAA guidance, but not on KIS.	Providers currently responding to QAA guidance. HEFCE will consider whether further information is required as part of the review of Unistats and the KIS.
Contact hours	Not currently available, although QAA guidance highlights that providers should provide information on workload.	Providers currently responding to QAA guidance. HEFCE will be looking at whether it should take a different approach to learning and teaching assessment in the review of Unistats and the KIS. Review of NSS does not recommend questions about teaching contact or learning time.

<sup>104</sup> We note that providers, in the CMA's view, are legally required to provide some of this information to students. See CMA33, [UK higher education providers – advice on consumer protection law](#) (March 2015). However, there is still an important role for the regulator in ensuring such information is available in a comparable format, and that information that which goes beyond providers' legal requirements is also available in a comparable format.

Assessment and feedback	Both how course is assessed and students' view of feedback is available via KIS, but as a percent of type of study rather than in absolute terms.	Changes being considered. HEFCE will be looking at the Learning, Teaching and Assessment data in the review of Unistats and KIS.
Level of intellectual challenge	Not currently available.	Some changes planned as part of the review of NSS. HEFCE will be consulting on changes in autumn 2015.
Student performance and degree classification	Not currently available, although previous work has been conducted in degree classification around the US (Grade Point Average and Higher Education Achievement Report).	HEFCE with partners is undertaking research to investigate concepts of learning gain and value added. This is complex, but HEFCE is considering it as part of its review of quality indicators. They propose some approaches in the autumn consultation 2015, although developing robust measures may take longer.
Student retention	Some data is currently available on Unistats (for example, continuation rates).	There is active and ongoing consideration of whether changes are needed as part of the Unistats/KIS review.
Terms allowing for changes to course structure after enrolment	Not currently available.	Review of NSS survey research recommends deletion of question 'any changes in the course or teaching have been communicated effectively'. HEFCE will be consulting on any changes in autumn 2015.
<b><i>Information about the course outcomes</i></b>		
Employability and salary prospects	Destination of graduates six and 30 months following graduation, type of job and average salary at course level available through Unistats based on census Destination of Leavers of Higher Education survey data. Currently no longer term data beyond 30 months at course level.	The Small Business, Enterprise and Employment Bill 2014/15 currently going through Parliament makes provision for supplying information about qualifications and the destinations of students after they have left an institution. The Bill will allow HMRC tax data to be linked to enable long term salary data to be made available.

<b>Information about the offer beyond the learning experience</b>		
Extra charges students will incur	Not currently available.	CMA not aware of plans to make likely extra charges available in a comparable format
Information about financial support available to students	Not currently available.	HEFCE will investigate in the review of KIS if more extensive information on financial support is needed.
Regulatory status – which regulatory provider oversees the provider and link to latest assessment	<p>Yes some information (eg accreditation of courses by professional bodies (but links could be better).</p> <p>HEFCE register records more information about a providers' regulatory status provided they are within the regulatory framework.</p> <p>HEFCE website now contains the latest review of each institution.</p>	Greater links between the HEFCE register and Unistats are being considered.
Strengthen the link between the UCAS and Unistats website		HEFCE and UCAS have agreed to introduce links between the two websites for the 2016 application cycle.