

Repainting the higher education sector:

The 2016 HE White Paper and Bill

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This publication is a collection of some of Wonkhe's early analysis and commentary of the 2016 White Paper and Higher Education and Research Bill both published in the week of 16th May 2016. It is not designed to be complete or exhaustive, merely the first reaction to the changes now coming to English higher education.

We will continue the work to understand these wide-ranging reforms in the coming days, weeks, months and years and will publish everything openly and freely at www.wonkhe.com so that the sector can collectively debate, analyse and understand the changes now upon us all.

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Welcome to higher education version 6.0¹

The government has over the last week proposed reforms that will herald a transition to the next substantial version of the higher education sector. The freeing-up of the market to new providers, course structures and forms will create a new conceptualisation of what it means to be a university. This might be the next step on from developments in the 1960s, with the new plate-glass institutions and the Open University, or the 1990s when polytechnics were granted university status. All ultimately came to be accepted in the mainstream.

And perhaps the new ‘challenger’ universities will be as well, but this will be the first time that a significant number of universities will not do research. It will be the first time that significant numbers of universities can be profit-making companies. There will be a far greater diversity of work-based provision, flexible course structures, tiny-sized providers, and open-ended entry requirements. New universities will be created from those already in the system, such as further education colleges, small and specialist providers and newer private entrants. And it's likely that new breeds of university will emerge as well, with the barriers to starting one up now much lower, and the ability for newcomers to offer degrees from their first day of operation.

With institutional change will come the apotheosis of a new discourse about universities that has been creeping up on the sector for a long time. This has not been without criticism already, debates about the market and everyone's role in it have been running for years. Sweeping that all aside, we are now asked to embrace a much more diverse, complex, and inclusive idea of the university with multiple aspirations and objectives. It's difficult to assess exactly how this will disrupt the established order - different parts of the sector will be challenged in different ways. But the prospect of a radical shakeup of the HE market should cause already-established

¹ 1.0 Pre 1828, 2.0 1828-1900 (UCL opens), 3.0 1900-1963 (Birmingham gets charter), 4.0 1963 (Robbins), 4.1 1965 (Woolwich & binary system), 5.0 1988/1992 (incorporation & end of binary), 5.1 1998 (Dearing & fees), 5.2 2012 (£9k fees), 6.0 2016 (Johnson).

universities to give some real thought as to how they might thrive in an more open and diverse system.

The Higher Education and Research Bill is now before Parliament, and it needs to progress quickly to allow all the pieces to come together in time for version 6.0 to come online in 2018.

Power and control in the new system

The old sector saw a system that was focussed on the needs of established providers of HE who ran and ruled the roost. The new order brings a powerful government regulator whose powers go further than anyone anticipated. And they will operate almost entirely in the interest of consumers, not providers. The providers - old and new - will move around the system, through gateways and across systems of assessment, ceding many traditional powers to the Office for Students. The OfS will be able to grant Degree Awarding Powers and University Title, and take them away (including from established providers). They will take responsibility for standards, something previously the responsibility of universities themselves. They will have the power to enter the premises of a provider suspected of being in breach of its rules. They will hand out teaching funding. OfS will even have the ability to validate courses itself.

The OfS will be guided by the Secretary of State who may issue guidance about “particular courses of study” - something the 1992 Act previously prevented. While independent of government *de jure*, it is not hard to see how the OfS will be - in practice - more subject than HEFCE to the whims of ministers, the media and pressure groups with opinions about different aspects of higher education.

It must also be noted that, despite the title, there is very little at present that demonstrates what link (if any) the Office for Students will have to students themselves. Indeed, the White Paper states that the OfS’s responsibilities will be to “students, employers and taxpayers”. The opinions of the latter two are certainly higher up the list of ‘groups that governments will listen to’. How the OfS balances the assumed interests

of these three groups will define the relationship between universities and government going forward.

The OfS will split HEFCE's responsibility for overseeing institutions 'in the round' with UK Research and Innovation (UKRI), the new single agency responsible for research policy. BIS has instantly chopped eight of its partner bodies, nominally in order to break down barriers to interdisciplinary study, but really in order to hit its own targets to streamline delivery. Nonetheless, the research councils will maintain their outward identity and branding, and UKRI will be responsible for overseeing the balance of funding between disciplines. A new body, Research England, will join the UKRI family to run the REF and hand out QR funding.

Perhaps one of the biggest questions about where power lies in the sector will be about 'standards' - that ever present and ill-defined aspect of public debates about all forms of education. The Bill says that "standards' means the standards used by an institution to ascertain the level of achievement attained by a student undertaking a higher education course provided by it." Previously the purview of providers, the Bill also grants the OfS responsibility for standards. If the government believes it has just cause for concern about sector standards, and in particular about ensuring the comparability of standards between institutions, then these moves to address them will likely represent a significant challenge to the autonomy of universities.



Chapter one: Challengers and challenges

The challengers (and challenges) in higher education market reform

Andrew McGettigan

Competition between providers in any market incentivises them to raise their game, offering consumers a greater choice of more innovative and better quality products and services at lower cost. Higher education is no exception.

(Executive Summary, §7 *Success as a Knowledge Economy*)

This is the ministerial credo we have lived with for the last six years, and it has driven a variety of efforts at market reform in English higher education. In theory, the replacement of the old system (with its direct grant payments to institutions and fixed undergraduate recruitment caps) by a loan-fee regime was designed to improve student choice by having money follow the applicant. Good institutions could expand to meet demand, and those that struggled to recruit would have to up their game or exit the market.

For established universities the final piece of that reform only appeared last year when student numbers controls were lifted entirely. It would, therefore, seem too early to see how the theory has played out in practice. But the new Conservative government is keen to launch on paths of further transformation, impatient at having been held in check for five-years by the Liberal Democrats. Thus we have *Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice* an impatient but confusing document which bristles with resentment towards an established university sector apparently not biddable enough to develop the kind of flexible, diverse provision it wants to see (and here we mean accelerated two-year degrees and degree apprenticeships, not part-time options, of course).

In truth, you can see that the large unmet demand for undergraduate places means that universities are less inclined to adjust provision in the

way envisaged by the last White Paper, 2011's *Students at the Heart of the System*. One pillar of the new White Paper is an information and transparency revolution that will transform the kind of information available to potential applicants so as to include earnings data by course and judgments about teaching excellence. This is seen as necessary but in itself insufficient to effect the type of change desired by the government. That is, real disruption to the 'incumbent providers' too protected from competition that is needed to improve teaching quality.

It is important to remember that this is the solution the reforms are designed to engender – better teaching, better student experience, improved contact hours and more graduates going into graduate-level jobs. It is all sketched out in the Executive Summary, but *Success as a Knowledge Economy* makes no attempt to back up the claims in its three main chapters.

The charge sheet reads: 'many students are dissatisfied with the provision they receive'; 'almost all students obtain degrees, the vast majority receiving a first or upper second, despite the likely difference in outcomes generated by widely differing levels of input and effort.'

In sum, standards have slipped – grade inflation is the evidence – and 'many' students are dissatisfied', (though the data indicates that only 'some' are, and it's hard to disentangle that from higher fees). 'Lacklustre' teaching is mentioned, but no footnote even points the reader to the supporting evidence.

So here's where the additional competition with 'innovative and better quality' products comes in. And the new branding of this competition is announced: they are to be 'challenger institutions.'

In this regard, it's important to understand how the most recent round of market reform failed in that aim. Changes to funding in 2012 that allowed more students at alternative providers to access tuition fee loans and maintenance support largely led to an explosion in the recruitment of 'non-traditional' students and did not see students who had offers from established universities choosing to take up places at new, alternative

providers in any significant numbers. They did not disrupt in the desired fashion.

The government has been slow to acknowledge the extent of this policy misfire, but a photographer in April captured a Downing Street policy advisor holding a discussion paper outlining the final hurdles to be ironed out in today's White Paper. That indicated that the previous phase of expansion had been coloured by 'fraudulent claims' (involving students and institutions) and "very high drop-out rates (one of the few proxies we have of bad provision)".

This echoes the conclusions reached by Margaret Hodge, then Chair of the Public Accounts Committee:

Today's NAO investigation has exposed the potential misuse of millions of pounds of public money, with EU students at some private colleges accessing public funds to which they were not entitled. ... This extraordinary rate of expansion, high drop-out rates, and warnings from within the sector ought to have set alarm bells ringing.

The government refuses to publish the numbers of funded full-time students who completed undergraduate qualifications between 2011 and 2015 at alternative providers. This would be the first step in assessing the value for money of that misstep, but it is tempting to read this episode as a clue to the moment of anger that erupts in the White Paper's second chapter:

For too long we have been overly tolerant of the fact that some providers have significantly and materially higher drop-out rates than others with very similar intakes in terms of demographics and prior attainment. This applies equally at both the high tariff and low tariff ends of the sector. Such variability is not simply a statistic, nor even simply a squandering of taxpayers' money. It is worse: it represents thousands of life opportunities wasted, of young dreams unfulfilled, all because of teaching that was not as good as it should have been, or because students were recruited

who were not capable of benefitting from higher education. (my emphasis)
(Chapter 2: Choice, §15)

Listen to the end of this Radio 4 [documentary](#) for one particular example of ‘young dreams unfulfilled’.

And it is perhaps the key to the changes we see in the White Paper regarding what are now called ‘challenger institutions.’ These are to be high-quality providers who can genuinely disrupt the established provision rather than alternative providers whose main innovation was to recruit from communities with little familiarity with HE.

Regarding funding, ‘challengers’ would ‘enter the sector’ and have the ability to apply for grants as well as loans for their students immediately. (We would thus have a single “gateway” rather than the two current ‘designation procedures’: Specific Course Designation – loans – and HEFCE Designation – grants).

This framework was outlined in November’s Green Paper. Models 1, 2a, 2b, have now been given names indicating the level and kind of funding sought.

Model 1 becomes ‘Registered’ – effectively licensed to operate as part of the English HE sector and eligible for Tier 4 visa status.

Model 2a, by and large, the current alternative provider scheme, becomes “Approved” and allows students to access a maximum tuition fee loan of £6000 pa and maintenance support. For Approved, that cap is a loan cap and providers can set whatever tuition fees they want.

“Approved (fee cap)” is the third and final model, 2b as was. Challengers electing for this arrangement can, subject to approval, access grants – teaching, capital and research – as well as loans, but must agree to a maximum tuition fee cap of £9000 pa and enter into Access Agreements if they charge over £6000 pa.

Probationary access to public funds is one thing (and there will be concerns about more providers accessing shrinking teaching and capital grant pots), but the White Paper's coup is to announce that new providers will be able to apply for probationary Degree Awarding Powers from the get-go, thus sidestepping a set of complaints about the anti-competitive nature of current validation arrangements.

Whereas the Green Paper proposed accelerating existing processes, so that a startup could receive Degree Awarding Powers within four years and the university title within six, the White Paper suggests giving degree awarding powers to a startup immediately at inception. This provisional measure would be confirmed after three years (thus giving the institution degree awarding powers in perpetuity dependent on good behaviour).

I find this development hard to assess. The Green Paper seemed to promise an acceleration of existing processes, but the White Paper appears to jettison basic principles underlying quality assessment, and the text itself offers nothing well-defined regarding the 'high-quality bar' that might apply to institutions when they have no track records of undergraduate teaching. The details on how Degree Awarding Powers and the University Title are to be awarded will be subject to consultation with the sector, but both processes will be moved from Privy Council control to the new, Office for Students.

So, given this bold move, how is the new Office for Students going to assess that applying institutions are high quality? Not against any set of criteria published in the White Paper and not on track record, as that would be unfair to new challengers.

The Green Paper had suggested that the track record of a provider or a key individual would be central to any successful application. And HEFCE's recent Revised Operating Guidance, covering the transitional period before OfS arrives in 2018, aimed to ensure that it could make 'reliable judgments about a provider's readiness to enter the higher education sector even when the provider does not have a substantial track record of delivering higher education' (Revised Operating Guidance §65).

So ‘no track record’ represents a departure from both. Indeed, the White Paper indicates that those entering the system and applying for degree awarding powers, would not have to meet specific and separate Degree Awarding Powers criteria (p.21) and entry on the basis of their ‘potential’ would be enough ‘as soon as the OfS is satisfied that the conditions of being an Approved provider have been provisionally met’ [Box 2.1].

Moreover, it’s not clear how the timings for DAP review are meant to work. When do we start the clock on the three years? When the institution receives DAPs or when the first student arrives?

This isn’t just a pedantic question as the review considering whether to award DAPs on a permanent basis is to take place after three years, but the ‘key indicators’ for the risk-based quality system that is introduced alongside these reforms specifies some measures the can only be measured after at least one cohort completes (degree outcomes, NSS results, completion levels) and some which need longer (graduate employment, progression to professional jobs and post-graduate study).

In the Executive Summary (§11), BIS insists that “making it easier for these providers will help drive up teaching standards overall; enhance the life chances of students; drive economic growth, and be a catalyst for social mobility.” But it is not possible to tell which providers they mean by “these.”

Briefings to the press have indicated that large US institutions and corporations, such as Google and Facebook, may be enticed into the English sector by opportunities that are not available in the States, or Middle and Far East branch campuses. (The press release though concentrated on the much less disruptive University Campus Suffolk and a new HEI in Hereford).

Current HEFCE Designation, which controls access to grant funding, sets no restrictions on corporate status (for-profit or otherwise) or even tax status, meaning organisations registered in other fiscal jurisdictions could be accessing public funding through subsidised loans and grants. Of course, the White Paper never mentions this issue at all.

I have previously complained about democratic deficits in HE reform, but the repercussions of these vague, uneven proposals are very risky and difficult to undo. There's even a hint that the HE Bill might proceed before a consultation on these regulations were completed. The criteria for Degree Awarding Powers and University are 'owned by BIS' and are to be 'put out to consultation', but not necessarily before a Bill appears. Regulations are matters of administration, so Ministers may not need legislative measures to make alterations outside legislative scrutiny.

This brings me to 'market exit'. The government insists that institutional failure is not its business so long as there is another provider to pick up any students adversely affected. Indeed, a failure of some kind would be evidence we are moving towards a 'healthy, competitive, well-functioning market' (Executive Summary, §17).

'The primary goal is to raise quality' and the idea is that this is best achieved by having weaker institutions end provision, and stronger institutions replace them (this also applies to individual academics. Hence there is no mention of methods to help individuals improve).

The only issue apparently is to ensure that current students are protected: previously solutions to this conundrum included ideas about ABTA-style bonds, and the Green Paper cycled through a series of options: "an insurance policy, a bond, reserve funds, or Escrow accounts."

The White Paper drops the attempt at specifics and just asks that all providers seeking Approved or Approved (fee cap) status would have to 'set out and publish plans to protect their students in the event of exit or course closure' (Ch1§33). These would have to be 'satisfactory and credible' to the OfS mind, but again no further specifics are outlined.

This may work for an orderly market exit, but it seems that any plan, based say on building up financial reserves, is likely to melt in the face of any significant liquidity stress (let's say, a new financial crisis centred on China). It's a myth to think that disorderly exits are not going to require sector intervention.

In the analogous article I wrote back in November about the Green Paper, I complained that ministers and civil servants seemed blind to a basic feature of our evolving system: we only discover which providers are high quality on the back of individual students who have studied at particular institutions.

Students who get a bad deal have limited ability to revisit their choices and even seem to have their own initiative penalised by the current system. Frankly, the last government did nothing for these students and on occasion treated them contemptibly. Caveat Emptor is not a responsible HE position for the government to take.

Perhaps someone, somewhere in Whitehall was touched by complaints of this kind, and so we have a new (albeit jejune) commitment to hold a 'call for evidence' into student transfers and credit accrual. My constructive suggestion to the government would be to hold fire on your market reforms and, if you must, put in place a system of teaching excellence and credit transfer first. If you are right about the merits of the TEF, then insights generated should inform more radical regulatory and sector reform. Trying to do everything outlined in Success as a Knowledge Economy all at once, without any evidence of 'learning gain' from the alternative providers fiasco, is ill-advised.

In all seriousness, it's hard to give any credence to these market reform measures if they are meant to advance quality: there is no explanation as to what they will be and what evidence supports them. We seem to be asked to 'feel the radical commitment', but it all seems rather to express an astonishing level of resentment against the history and autonomy of the established sector. BIS and the Treasury seem to have lost any perspective on what problems there might be in the sector and how they might be solved constructively.

April's long lens snap also caught this opening paragraph:

“BIS are trying to resolve real problems of quality and regulation. But it is not clear they have figured out how and there is a risk that the bodies and rules they will establish in regulation will not solve teaching quality, while creating poor quality provision for marginal students.”

That seems an apt summary of these proposals on market reform.

The White Paper proposals will bring order to the independent sector

Joy Elliot-Bowman, Study UK

The past two decades have seen a steady growth on two fronts: in the number of students seeking higher education and in the number of institutions (both public and independent) providing it. This is not coincidence, but cause and effect.

Following the university expansions of the 1960s and 1980s, which gave us the Universities of York, Kent and Lancaster to name a few, student demand has brought us again to a critical time for higher education. Growing demand in numbers alone has driven the need for more providers, while growing demand for innovative, industry-focused, and vocational courses in particular has directed the expansion of provision towards largely teaching-focused institutions, very different from the research-laden traditional universities.

The White Paper is a much-needed response to this recent expansion. While the headlines harp on about ‘new entrants’ and ‘marketisation’, these proposals will do far more to bring consistent and effective regulation to bear on the independent sector – and through it, more confidence and stability for students – than to open the floodgates to a wave of new providers. The truth is that the wave has already broken.

The independent sector is thriving, as students turn to courses designed with their needs and interests in mind, not those of a distracted, research-focused, rankings-obsessed faculty. Many want intensive two-year degrees, flexible learning or less costly courses, and to be taught by industry experts instead of leading researchers. What they need, though, and what this White Paper delivers, is consistency and clarity in how these attractive new providers who do not receive public funding are regulated, and their quality assured.

The failure to pass HE legislation in 2011 has resulted in piecemeal, reactionary and optional regulation for independent providers, focused more on access to loans than a quality student experience. In the absence of legislation to create a single regulator for HE, multiple arms of government have developed partial solutions to monitoring quality on the fly and off the cuff. These regulators have been facing implementation, evolution and revision issues simultaneously, and leaving individual providers unsure of where they will end up in a regulatory game of musical chairs.

The White Paper marks the first serious attempt to bring coherence to regulation across higher education through its 'single route'. Providers can clearly understand what is expected of them and either rise to this challenge or safely exit whilst protecting students. Both are extremely difficult at present because of piecemeal and reactionary regulation, which has led to Home Office immigration officers parading around as arbiters of quality.

The single route will also offer a series of protections to the sector. Most independent providers make reasonable decisions based on carefully considered risks, with the aim of ensuring that their students receive the best education possible. Widely publicised evidence has shown us, however, that some do not. The White Paper proposals for 'Approved Provider' status will ensure that the majority can conclusively demonstrate their quality, while those who fall short will no longer be able to get by on the reputations of the sector. Providers who have invested in quality will receive the financial rewards of this investment. Others will need to step up their game to achieve the same result.

Students are already voting with their application forms for independent providers, and their designation for student funding has broadened this eager cohort further. The White Paper will give more of them than ever the chance to study fashion with Vogue, dramatic arts in a working theatre or football business in Wembley stadium, supported financially and through an easy-to-understand system of quality judgements and information. Instead of a ranking system dominated by research, which makes no attempt to understand the student experience, initiatives like

the Teaching Excellence Framework could provide the opportunity for applicants to evaluate the learning and teaching they could receive at an institution. Leaving aside detailed debates on the implementation of TEF, it is the first and only platform for comparing teaching across the full range of HE providers. It will no doubt be – like the RAE/REF before it – developed and redeveloped, and its qualitative detail will define its success. But at least it starts somewhere, for reliable information on teaching is sorely needed by students.

The UK higher education sector has never been a traditional market, and regulation must never reduce it to a uniform service provided to students of a certain age. Students are not uniform, their futures are not uniform, nor therefore should their higher education be uniform. This White Paper aims to regulate what student choice has already made necessary: industry-led, innovative teaching which responds quickly to student and employer needs. Not only will students today have many jobs over their working life, but many will have one which did not exist when they started their degree. HEIs must move as quickly as the world for which they are preparing their students.

The job of the government is not to restrict student choice but to ensure they are fully informed in the choices they make. The predictable decisions by some universities to try to protect their dominant model – and deny students this choice – is regrettable. As long as there is student choice there will be competition, and all that comes with it. This White Paper is simply about setting fair, consistent, and transparent ground rules for that competition.

Does the White Paper make Watson's eight 'category mistakes'?

David Morris, Wonkhe

Back in 2013, the late, great Sir David Watson wrote a paper for HEPI entitled *Misunderstanding Modern Higher Education: eight category mistakes*. Watson outlined eight frequent misapprehensions about UK HE that were often made in policy discussions and policy making. As the first in a series of pieces that will evaluate the White Paper against criteria for effective policy making, we ask, have these category mistakes been made or avoided?

Error 1 – Judging performance at the 'institutional' level

Watson pointed out that “courses, subjects and evolving inter- and multidisciplinary academic and professional fields, should count more than whole institutions” when evaluating both research and teaching quality. Right away, the proposals for the TEF are struggling to allow for this. The White Paper says that discipline-level assessments will not be made until at least year 4 (2019-20), and only then after a successful pilot scheme. With institutions holding onto their TEF levels for up to 3 years, we may not see many providers assessed at the discipline level until at least 2020-21. As such, a high TEF level may prove to be misleading for some students who enter lower performing departments who are 'held up' by higher performing departments within the same institution.

Error 2 – Confusing 'widening participation' and 'fair access'

Watson argued that obsessing about disadvantaged students making it to the 'top' institutions for its own sake was errant way of understanding fair access and social mobility – Oxbridge isn't for everybody. Instead, Watson wrote that focus needed to be on “getting more students qualified and to the starting-gate” with a fair shot – primarily through developments in schools policy. The White Paper has stopped short of giving the Director of

Fair Access the power to set targets for individual institutions, which suggests that this error has been avoided. Nonetheless, the open publication of data might prove to put just as much pressure on individual institutions to aggressively seek applications from lower-participation backgrounds in order to avoid public ridicule.

Error 3 – Taking HE in isolation from tertiary education

“It is ‘tertiary’ (including higher education) rather than exclusively ‘higher’ education that matters to society at large”, argued Watson. In spite of overtures towards developing degree apprenticeships and the coming introduction of a Skills White Paper and Skills Bill, BIS at present appears to have very little coordination of tertiary education policy. The PM and several ministers have a declared aim of ‘university or apprenticeship’ for all 18 year olds, but it is unlikely that the current trajectory will lead to this. Area reviews of FE colleges have not included universities (with some exceptions), and lifelong and part-time learning in FE and HE has collapsed since 2010. Whilst the liberalising of degree awarding powers might bring some colleges into competition with universities, there is little in the White Paper that suggests a coordinated size and shape for tertiary education as a whole.

Error 4 – Research selectivity and concentration

Watson was fiercely sceptical of claims that ‘concentration’ produced better research outcomes, arguing that the cooperative and international nature of modern research made this irrelevant. Much will depend on the ongoing Stern Review of the REF with regards to this. The acceptance of the Nurse recommendations vis-a-vis the research councils intends “a greater focus on cross-cutting issues that are outside the core remits of the current funding bodies, such as multi- and inter-disciplinary research”, but it is doubtful whether this can go anyway to addressing the ‘two-tier’ system that Watson so decried.

Error 5 – Obsessing over international league tables

Watson was scathing when he wrote that “what governments say they want from higher education systems represents almost the opposite of what the international league tables they also exhort us to climb actually measure”. Jo Johnson appears to have fallen straight into this trap, outlining successive measures on teaching quality, widening participation, regulation, and market competition that will do absolutely nothing to improve the UK’s leading institutions in the world rankings, despite his stated aspiration in the foreword to sustain “our universities’ enviable global reputation and position at the top of the league tables”.

Error 6 – Distinguishing between ‘private’ and ‘public’ institutions

Watson’s noted that established institutions are already quite used to behaving like businesses, despite politicians regularly imploring universities to be more ‘business-like’. The White Paper’s push to expand market competition is a clear extension of this. How it is to be interpreted under Watson’s framework depends on your interpretation: either universities are already well prepared to adapt to the incoming competition, or the issue of ‘shaking up’ the sector with new institutions is entirely moot and will achieve little. Only time will tell.

Error 7 – Misunderstanding student choice

Watson’s observation that “what students want and need can confound the most sophisticated policy frameworks, where spokespersons react to what they regard as irrational choices by prescribing more and decreasingly plausible ‘information’” was wonderfully perceptive and has been borne out by subsequent HEFCE research. It is interesting that the TEF has been framed under the heading of ‘choice’, and not ‘quality’, and also that further work has been proposed to deliver supply-side solutions to STEM graduate employment. Watson would argue that there is already quite sufficient choice available for students, that it has already been significant in shaping our sector, and providing yet more data about

graduate employment outcomes will do little to change how students behave.

Error 8 – Confusing reputation and quality

Watson pointed to a growing body of evidence, accepted anecdotally, that “you won’t necessarily learn more if you go to a posh place”. On the face of it, the use of the TEF to challenge arguably complacent institutions on the quality of provision was an attempt to disaggregate reputation and quality. However, as Watson pointed out, reputation is as much used as a proxy for quality by employers as well as students, and so the use of DLHE employment data in the TEF might just create a cycle where established prestige continues to trump small class sizes, effective teaching, and developing skillsets. Again, it remains to be seen.

Two systems

Watson argued that the UK HE system should aim to learn from the US, but not from the New England, privatised, competitive approach, rather the collaborative Californian model. Watson was a strong advocate of credit transfers and flexibility that are a hallmark of the Californian system, but appears to have envisaged it within a collaborative, rather than a competitive system. Today’s call for evidence on introducing course-switching is something that he may have found welcome, but as Ant Bagshaw has noted, it will require a willingness to collaborate and an revival in part-time delivery. Instead, fierce market competition looks set to make institutions more protective and individualist, and despite some friendly words there is little new or substantive on part-time study.

Sadly, the White Paper appears to have made many of the category errors that Watson worried were endemic in UK HE policy making.

Credit worthy

Ant Bagshaw, Wonkhe

“An increase in course and institution transfer would also bolster the role that higher education plays as a leading vehicle for social mobility. If the option of transferring were more available, then it would be to the benefit of students who might otherwise have dropped out, perhaps because they needed to be in a different part of the country, as well as reduce the typically three-year commitment that deters potential students with less secure backgrounds.” White Paper, p53

Team Wonkhe decided to get a head start on newly-reopened debate about credit accumulation and transfer. We know it’s an old debate, and seen as a fringe interest by proponents of a Schengen-style borderless higher education world.

To get the ball rolling, we’ve presented a few options:

1. The transfer window

The sector could have a window, say at the end of the first year of an undergraduate degree, where all students could put their hat into the ring (via UCAS?) with a record of the modules they’ve taken and results for their first year. Then through clearing they could seek to trade up/down/across as they see fit. This way, you can keep the coherence of the final two years of a bachelor’s degree, especially given that in many places the first year won’t count towards the final classification. This builds on the accreditation/recognition of prior learning already in place, but adds a structure to promote mobility.

2. Pick and mix

Students could opt, like the Open University’s Open Degree, to take a range of modules from any provider so long as they accumulate credit at the relevant levels for the award. This would be the purest form of

accumulation/transfer but would require a reassessment of what it is to hold the award, given the potential for incoherence (twelve 30 credit modules for a bachelor's degree, each from a different provider?). Where would the degree certificate come from – a role for the OU, the pioneers of this approach, perhaps?

3. In this together

Groups of institutions with an inclination to share their portfolios could club together to share modules. Within a city, for example, students could take courses from across the providers to gather the necessary credit. There could be efficiencies with shared teaching of some core courses such as methods training.

Moving to a system of borderless transfer wouldn't be easy. It would require a lot more cooperation and a willingness to reconsider the nature of the degree. And students should be protected from building incoherent awards which don't help them develop the necessary skills, knowledge or experience.

David Watson, writing for HEPI in 2014 summed up the stark truth about credit transfer: “The most important pressure militating against the success of Credit Accumulation and Transfer (CATS) in UK HE seems to have been institutional protectionism, reflected especially in the reluctance to grant advanced standing on admission. This is reinforced by funding approaches which devalue part-time and mixed-mode study.”

We know the challenges, particularly for an increasingly competitive sector resistant to perceived threats to institutional autonomy. But there's a lot of potential in the idea. Students could more easily take control of building their own experience and could more easily redress deficits in the advice and guidance they receive pre-first-time-application. If you believe that student choice and the operation of a market is a key to driving quality, then students need the chance to choose.

Private lives of the British university: a vision of the future?

Ant Bagshaw, Wonkhe and Benedict Wilkinson, KCL Policy Institute

The rumours of elite universities rushing towards unilateral privatisation have been quiet of late, but this may cease-to-be if future reforms to teaching and research funding fail to give such institutions sufficient incentives to remain in the public domain.

Just under a century ago, Cambridge and Oxford called in the commissioners and received regular public money for the first time. There was, of course, no mention of QR funding, RAB charges or TEF in any earlier legislation; nor even in Elizabeth I's Oxford and Cambridge Act of 1571. For much of the past 100 years or so, the idea that British universities might be 'private' – that they might choose to opt out of public finance and associated regulation – has been little more than a speck on the most distant horizon.

But a few years ago that speck began to grow. In 2009, Imperial's Rector proposed creating an Ivy League of private UK institutions. In 2010 – and sporadically since – there were hints and rumours that Cambridge had seriously considered going private. This was hardly surprising for some players in the bustling higher education marketplace where many vice chancellors complain – prompted no doubt by their finance directors – about the real-terms cut in fees with the level frozen at a maximum of £9,000 for home and EU undergraduates. There have been regular claims that the Oxbridge offer costs as much as £16,000 per year to deliver. However, whenever universities have threatened to privatise their teaching operations, HEFCE have responded with the far greater threat of removing access to QR money (worth over £1bn in 2016-17).

So until recently, British universities looked set to stay as broadly public institutions. However, the Higher Education and Research Bill looks set to change all that. It proposes to dissolve HEFCE and with it the link between public funding for teaching and research. There is a good chance

that some universities may look again at the costs and benefits of public finance. Accompanying the TEF comes a carrot of only modest increases to fees but also a significant regulatory stick. This is not perhaps the most alluring deal for some universities, particularly when you throw into the mix that the National Student Survey (NSS) may play a major role in the way that TEF is conducted and assessed. Some institutions with ‘top’ reputations score quite badly by this measure, particularly in London.

If some universities bridle at the idea of limited rewards and larger punishment in the new higher education marketplace, how would they attempt to seek ways around it? There are plenty of different options, but two seem particularly obvious.

Scenario 1- The [Pr]Ivy League

Let’s assume, bolstered by the recently-published IFS research into graduate earnings, that there are some institutions which could borrow competitively to fund their own loan schemes, issuing bonds each year underpinned by the earning potential of the graduates they produce. That would allow institutions to offer the same package, or an even better one, to prospective students with similar lifetime payback arrangements. If we assume that the effective RAB charge for Oxford, Cambridge, UCL, Imperial and LSE (and probably some others) is near zero, then this is a good deal for bondholders and taxpayers too. That said, past performance – even eight hundred years of it – is no guarantee of future success.

Having established a mechanism to turn graduates’ future earnings into cash now, these institutions could charge what they see fit, and many people could and would pay upfront. This could create a model similar to the US Ivy League with fees above-and-beyond costs being used to subsidise poorer students. If a pay-back regime via the Student Loan Company and PAYE could be developed, then the experience for the student and graduate would be very similar to the public loan, but the burden of raising the funds would fall to the universities.

Scenario 2 – The alternative alternative

Why should this just be a model for an elite group? When HMRC data is linked to individual students' data, it will be possible for all institutions to demonstrate just how lucrative it is – on average – to study with them. An enterprising modern institution, which might not have the very top credit rating of the older universities, could work with banks to develop financial products tailored to individual students. With interest free periods, buy-now-pay-later, and flexible repayment methods, students could have a range of offers beyond the single government-backed loan.

These might be more expensive for students in the long run, but they'd probably be most used in key markets like business and law where likely earnings will be more than sufficient. These place the burden on the individual to repay with the bank, rather than the university liable for bad debt. It's another way out of the TEF, and if enough institutions chose to reorganise this way it could become the dominant model for key vocational subjects. It also spreads the risk and gives flexibility to universities to charge as they feel appropriate, perhaps even achieving the differentiated fee structure intended by the last government.

They saw us coming

Within the White Paper is the concept of the “Basic”, “Approved” and “Approved (fee cap)” provider classification (see box 1.1 on p24). The capped fee providers have the most stringent conditions, but they get to charge up to a higher level. It's the Approved providers which have the lighter burden, and in return can set unlimited fees. But it looks as though they won't be eligible for any type of teaching or research grant. That leaves the prospect of a non-research private institution (the New College of the Humanities, say) with significantly greater flexibility than any mainstream university.

Let's recall that “dual support combines project funding for excellent research proposals, which is forward looking and assessed through peer review, with formula based quality-related research funding that rewards performance retrospectively based on peer review and proven impact from

the research.” (White Paper, p67). Can it really be the intention that institutions that do no research can be offered a more flexible arrangement than teaching-and-research universities? What kind of level playing field is that?

Now's the time

The White Paper and proposed Bill could introduce the conditions for privatisation if research is to be funded separately from teaching. If participation in the TEF is optional – essential only for institutions that want to raise their fees through the government loan scheme, and then only by inflation – then going private may prove to be attractive.

Some institutions could enjoy the best of both worlds if the new category of Approved provider is given access to research grant (QR) funding while they raise teaching income privately. The transparency revolution could help further by demonstrating to the financial markets the viability of private individual loans, freeing even more institutions of additional red tape. And it would reduce the overall taxpayer bill resulting from the student loan system.

The government has added layers of market control which will push institutions to consider their options. There's time before proposals in the White Paper become legislation: will the bill take the next step and leave the door open to privatisation of teaching? At the very least, expect some lobbying on this issue because the stakes are too high for some to let this opportunity slip by.

Chapter two: Power and autonomy

The market is free, yet everywhere it is in chains

Smita Jamdar, Shakespeare Martineau

You don't know what you've got till it's gone. It was certainly my overwhelming reaction to reading the Higher Education and Research Bill (HERB). Ever since I started practice, the defining piece of legislation on HE regulation has been the Further and Higher Education Act 1992 (FHEA), and like so many things, familiarity bred contempt to the point that I craved a new Act and a new, coherent regulatory framework.

On Thursday, I suppose I finally got it, with both barrels. "Be careful what you wish for" has rarely seemed more apt.

So what's changing from the legal perspective? The short answer is "a lot" so I will focus on what I see as the big changes.

We will have the Office for Students (OfS), an organisation whose role and make-up, so vastly different from HEFCE's, will in my view set a very different tone to regulation. The guiding principles under which OfS must operate are instructive: there must be more quality and choice for students, competition between providers, value for money, equality of opportunity in access and participation. Considerations relating to the interests of incumbent providers, or achieving a level of stability likely to be necessary to safeguard the overall reputation of English (and therefore UK) HE are conspicuously absent from the list.

The OfS is to be guided in the discharge of its functions by the Secretary of State, who, while having regard to broad concepts of academic freedom and the sanctity of academic judgment, may issue guidance by reference to "particular courses of study", an express and pointed reversal of the position under FHEA where grant conditions were not permitted to be framed by reference to particular courses.

The OfS will be run by a board and chief executive appointed by the Secretary of State and capable of being removed by him for, amongst other things, “such [other] grounds as the Secretary of State considers appropriate. The members of that board must wherever possible reflect the desirability of having experience of: the interests of students, providing HE across the full range of provider types, employing graduates, promoting choice and competition in other sectors; regulating other sectors, and management and finance.

So in the OfS we will see the creation of a regulator whose role is about as far removed as it is possible to be from preserving the status quo, run by people whose collective experience will not major on HE as we know it, appointed by and far more explicitly answerable to a Secretary of State with greater powers to drive institutional behaviour from an academic perspective. Nothing to worry about there, then.

The OfS will have a wide range of functions, centred on the creation of a statutory register of HE providers. Registration will require compliance with a series of initial and ongoing conditions, including some that may be specific to individual providers. Aside from certain mandatory conditions, the power to impose conditions is constrained only by an express obligation to ensure that they are proportionate to the regulatory risk posed by the institution, defined as the risk of an institution failing to comply with regulation by the OfS.

Mandatory conditions include: obligations to provide information and notify changes to OfS; obligations on certain providers to publish admissions data by gender, ethnicity and socio-economic background; regulation of fee limits; and the requirement to have access and participation plans in order to charge higher fees.

An area where the power to impose conditions is expressly stated is in relation to quality and standards, including the power to require particular standards to be applied. “Standards” means “the standards used by an institution to ascertain the level of achievement attained by a student undertaking a higher education sector course provided by it.” The sector that for so long has guarded fiercely its autonomy over degree standards

appears to have lost the battle; the grade inflation doom-mongers will be rubbing their hands with glee.

Some might point out that over recent years HEFCE, by generous and imaginative interpretation of its statutory powers and duties, has moved towards a more explicitly regulatory role and so question whether any of this will make any real difference. I think it will for many reasons. HEFCE's incremental change in role occurred with the tacit support of a broadly homogenous, compliant sector that recognised that its interests remained at the heart of what HEFCE was trying to do. HEFCE did not have to cater for the challenges posed by some of the less desirable parts of the alternative provider market, or implement the policy of a government so overtly hostile to incumbency. But the main reason we will see a difference is because of the statutory powers of enforcement that OfS has, something lacking from the non-statutory regulatory framework that HEFCE built.

What will this enforcement entail? Fines for breaches of regulatory conditions, suspension of registration and deregistration principally, but also refusal to renew access and participation plans in appropriate cases. For particularly serious cases of breach of registration conditions, the OfS and/or Secretary of State can apply for a search warrant to enter premises for the purposes of investigating the alleged breach. I can't imagine that this power is intended to be exercised to raid a meeting of an exam board because the grade boundary between a lower and upper second-class degree is not sufficiently robust, but in the regulatory brave new world we face, who knows?

Other key duties of the OfS include to assess or make arrangements for, the quality and standards of the education provided by English HE providers. This is a huge departure from FHEA 1992, from which it was clear (notwithstanding some impressively creative and concerted recent efforts to argue to the contrary) that standards were the preserve of institutions.

The OfS will be responsible for authorising degree awarding powers and university title and revoking DAPs and UT for both new providers and

incumbents, except, it appears, where university title was secured through the Companies House “route”. The reason for excluding universities registered via this route is not clear to me; colleagues in my corporate team have suggested it might be because a separate process for revocation exists, but it seems a missed opportunity to regularize the position for all providers. No doubt the thinking will become apparent as HERB moves through its Parliamentary passage.

Removal from the register of higher education providers (or indeed not being on it in the first place) appears to be grounds to revoke university title, giving extra teeth to enforce compliance with registration conditions, and perhaps also preventing institutions from deciding to try to operate outside the registered system if at all possible.

All enforcement decisions by the OfS can be challenged in the First Tier Tribunal, a court established to deal with appeals against decisions from various regulators such as the Charity Commission and the Information Commissioner. Looking again at the sorts of conditions that the OfS can enforce, there is the possibility of the Tribunal becoming involved in matters of academic quality and standards in a quite unprecedented way.

The OfS will be responsible for the approval of access and participation plans. Again, the Secretary of State can make regulations about what needs to be included in the plan and therefore what institutions should be doing to improve access and participation, including how underrepresented groups should be targeted, and what financial support should be available to them. The scope for erosion of institutional autonomy is clear.

The Secretary of State has the power to confer supplementary functions on the OfS. It seems very likely that the Prevent monitoring duty will be transferred to it; less clear is what will happen to HEFCE’s principal regulator role for HE providers who are exempt charities.

The promised deregulation for higher education corporations in England is provided by allowing them to set their own instruments and articles of government, subject only to any public interest governance condition that

the OfS impose on registered providers. Such a condition may specify different principles of governance to apply to different providers but must include academic freedom for academic staff at all registered providers. It seems that this will be extended to alternative providers, most of whom are not technically subject to the current protection for academic freedom, such as it is.

Higher education corporations in England will be given greater control to decide their own futures by asking the Secretary of State to dissolve them and transfer their assets and liabilities elsewhere, although interestingly have not been given the wider power FE colleges have to dissolve themselves by resolution. Speaking of FE, an FE corporation will be able to be re-designated by the Secretary of State as a higher education corporation irrespective of the percentage of its FTE students undertaking HE.

Some, maybe even a lot, of this may change as the Bill works its way through Parliament, but the main principles on which it is founded are unlikely to. We will undoubtedly be left with a more explicitly regulated, less autonomous and less stable English higher education sector, with greater risks for prospective students, students and graduates alike. I only hope that the upside, whatever Ministers think that might be, is worth it.

UKRI if you want to: how to read the new research landscape

James Wilsdon, University of Sheffield

From a research policy perspective, I'm encouraged by this week's White Paper. Reforms to the architecture for research funding, which felt like an afterthought in November's Green Paper, have now received more thorough treatment. And while uncertainties persist about how the new structures will operate, BIS has clearly put serious thought into the governance arrangements for the research councils, resolving some of the ambiguities in the Nurse Review.

The headline is the creation of a new body, which will draw the seven research councils, Innovate UK and HEFCE's quality-related funding under a single strategic umbrella. Sir Paul Nurse's preferred name for this body – Research UK (RUK) – has been quietly dropped, in favour of UK Research and Innovation (UKRI; an acronym which social media quickly decided is pronounced You-Cry).

This name change reflects the late – and still controversial – addition of Innovate UK to the mix, following a rapid consultation in February. But senior sources tell me that a further problem stemmed from the belated discovery that “ruk” roughly translates as “jerk off” in Dutch. While not on the scale of the department's short-lived rebranding as DPEnIS in 2005, there was reluctance among BIS officials – even as they contemplate Brexit – to let UK research excellence become synonymous with wank in another European language.

The new name is accompanied by a harder-edged rationale for UKRI. In the green paper, the case was made in terms of simplifying structures and reducing bureaucracy. Now, in response to those who queried what problem these reforms were trying to solve, UKRI comes with a legal underpinning. BIS has been helpfully advised by its lawyers that current arrangements for the research councils prevent them from “holding, managing and distributing inter- and multi-disciplinary grants such as

those...from the £1.5bn Global Challenges Research Fund.” So not moving to an integrated structure “presents an increased risk to the UK’s world leading position” in research.

At a strategic and operational level, UKRI’s objectives are laid out in a series of six bullets:

- a greater focus on cross-cutting issues that are outside the core remits of the current funding bodies, such as multi-and inter-disciplinary research;
- a strengthened, unified voice for the UK’s research and innovation system;
- improved collaboration between the research base, business and the commercialization of discoveries;
- better mechanisms for the sharing of expertise and best practice – for example, around management of major projects and large capital investment;
- more time for research leaders to focus on strategic leadership through the centralisation of back and middle office functions; and
- improved quality of evidence on the UK’s research and innovation landscape through the pooling of multiple datasets.

Another benefit left unstated, is that UKRI removes at a stroke eight organisations from the roll-call of BIS partner bodies – making a significant contribution to the “BIS 2020” strategy, developed with the help of McKinsey & Co. in the summer of 2015.

The meat of the White Paper’s proposals comes in the discussion of UKRI’s governance. To ensure “strong and empowered leadership,” UKRI’s board will have responsibility for “overall strategic direction, cross-cutting decision making, and advice to the Secretary of State on the balance of funding between research disciplines.” Ministers will appoint UKRI’s board, which will be supported by a central staff, who will gradually take on more cross-cutting functions, such as procurement, HR, and communications while staffing levels in the existing councils are reduced. This will enable the research councils to deliver their envisaged 17 per cent reduction in headcount by 2020.

UKRI will also manage cross-disciplinary funds, including the unallocated portion of the £1.5 billion Global Challenges Research Fund (which rises fast from nothing this year to £38m in 2017/18, £122m in 18/19, £216 in 19/20 and £315m in 20/21) and an additional multidisciplinary pot that will be top-sliced from the budgets of all seven research councils from 2018 onwards. The precise scale of the latter is still to be agreed, but it is expected to be between three and five per cent of the total, generating a pot of between £100m and £150m.

At the same time, ministers will “retain the ability to provide high-level direction as to the allocation of funding”, which will include “setting hypothecated budgets for UKRI’s nine autonomous Councils.” This goes some way to assuaging concerns over the autonomy and stability of existing research council budgets within the new structure, as does the commitment to enshrine “the distinctive focus and remit of the Councils... in future legislation.” Further reassurances are made about “continued hypothecation” and “maintaining separate budgets” for the quality-related side of the funding system, as it moves from HEFCE to UKRI, with a promise “to enshrine the principle of dual support in legislation for the first time.”

So there are probably enough safeguards in place to reassure critics – including in the House of Lords – and avoid research reforms becoming a stumbling block to the smooth passage of the higher education bill. But given that ministers will make high-level funding decisions based on advice from the UKRI board, the way that these relationships between BIS, UKRI’s board and chief executive, and the leadership of the existing councils, will operate in practice – particularly in terms of budget-setting – is still somewhat unclear.

From 2018, when UKRI becomes fully operational, the chief executives of the current councils and Innovate UK will see their job titles changed to “executive chairs.” They will report to UKRI’s CEO, but won’t have seats on the main UKRI board. And the size of the councils will be reduced to “5-9 other experienced independent members drawn from the relevant community.” On the advice of UKRI’s board, ministers will continue to set budgets for each of the nine councils, and the UKRI CEO “will establish a

framework within which the Councils will have delegated authority for their hypothecated budgets.”

In a slightly odd paragraph, the White Paper also reveals that the “names and brands” and “symbolic property” of the research councils will be retained, while the Royal Coat of Arms will be conferred to UKRI. This resolves a longstanding niggle over the Royal Coat of Arms, which the research councils resisted adopting for some years, in an effort to signal their independence from government. I hope that someone in BIS will receive due recognition in the new year’s honours list for winning this particular argument.

As to how UKRI works in practice, a great deal will rest on the leadership style and precedent established by its first chief executive. This week’s announcement that John Kingman will move from HM Treasury to become UKRI’s inaugural chair has been welcomed by research leaders, who recognise his consistent support for science and innovation through successive spending reviews. Kingman’s appointment also suggests that BIS wants to pick up the pace and establish a “shadow” UKRI well ahead of the formal passage of the HE Bill.

It is expected that Kingman will steer UKRI through to mid-2018, before handing over to a new chair (most likely drawn from the business world) and CEO. His biggest priority over the next twelve months will be recruiting a CEO of sufficient calibre, with the right skillset to manage a £6 billion, nine-headed hydra. The language in the Nurse Review around individual councils as “faculties” within a larger whole has led many to assume that the winning candidate will be drawn from the ranks of Russell Group vice-chancellors. Sir Leszek Borysiewicz, Dame Nancy Rothwell, and Sir Keith Burnett have all been mentioned as possibilities. There is also a suggestion that Kingman will look overseas, with Sarah Springman, Rector of ETH Zurich, an outside contender.

Others note that Sir Mark Walport’s five-year term as chief scientific adviser comes to an end on 31 March 2018, in perfect time for him to take on one last big job. But memories of his tussles with the research councils in the autumn of 2014 remain fresh, leading senior sources to suggest

that a more consensual operator is required. Either way, Walport is a winner from another proposal in the White Paper: the strengthening of the Council for Science and Technology (CST), which he co-chairs. Beefing up the CST is a hardy perennial in UK science policy – this must be the third time it’s been announced in the past ten years – but the intention now is for CST to perform the high-level horizon-scanning and coordination role that Nurse envisaged for his new ministerial committee (an idea which the White Paper kicks into the long grass).

The really interesting question is how UKRI will bed down once its top team is in place, and it becomes fully operational, presumably from April 2018. Can it genuinely deliver a step-change in interdisciplinary, outcome-oriented research, while preserving the distinctive identities, strategies and disciplinary connections of its constituent parts? And will the existing councils be recognisable a decade from now, or reduced to operating divisions within a single corporate structure? Talking to senior figures across the councils and HEFCE over recent days, there is a cautious but growing optimism that these arrangements do create the right kind of enabling framework, and could overcome some of the problems that have hampered earlier efforts at cross-disciplinary working.

As the White Paper reminds us, the UK has an immensely productive and high-performing research system. A huge amount rests on the success of these reforms. UKRI will quickly start to influence the future size, shape and direction of disciplines, departments, and individual research careers. Who is laughing and who ends up crying five or ten years from now remains to be seen....

Standing up for standards

Ant Bagshaw, Wonkhe

Happily, the Higher Education and Research Bill provides us with a definition of standards: “standards’ means the standards used by an institution to ascertain the level of achievement attained by a student undertaking a higher education course provided by it.” 13(2). So that’s clear then? Standards are a measure of the academic level at the point of ‘output’.

But that’s not the only definition the government has in mind. If we turn to the White Paper, we see the use of “demanding quality standards”, “robust standards” and “high quality standards.” We also see that the government intends for the introduction of TEF to: “drive up the standard of teaching in all universities.” We therefore also have a definition which is the standard of the quality provided, the standard of the ‘input’.

Does it matter? Well it matters in one sense because it would be nice to be clear about what we mean when we say standards. In the current Quality Code, Part A relates to academic standards (the output) while Part B relates to ‘assuring and enhancing of academic quality’. Part B relates mostly to the ‘inputs’ of teaching, resources, student support etc.

Let’s say that we can maintain a semantic distinction between quality as input on the one hand, and standards as output on the other. Does the Bill represent any change from the current status quo? The White Paper explains to us that: “The OfS will have a statutory duty to monitor and assure quality and standards across the sector, extending the duty that HEFCE has solely for HEFCE-funded providers to all registered HE institutions” (p22). This is followed-through in the Bill with provision for the appointment by OfS of a quality assessment body, and for OfS to introduce “a scheme to give ratings to English higher education providers regarding the quality of, and standards applied to, the higher education that they provide where they apply for such a rating.”

This doesn't sound too different to the current arrangements whereby QAA, under contract to HEFCE, conducts periodic reviews where teams make judgements about whether institutions meet threshold standards, and whether quality is suitable. Reviews also make judgements about information (something which increasingly falls under the purview of the Competition and Markets Authority) and on enhancement which is related to the quality area, essentially whether institutions are actively trying to make provision better.

Over the threshold

This may be where it gets interesting. Current judgements are based on threshold standards, but that may all be about to change... I suspect that if you read the 2009 Innovation, Universities, Science and Skills Select Committee exchange between the vice chancellors of Oxford (Hood) and Oxford Brookes (Beer), you – like me – would find it hard to forget. The VCs did their very best to preserve the sector line that standards are broadly comparable across the board, assured by the external examiner system.

And so I was struck by the passages in HEFCE's revised operating model for quality assessment about the renewed call for standardising standards in the form of a national external examiner system and the development of approved degree classification algorithms. The 2009 report concluded that: "so long as there is a classification system it is essential that it should categorise all degrees against a consistent set of standards across all higher education institutions in England." However, it went on to note "concerns that the higher education sector neither sees the need for this step nor is willing to implement it."

Come 2016, and the HEFCE proposals again recognises that it's not the whole sector which is cock-a-hoop at the idea, but that there have been calls for reopening the issue. HEFCE's position is:

"that there is a student and public interest in providing better evidence of the reasonable comparability of academic output standards across the UK, particularly at the pass-fail borderline for all awards but also at the 2:1-2:2

borderline for classified undergraduate degrees, and the equivalent in a grade point average (GPA) system.”

From that follows the conclusion that providers which fail to make use of the acceptable [HEFCE’s word] algorithms for degree classifications will have to explain themselves to the funding council through the assurance processes. Now this is something of a leap from the consultation feedback in which: “The emphasis of many responses was that the ‘guidance’ should not be mandatory or prescriptive, but guidelines for best practice, with ‘example’ algorithms for those providers considering changing their current approach.”

Having delegated the task of developing common classification algorithms to the sector’s representative bodies, HEFCE has taken the pin out of the grenade and walked away, saving itself – probably – from the worst of any damage. But are the vested interests any different to those in 2009? Surely Oxford’s VC wishes to retain the system where the institutional brand matters more than any individual student result, and for Brookes to maintain the fragile assertion that the current system establishes a national threshold.

Pincer movement

Why does this matter? When we take first the HEFCE reach into institutional autonomy for standards, and then we find provision in the Bill for the ratings of absolute standards – not just the meeting (or otherwise) of threshold standards – then universities will start to get seriously worried about the threat to autonomy. I wrote elsewhere on Wonkhe about three ways the White Paper promised to redefine fundamental approaches to design and delivery of higher education: the changes proposed are far from trivial.

There are plenty of good reasons to want comparability between degrees, such as reducing the impact of provider choice on student outcomes (the high-performing student at the institution with a less good reputation with employers). This would particularly help students who might only have a limited range of local institutions, or who didn’t appreciate that

certain employers might only be looking for graduates from a narrow range of universities. But those arguments will have to be weighed against a sector which likes to retain its diversity and where institutions are generally allowed to muddle along in their own ways.

Elsewhere on Wonkhe, in responding to the HEFCE assurance paper, Paul Greatrix concluded that: “the activities set out here represent a significant challenge to the autonomy of universities in setting, defining and assuring standards.” If providers are going to fight the multiple threats to individual institutional autonomy, and let’s assume they will, they may need stronger arguments than ‘we like it the way it is’ to shake off this latest challenge. Then again, maybe this time the sector will joyfully embrace a system of national comparability for degree outcomes with transparent comparison of standards across the board. I won’t be holding my breath.

Gaps in the White Paper that will undermine students

Jim Dickinson, Union of UEA Students

If policy represents solutions to problems, it's hard to regard the government's efforts this week as a great bit of wonkery. The White Paper's title contains the phrases "Teaching Excellence, Social Mobility and Student Choice", yet its proposals contain limited measures that might actually improve the quality of teaching.

The absence of proposals to improve (rather than just expose the lack of) social mobility is another problem. And the definition of student choice in this context (most of HE will further homogenise, but you too could get into a lifetime of debt with a degree from someone that's never awarded one before but wants to make a profit from you) is dispiriting at best.

But while this is a 'no consultation' White Paper, there are still things that can be done to improve it.

The first eye-catching proposal that is central to Cameron's "social justice" themed Queen's Speech is the formalisation of the focus on diversity and fairness by tracking success measures other than access throughout the student life cycle. OFFA has been working in this direction anyway and will help end the scandal of students that aren't 'traditional' being properly understood only before, rather than during, their studies.

But measuring at institutional level masks huge inequalities across subject mixes within HEIs, so given we're due a TEF that works at the subject level, we really need access agreements that work at this level too.

I've often thought that going to university in the UK as an undergrad is like visiting a theme park- the big maps, the smiley people in t-shirts, the expensive catering; there's a bunch of costs you haven't thought about, no redress once you're in if half the rides aren't working. And it's not as if you can easily change your mind if you're disappointed on the day.

So perhaps the most intriguing proposal in the white paper is a watered down version of my proposal from my Wonkhe blog of November 2014 – the launch of a “call for evidence” on whether students “should be able to switch course more easily”.

If like me you believe that the ‘voice’ side of Hirschman’s exit/voice options for wielding power is great for the collective student interest in the long term but useless for individual redress in the short term, the potential strengthening of the ability of students to take their money elsewhere is exciting.

Beware, BIS, the clutch of ‘evidence’ you’re about to receive which will all claim there’s no problem here – it’s likely to be as reliable as some of the claims in universities’ dodgy prospectuses that students are so upset about in the first place. If BIS really wants to empower students rather than prospective students, the exciting next step would be only to incur debt for year one – and only prevent students going to a new HEI in the future – once a student is safely installed in year two.

Depending on where you sit in the HE sector, you may or may not believe that the REF is effective, but its power is not in the exercise itself, it’s in the way the results can go on to dictate funding. A government that has given up on direct grant funding of universities will therefore never make a TEF work in the same way, and the White Paper demonstrates this.

For students, there’s much sound and fury about fees and the potential for them to rise but the smart student would be wise to worry about the stuff not mentioned – the untampered ability of the government to play about with repayment terms, the dodgy repayment calculators from government agencies failing to tell them how much they’ll pay back, the outrageous clutch of hidden course costs that the CMA is only just starting to uncover, the hugely market-distortive role that university pricing policy is having on the cost of accommodation and the wafer thin student protection policies for new entrants.

If the government wants to intervene to make the market work for students when it comes to costs, it should start by preventing itself from

changing loan terms once a deal is signed and end by looking at the range of costs and debt now being faced by potential undergraduates.

Students' unions and NUS dodged a bullet having been braced for tough measures. NUS' disaffiliation battles at present are probably a blessing, given a Secretary of State not minded to view the student movement with benevolence can probably point to NUS referendum requirements in the Education Act 1994 and regard them as doing the job they were designed for. Meanwhile, concerns about SU transparency and accountability hinted at in the Green Paper look to have been largely headed off, with OfS set to work with the Charity Commission on making sure everyone can see what all of them are up to.

The sad bit is that while the White Paper "recognises the roles that SUs play", in truth it massively sidelines them. A combination of not wanting to impose SUs on the new "challenger institutions" and NUS' dalliances with a boycott of the TEF results in SUs being at best optional when it comes to student voice in the TEF technical consultation.

The government could choose to extend the SU bit of the Education Act 1994 to new providers; it could require that new providers include students on their governing bodies, and it could ensure that valuable individual advocacy offered to students by unions in the event of a problem or complaint is a right extended to all HE students. I doubt it will.

There are, of course, plenty of other missed opportunities. Creating an Office for Students without involving them in its governance (that we know about) is disappointing. Carefully regulating what a university can charge without doing anything to regulate what you might get for that debt is remarkable. There's nothing substantial on course closures (only institution-wide closure), nothing on the scandal of the UK external examining system (students are paying to be marked as much as they are being paid to be taught), and ominous deregulation paragraphs that could lead to the asset-stripping of institutions that all of us as taxpayers have contributed to over the years.

But perhaps the most miserable thing about the White Paper is the lack of focus on what will actually be delivered. You can't have it both ways. If it's a market where providers and consumers are free to choose each other, HEIs won't risk dwindling capital on the sort of expensive HE vocational stuff that the labour market needs. And students will never choose degree level apprenticeships unless and until they look as expensive and 'prestigious' as 'academic' HE.

Attempts to level that playing field so far, for instance by making nursing students pay for the privilege of staffing our hospitals at weekends, have been in the wrong direction. What is perhaps needed is an OfS charged with making sure that provision exists across the UK and that cold spots, both from a general HE participation perspective and from a subject level perspective, are tackled. It's not too late.

The student voice is missing from the TEF

Alex Pool

Jo Johnson says that TEF will deliver value to students. However, when you delve deep into the TEF year 2 proposals you discover something a little strange.

Quite surprisingly, the student voice section of the much anticipated Technical Consultation is a mere 99 words long. It says that where feasible, students should be ‘involved’ in preparing a university’s TEF submission – the document that universities will be invited to submit as part of the process. Astonishingly, it then boldly offers a get out jail free card by stating that a university will not be disadvantaged in the event of ‘non-cooperation’ by their students or students’ union.

As a result the process doesn’t actually give students an opportunity to give any opinion on the teaching at their university beyond completing the NSS. If they’re lucky, their students’ union will be invited to cast an eye over what a university has said about itself in its own written submission, but this certainly won’t be a requirement.

Along the way then, in the development of the TEF, there has been a decision not to offer students and students’ unions their own submission as part of the framework. This ignores the many years of effective student submissions produced as part of quality assessment reviews. These submissions have taught us a huge amount about what students think, for example how they interpret NSS scores, drop-out rates and graduate destinations.

We also know that leading up to a quality assessment review students’ unions continuously report how they make huge changes in their university as part of producing a student submission, thus enhancing the student experience and improving the quality of the education on offer. Why wouldn’t we want this culture as part of the TEF, particularly when the White Paper sets itself up as a champion of the ‘student interest’.

In effect, the TEF as it stands strips students and students' unions of one of their current and vital roles. This contrasts substantially with the huge cultural shift the HE sector has been through since the development of Chapter B5 of the Quality Code. Student engagement and partnership is now a core element of assurance and enhancement in many institutions, and the better for it.

With this in mind, one could ask how legitimate will the TEF process be without proper student opinion. There seems to be an unremitting effort to dismantle the opportunities for students and students' unions to have their evidenced and collective feedback used as part of the regulatory processes. With no visits to universities planned by the TEF panels, would it really be that difficult to have both a student submission and a university submission?

Surely this would be an example of delivering 'value': two for the price of one?

Ten things you may have missed about the White Paper

Andrew McGettigan

Monday's publication of the government's White Paper, Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice, came six months and 600 responses after the Autumn's Green Paper, Fulfilling Our Potential.

Back then I flagged ten issues and questions that might otherwise have been missed about the government's proposals for market reform and teaching excellence. Here I return to those items, some of which have been clarified and some of which are still vague, while highlighting new developments that appeared two days ago. It is worth noting that the White Paper is shorter than the Green Paper (85 pages to 100 pages) and uneven – compare the detail on the Teaching Excellence Framework (which has its own sixty-page technical consultation) to the complete absence of information on the 'high quality bar' used to determine whether challenger institutions should be granted Degree Awarding Powers at inception.

1. Information is the counterpart to competition

The government is promising an information and transparency revolution for English higher education, placing a duty on institutions to publish new kinds of information as part of Unistats. The three TEF outcomes – Meets Expectation, Excellent or Outstanding – will tell students clearly 'where the best provision can be found and to drive up the standard of teaching in all universities' and potentially perform the signalling function that tuition fees cannot do. I agree with the White Paper's thrust that publishing this data is more significant than tying the TEF to fee increases.

In addition, institutions and UCAS will be required to share admissions cycle data broken down by 'by gender, ethnicity and disadvantage'

allowing applicants to see how their predecessors move from application to offer (or rejection) and to acceptance. Progression rates will also have to be broken down by these categories and published.

Sunlight is said to be the best disinfectant and the press release that accompanied the White Paper states:

This will shine a spotlight on universities that need to go further and faster on social mobility and spur further action to ensure all institutions to reach out to disadvantaged groups.

(Some of this sunlight wouldn't go amiss in the Treasury and BIS).

2. We have a new sector acronym: its name is LEO

New information on graduate earnings by course and institution is on a fast-track to be published this Autumn, following the work done by the Institute for Fiscal Studies and others into graduate borrower salaries.

In computer history, LEO was a British success: the first computer used in a commercial setting by J Lyons & Co. Lyons Electronic Office ran its first payroll and logistics functions in the early 1950s, being used to coordinate production across the company's range of teashops.

The Longitudinal Education Outcomes dataset 'will link higher education and tax data to chart to chart the transition of graduates from higher education into the workplace better' through studying earnings:

This rich new data source will give students the information about the rewards that could be available at the end of their learning, alongside the costs. This innovation is at the heart of delivering our reform agenda ambitions: improving choice, competition and outcomes for students, the taxpayer and the economy. By increasing transparency and making better use of public data than ever before, we will shine a light on the employability outcomes of courses and institutions for students to evaluate alongside other considerations. We hope this will also be used by providers

evaluating their provision and considering how they can tailor it to better deliver relevant skills for the labour market. At an aggregate level, by enabling more authoritative data to be produced of the employment and earnings of graduates long after they have completed their education, we will be able to facilitate an improved understanding of the value added by a higher education degree.

(Chapter Two: Choice, §42)

There will be a consultation with the sector over the Summer and the government is looking to incorporate the data into the TEF by 2018/19. The IFS report raised concerns about the variation in graduate earnings and the government also therefore proposes to commission research into ‘robust measures of the value added by different subjects and institutions’ (to be published in mid 2017).

Data like this will be of obvious interest to applicants and to the Treasury (it tells them which loans have such low repayments that they are really ‘vouchers’). But questions arise given that the IFS report was based on the earnings over ten years of students who graduated in the early 2000s.

How far will applicants be swayed by earnings data of graduates who studied at their institution (or its precursor) over 15 years ago? Was the course that interests them even offered back then?

How far can providers’ evaluate their current provision’, as the government wishes, against courses and intakes so far in the past? That is not clear. Perhaps the main function of LEO is undercut misplaced prestige, which also thrives on similar time lags.

3. TEF Incentives are much clearer in the White Paper

As the TEF introduces three outcome grades, these will lead to differential fee caps and tuition fee loan caps from 2019/20 (using the results of the 2018/19 TEF).

In 2017/18 all institutions who Meet Expectations will be allowed to apply an RPI uplift to the maximum tuition fee they charge and the tuition fee loan their borrowers can access. The same will apply again in 2018/19.

At this point there will be two levels of fee cap – a £9,000 pa limit for those who do not Meet Expectations and second limit to which two lots of RPI uplift have been applied. (A similar RPI uplift applies to private providers who choose not to have regulated fees – in that case the uplift applies to their maximum tuition fee loan of £6,000pa).

Then differentiation kicks in. For 2019/20, the Meets Expectation cap now only rises by half of RPI each year, while a new cap is introduced for those who achieve Excellent or Outstanding in the TEF, one that continues to increase fully in line with RPI.

Institutions will be able to charge the maximum tuition fee that their TEF badge in the previous academic year allows. If an institution fails to Meet Expectations subsequently it must drop down to £9,000 fees. Thus there will be three tuition fee caps in operation for the established sector.

The government expects this measure to represent an additional £1billion in loan outlay per year. RPI is currently around 1.5 per cent.

I could not see a costing of the administrative impact on universities but the TEF is voluntary, 'allowing providers to consider the benefits and costs of applying' before doing so.

The HE sector has been good at conceptualising academic freedom as freedom from direct political interference, but it needs to start thinking about indirect pressures.

4. University finances will be eroded by inflation-indexing

RPI is an improvement on the possibility of CPI as the inflation measure to use for uplifts, but it still leads to an erosion of staff pay and conditions. (Tuition fee increases of this kind affect the repayments of higher earning

graduate borrowers, unlike repayment threshold freezes which hit lower and middle earners hardest).

As I pointed out in November, the Office for Budgetary Responsibility has repeatedly called attention to the fact that average earnings tend to increase faster than RPI. HE is a labour-intensive sector and one where many of its employees are graduates, who are meant in theory to receive earnings that even outperform average earnings.

The politics of HE pay is a close-to-hand example of why graduate earnings do not simply represent reward for increased productivity and thereby a direct measure of 'value add'.

5. There was little to no mention of part-time or mature students

A repeated theme, I'm afraid. There was no mention of mature students and the two references to part-time study only repeating the announcement made by George Osborne in March's Budget (word for word): 'the government will review the gaps in support for lifetime learning, including for flexible and part-time study'. Part time undergraduate numbers have dropped from 250,000 to 100,000 since 2010/11.

Instead, the government has decided to focus on 'flexible', full-time study, by which it means accelerated degrees and two-year degrees. These will be subject to a 'call for evidence', which also intends to look at making transfer between institutions mid-degree easier. Speaking as someone who transferred in the mid-90s, I can say that this is long overdue. And, in truth, a mechanism of this kind should be put in place before any further market liberalism occurs – otherwise the discovery of high quality is on the back of students who can get a very raw deal. (I didn't improve 'my life chances' as the government would have it, but I did go to a better course, academically speaking..)

As I said last time, part-time is what the government should be looking at:

The failures of higher education and industrial policy are entwined here. A smart government would overhaul current ELQ restrictions and look how it can intervene to promote part-time study. This is where more choice is needed.

6. There may be sanctions!

A 'level playing field' for all providers, as promised by the government, would require that the risk-based quality and standards assurance processes will apply to all institutions. That means the sanctions listed in the White Paper have the potential to be used with the established sector. (Though the threat is likely to be stronger than the execution).

The following are listed:

- Enhanced and more regular monitoring;
- Imposing an action plan;
- Blind marking of a selection of degree scripts;
- Student number controls;
- Charging fines;
- Re-classifying as provisionally satisfying conditions;
- Varying DAPs conditions to constrain activity;
- Removing DAPs; or
- Ultimately, removing the provider from the register.

In addition, the Office for Students and BIS will have the power to 'enter and inspect premises (with a court warrant if there is suspicion of serious breaches, such as fraud or malpractice'. The associations conjured by OfStud might make it a better abbreviation than OfS.

7. Sharia-compliant student loans

There's no further detail on alternative student loans in the White Paper as compared to the Green Paper. In fact, the only noteworthy points are a

repeated commitment to bring legislation to Parliament and the dropping of ‘sharia-compliant’ from the description of the loans. The Green Paper is still the first port of call for detail on what is likely to be proposed.

8. Higher Education Corporations & the Public Interest

As with the ‘alternative finance product’, the Green Paper has more detail on the potential future for Higher Education Corporations, a common form amongst English HEIs.

The White Paper promises that the ‘unnecessary statutory requirements’ will be removed. In practical terms, these relate to a lack of clarity over whether current statute gives HECs the power to issue bonds and financial derivatives. HECs are also a quasi-public corporate form – this issue is not mentioned in the White Paper and nor are the current statutory protections regarding the assets of institutions that had a varied history of public ownership. For more detail on these matters, see the previous article. But, again, it strikes me as odd that the White Paper should have less detail here than the Green.

9. Universities / Approved (fee cap) providers will remain subject to Freedom of Information legislation

...but those providers adopting Registered or Approved models of funding will not.

In the last year’s Green Paper we considered the application of the Freedom of Information (FOI) Act to higher education providers, and whether there was scope to level the playing field between different types of providers. On 1st March this year, an Independent Commission appointed by the Cabinet Office reported on the Act and the burden of FOI on public authorities. The Commission did not recommend making any significant changes to how the FOI Act applies to higher education providers. In light of this and the responses to our consultation, we will retain the current approach: approved (fee cap) providers (who are

eligible for direct grant funding) will come within the scope of the FOI Act, while registered and approved providers (who are not eligible for direct grant funding) will not.

Chapter 1: Competition, §32

10. Public Interest and Charitable Status?

Again, there have been no further developments regarding November's announcement that a review is in underway into the public interest principles pertaining to higher education providers. There's been no new Ministerial Letter and nothing was mentioned directly in the White Paper, although the four currently defined areas of public interest – DAPs and university title, academic freedom, governance structures and finally, 'powers and charitable objects' – will all be affected by what happens after the White Paper.

As argued previously, charitable status haunts this whole discussion. How will charities fare in the new market? Can the Office for Students have a first duty to champion competition and the student interest and at the same time become the regulator for the exempt charities in the sector? Previous experience tells me this is a topic few are willing to address head on.



Chapter three: The incredible machine

Five risks to the success of the Teaching Excellence Framework

Louisa Darian, Wonkhe

If the government's White Paper proposals take up 'half a bookshelf, as likened by Nick Hillman last week, then the TEF takes up a good third with a hefty 65 page consultation document published alongside the White Paper and numerous research reports. On the plus side, it seems that the government has heeded some of the sector's concerns and the prize for institutions that take part looks to be significant with the government valuing it at £1 billion per year. However, whether the TEF will meet its objectives is yet to be seen and, with the level of complexity and detail entailed, you can't help but wonder whether there is an easier way.

The White Paper refines the Green proposals, going some way to allay the sector's concerns in relation to scope, speed of implementation, and assessment (specifically the need to recognise context). Any concerns about whether a voluntary scheme would work have also largely been quashed. Inflationary increases will now be linked to the more generous RPI, and institutions that have a positive QA outcome (the majority of established providers) will be guaranteed the full inflationary uplift in the first two years, and a 50 percent uplift in future.

However, with some of the detail dealt with, there are a number of fundamental issues that still weigh heavily on the future success of the TEF.

Will students use it?

This is a real concern, and one that is not specific to higher education – government departments and regulators across all sectors have queried how to get users to be more enquiring when making choices. Findings from BIS's own research raise a number of doubts about this. Their

applicant survey suggests that most students don't think that there is a problem with information, with just eleven percent saying that information on quality is not transparent and six in ten saying it is. Their qualitative research findings also suggest that, while students think TEF information would be useful, it probably wouldn't change their choice. There is an answer to this, albeit a partial one – making sure the information sits in league tables, which around 60 per cent of students use. But does the government have the power to dictate this?

Will we see variation in quality?

The whole point of the TEF is to try and identify where the good practice lies and weed out the bad, with the assumption being that there is poor teaching practice in the sector. However, it appears that BIS have already crunched the numbers and aren't expecting to find hugely shocking findings. They predict a bell-shaped distribution with expectations that 20-30% will receive an Outstanding rating and 50-60% Excellent. This expectation also lies in the labels themselves, with the difference between Excellent and Outstanding indistinguishable to all but an expert eye. It's also a clear departure from the common, and more user-friendly, 'Good' and 'Outstanding' used by Ofsted.

Will it deliver quality improvements?

BIS's intention is that the uplifts will allow those delivering the best quality teaching to continue to invest in this. However, the difference in uplift between those 'Meeting expectations' and those who are 'Excellent' or 'Outstanding' is just 50 percent. This could equate to around £100 per student – is that enough to both incentivise and fund excellence? Perhaps cumulatively. But we will also have to be prepared that those who don't have the resources to invest in better quality, including many further education colleges who have received a poor overall financial settlement, potentially falling away. The core metrics also don't include teaching qualifications, which research by the HEA has shown to be important, and there is no plan to incorporate an element of peer review which would genuinely support learning in the system.

Will it recognise diversity?

The opportunity to present contextual evidence to a panel goes some way to resolve this, but will it be enough? Ofsted ratings have suffered from accusations that they favour certain types of provider, and this also applied in HE in the case of Subject Review where the most prestigious universities came out on top. But diversity also relates to discipline. The move to discipline level ratings should help but only if discipline-level panels and experts are introduced. And while there is currently no explicit reference to use of earnings data, the White Paper does say that the TEF will draw on the new LEO dataset in time, with potential risks for arts and humanities subjects if this does come about.

Will it be costly?

Almost certainly. While providers will not bare a cost to apply there will likely be swathes of new staff and TEF teams created at institution-level to support the framework. There will also be the cost of the various different panels, particularly when things move to subject and potentially postgraduate level. And these costs will undoubtedly be passed on to students.

I have sympathy with what the government is trying to achieve. League tables are widely used and academic research shows they are a poor indicator of quality. But reading the detail of the new system does lead one to wonder if there is a simpler way? One of the real risks to the TEF's success is the continued use of incomparable degree classifications by employers and students, which will drive their inclusion in league tables. HEFCE proposes work to address this as part of the new QA arrangements. If greater comparability could be achieved, even across institutions with similar profiles of students, this could remove the need for a TEF altogether. It would also better protect diversity, by measuring outcomes rather than inputs. And, if it could be achieved by the sector working together to protect standards it would also promote institutional autonomy.

Perhaps this is too simple a proposal, but the opportunity to consider this is here now. If not, there is still a lot more work and convincing to do before we can be confident in the TEF's success.

Timeline for rolling out the TEF

	Year 1	Year 2	Year 3	Year 4
Unit of analysis:	Institution	Institution	Institution	Discipline
Scope:	U/G	U/G	U/G	UG + possible PGT
Prerequisites:	Satisfactory QA judgement	Satisfactory QA judgement	Satisfactory QA judgement + CMA compliance	Satisfactory QA judgement + CMA compliance
Metrics:	None	NSS scores, DLHE 6m outcomes, Retention	NSS scores, DLHE 6m outcomes, Retention (contact hours/highly skilled employment metric piloted)	All agreed metrics
Rating:	Meets Expectations	Meets Expectations, Excellent, Outstanding	Meets Expectations, Excellent, Outstanding	Meets Expectations, Excellent, Outstanding
Incentive:	Inflationary increase	Inflationary increase	Variable inflationary increase	Variable inflationary increase

The Even More Incredible Machine

Some wonks may remember an addictive computer game called The Incredible Machine, in which the player has to construct increasingly convoluted machines to achieve specified goals. The idea of nudging a basketball into a rubbish bin using a set of bellows may stand as a metaphor for contemporary policy design.

Since the TEF was unveiled last year, we've been working to understand its various inputs and outputs of the new framework. Now with the White Paper published and further details of the TEF known, we've decided to update our Incredible Machine - a visual guide to the TEF

This is an attempt to represent the TEF after five years of operation. Hence we do not show incremental differences over the introductory period. For that you can see our timeline for rollout [here](#).

Find the diagram below.

Notes

- a. It has been confirmed that achieving one of a range of positive quality judgements will be a prerequisite of TEF entry, although by 2020 it is anyone's guess what the quality judgements will look like, as the review methods involved will inevitably change. In particular, the white paper indicates that the issue of compliance with Competition and Markets Authority guidance will be 'built in' to future quality assurance review
- b. It has also been confirmed that there will be two possible ways for a provider to demonstrate access and participation credentials in the TEF – either by holding a formal 'Access and Participation Plan' agreed with the OfS, or by submitting an 'Access Statement' on its work in this area.
- c. Metrics in relation to student satisfaction, non-continuation and employment outcomes will feature, as expected. The employment outcomes metric will be complemented by a second metric for 'high skilled' employment, and it is likely that both will be underpinned by a

revised DLHE survey and by a new 'Longitudinal Employment Outcomes' dataset derived from student loan and tax records. Further metrics – e.g. on contact hours – may be included by 2020, but this is not confirmed.

d. As expected, providers will be able to submit an additional portfolio of evidence, in a prescribed format (possibly a very prescribed format!).

e. All of these elements will be considered at first instance by a team of Assessors, individually at first and then in groups. It can be presumed that not all Assessors will be asked to look at all entrants, so it will be interesting to see how the allocation is done. Assessors will review each entrant in three areas: Teaching Quality, Learning Environment, Student Outcomes and Learning Gain.

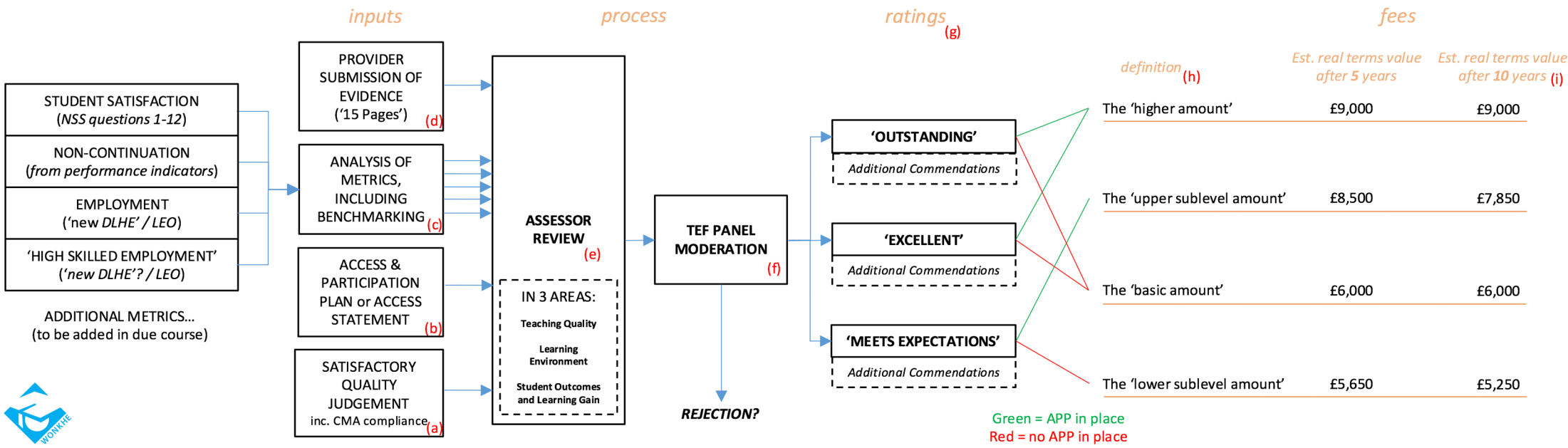
f. Assessor reports will then be sent to a single main TEF Panel to be moderated, then revised or confirmed. This panel will be comprised of people from the pool of Assessors, and will have an independent chair appointed by the OfS. It appears to be the case that it will be technically possible for the Panel to decline to give a TEF rating, but this can be expected to be very rare.

g. There will be three possible TEF ratings: 'Meets Expectations', 'Excellent', or 'Outstanding'. In addition, commendations may be awarded for distinction in particular areas, regardless of the overall rating given. It is important to note that to achieve 'Excellent' overall, a provider must be deemed 'Excellent' in all three areas of review – so this may be quite a high threshold. The same logic follows for 'Outstanding'.

h. Different combinations of TEF rating and access document will determine the level at which a provider's undergraduate fees may be capped. We have used the descriptions for different fee caps from Schedule 2 of the draft legislation. We have not shown all the detail here, as it is also possible for a provider to only be permitted to charge a 'floor amount' if it has no TEF rating at all – but this will be unusual given the near-default status of a 'Meets Expectations' rating.

i. If the policy set out in the white paper is adopted, then our estimated cap levels would follow (assuming an average path for RPI over the period of 2.9% per annum, discounting by the same values, and rounded to the nearest £50). It should be noted however, that in the legislation as drafted, nothing compels ministers to use any kind of index in determining the position of the sublevel caps compared to the others (the other caps can only be varied with indexation or varied by Parliament). In any case, it will be seen that over time, significant variation of incomes from fees may arise, and that providers must maintain an 'Outstanding' rating continuously to preserve the value of their fee income in real terms.

The diagram follows on the next page.



Chapter four: The Bill and next steps

The Higher Education and Research Bill in Parliament

It's finally here. The legislation the some believe the sector has needed for half a decade is finally before us. In one sense, the excitement of parliamentary debate, discussion and discourse is here, and yet in another sense, it is easy to anticipate likely disappointment in the quality of such discussion.

There will be much in this Bill that the sector and those tied to it may find problematic. The merging of the research councils, whatever the government's statement about 'legislating' dual-support actually looks like will set off some nervous twitches. The fast-track to university status and degree-awarding powers will no doubt have some concerned about collective reputation and quality.

However, if universities are hoping that the democratic wisdom of the 'mother of parliaments' will save them, they may well be disappointed. One particularly esteemed political commentator has called the modern UK Parliament "little more than an arena assembly – in which ritualised debates trump serious discussion". Britain, it is argued, suffers from a 'deficit of deliberation' on legislation, and much that has made its way into the statute book in recent years has either been poorly drafted, ineffectual, or superfluous.

However, such observations were made before the past year of relative parliamentary turmoil that the present government has experienced with its very slender majority. The present government has had three defeats in the Commons, and more than 50 so far in the Lords. The recent behaviour of the Lords has so raised the government's ire that there are suggestions that the Queen will announce new plans to reduce its power; unprecedented for a Conservative government. That said, former Health Secretary Andrew Lansley has noted that the upper-chamber's legislative activism has been largely due to the poor quality of drafts emanating from the Commons.

There are a great many members of the Lords who have spent their careers in higher education and research, and who will no doubt take a keen interest in the HE Bill. Any controversial features of the Bill may well see amendments being sent back to the Commons: the sector would be wise to see its 'representatives' in the Lords as its best hope for making changes.

In the Commons, the large SNP bloc may choose to use the Bill as an opportunity to give the government a kicking and highlight their contrasting policy of free higher education tuition fees. It remains to be seen how Labour, as the official opposition, will organise its opposition. But while the politics is inevitable open and highly changeable, the parliamentary process is much more rigid.

The Parliamentary Process

Parliamentary procedure is complex and obscure, and it is difficult to anticipate exactly how and when different parliamentarians may try to leverage influence. Here are some of the likely, and not so likely, flashpoints:

The Bill has already had its first reading.

Commons Second Reading: This debate is on the top-line principles of the Bill. The opposition gives a response and a vote is taken, but there are no opportunities for amendments. Expect little drama here, but it will be interesting to see how Gordon Marsden formally responds for Labour. There is a chance that this could take place before the summer, if the Bill is introduced quickly.

Commons Committee Stage: This line-by-line examination of the Bill is in theory where MPs get to scrutinise legislation and make evidence-based changes. Unfortunately, nothing of the sort tends to happen at committee stage, at least in the Commons. Public Bill Committee (PBC) members are selected by party whips for their loyalty above all else, and not for their interest in the piece of legislation at hand. However, if the government wishes to correct an error in the Bill (whether legal, practical or political), they may choose to do so here, and so the overwhelming majority of

amends accepted here will likely be government proposed. PBCs can make calls for evidence, and members of the public can submit it, but this very rarely results in anything.

Commons Consideration and Third Reading: In the Commons these two stages typically take place on the same day. In consideration, amendments are submitted by members. These may get interesting if any Conservative backbenchers take exception to any aspects of the Bill. After this, the third reading is the final Commons vote on the Bill, unless any amendments are sent back by the Lords.

Lords First and Second Reading: As in the Commons, these are largely formalities.

Lords Committee Stage, Report and Third Reading: This is where there may be the greatest interest for trackers of the HE Bill. Lords committee debates are typically more substantive than their Commons equivalent, particularly if any specialists find their way onto the committee. Government whips' control over peers is much less tight than over their MPs. Those HE peers who are not on the Public Bill Committee will be able to submit amendments at the report stage. It is over amendments that the government has got itself in trouble in the Lords this past year. Bills have not been rejected outright, but rather been sent back to the Commons for consideration of amendments, and thus forced government climb downs.

'Ping Pong' and Royal Assent: A Bill must be approved by both Houses in identical format before being given final Royal Assent. If the Lords does send the Bill back with amendments, it would be surprising to see the government take a stand on something like the HE Bill. This of course will depend on the nature of any amendments, and besides, by the time we get to this stage (we expect it to be the autumn at the earliest), we may have a completely new PM, cabinet and HE minister, and be on our way out of the EU. We shall wait and see.

Higher Education Bills we've known and loved

By Graeme Wise

How have previous pieces of higher education legislation shaped the sector we know today? What's changed, what's stayed the same, and what will be affected by the upcoming Higher Education and Research Bill? We thought with a new Bill heading to Parliament, now would be a good time to look back through the ghosts of HE legislative past.

Education Act 1962

- Imposed a duty on all local authorities to give grants to qualifying students from their area to enrol on qualifying courses anywhere in the UK.

The Prime Minister was Harold Macmillan, and the Minister of Education was David Eccles. This hugely important legislation ended the 'postcode lottery' for getting a grant depending on where you grew up. It can be no coincidence that this was seen as an essential move towards expanding opportunity at a time when people born during World War Two were reaching young adulthood, and in economic affairs the country was emerging from 'austerity.'

Science and Technology Act 1965

- Established the procedures for creating Research Councils by Royal Charter, although only the Medical Research Council, the Science Research Council and the Natural Environment Research Council are actually named; others came later, including splitting up the SRC.

The Prime Minister was Harold Wilson, and the Secretary of State was Tony Crosland. The context was Wilson's totemic speech, as leader of the opposition in 1963, on the 'white heat of the scientific and technological revolution'. Crosland took forward legislation to enact change in the funding regime for science. The impact at the time was debatable, though clearly the structural instruments put in place here have been long-lasting. The proposed Higher

Education and Research Bill will significantly amend and reform this legislation to create a 'nested' structure with existing chartered Research Councils and some other bodies under the umbrella of a new statutory body, 'UK Research and Innovation.'

Education (No. 2) Act 1986 & Education Reform Act 1988

1986 Act

- Established statutory protection of freedom of speech within the law in universities and colleges, for members, students, employees and visiting speakers; and makes 'every person connected with the government of the institution' responsible for securing it

1988 Act

- Removed the polytechnics from local authority control and created the new legal form 'Higher Education Corporation', which most of the polytechnics then became
- Abolished the Inner London Education Authority; the polytechnics it controlled became Companies Limited by Guarantee
- Set up the Universities Funding Council (UFC) and the Polytechnics and Colleges Funding Council (PCFC)
- Ended academic tenure rights (by setting up a body of five people – the 'University Commissioners' – with sweeping powers to amend the statutes of any university)
- Made it a criminal offence to purport to offer a degree without the proper authority, and made the directors of companies guilty of the same if they allow the company they control to do this

The Prime Minister was Margaret Thatcher, and the Secretary of State was Kenneth Baker. These are worth taking together as they were part of the same political context of public sector reform. The 1985 Jarratt Report had been commissioned by the vice chancellors' national body and recommended adoption in the universities of stronger central management structures, and the abolition of academic tenure. At the same time, the government was 'at war' with many

local authorities and in many cases the polytechnics within them were equal in size and budget alone to their other divisions combined.

The polytechnic directors had a separate lobby, which was pressing for freedom. But a single funding council was seen by vice chancellors and conservative elements as going ‘a bit too far,’ hence, a binary system remained, but polytechnics were less constrained within that system. Two parallel admissions systems emerged as well – though this was not a statutory matter. Freedom of speech protections went across all institutions and had their roots in conservative reaction to ‘no platform’ policies and related practices in some institutions. It may yet be this final aspect that becomes most relevant to today’s debate, as ‘no platform’ is a hot issue once again and we may see new measures proposed by the government, or by parliamentarians through amendments.

Further and Higher Education Act 1992

- Merged the UFC and PCFC to form HEFCE; the new body to be appointed by the Secretary of State, taking into account the ‘desirability’ of having members of the board who have shown ‘capacity in the provision of higher education’.
- Established a duty on HEFCE to ‘secure that provision is made for assessing the quality of education’ it funds or may fund, and established a statutory committee within HEFCE to advise on this duty.
- Also gave the Secretary of State fairly sweeping powers to confer supplementary functions on HEFCE and to interpret whether a particular function is a proper function of it, and gave HEFCE powers to require information from institutions and carry out efficiency studies.
- Established the powers of the Privy Council in relation to university title and degree awarding powers.

The Prime Minister was John Major, and the Secretary of State was Ken Clarke. This legislation underpins the core elements of the HE system we have today. It created a single funding council supporting a unitary sector and laid the ground (following some toing-and-froing covered recently by Registrarism) for our current quality assurance regime.

The 2016 Bill will make big changes here, abolishing HEFCE and replacing it with an Office for Students, to consolidate a shift from the ‘grant-making state’ to the ‘regulatory state’ in relation to HE teaching. In keeping with that, the OfS will lose all responsibility in the area of research, innovation and knowledge exchange. The OfS and UKRI will collaborate in the role of monitoring the health of higher education institutions ‘in the round’. The OfS will also obtain powers that the 1992 Act allocated to the Privy Council.

Education Act 1994

- Created a cross-sector Teacher Training Agency and set out measures relating to teacher training.
- Established a range of requirements in relation to students’ unions, including term limits for sabbatical officers, requirements to hold referenda on affiliations to external bodies (e.g. NUS), periodically or on receipt of a qualifying petition, fair allocation of resources to clubs and societies, etc.

The Prime Minister was John Major, and the Secretary of State was John Patten. In 1992, John Major was unexpectedly returned to power with a slight majority, and proceeded to wage war on three great evils facing the country – ‘benefit fraudsters, motorway road cones, and students’ unions’. There were also roots in the same Thatcherite thinking that underpinned parts of the 1986 and 1988 Acts.

The resultant draft legislation on students’ unions was extremely restrictive and authoritarian, and NUS mounted a huge campaign against the Bill. In the end, the government overplayed its hand, with a broad coalition of opposition emerging including conservative peers and vice chancellors (who were against the incursion into their own autonomy apart from anything else). The final Act imposed some new restrictions and requirements but did not presage the all-out destruction of a student movement in Britain, as per the original intention. Suggestions that the current government might have another attempt at this appear to have been confounded.

Teaching and Higher Education Act 1998

- Established the core architecture of income-contingent loans.
- Imposed a requirement on institutions to charge 'specified students' (i.e. full-time home undergraduates) a fee 'equal to the prescribed amount' (which was £1000).

The Prime Minister was Tony Blair and the Secretary of State was David Blunkett. The Labour Party had come to power in 1997 and immediately, and controversially, introduced fixed fees of £1000 per annum for FTUG programmes in England. At the same time, they reformed student loans to make their repayment less onerous, introducing the basic features of the system we have today (though it has been revised in some important respects); but crucially there was no loan available specifically to cover the £1000 fee.

The argument was that higher education represented a large 'middle-class subsidy' which should be curbed. There was an ongoing and widespread 'doorstep backlash', and NUS was seen as complicit. It is worth noting that the fee was intended to be truly fixed, not variable, except reductions for means-testing – it was not open to institutions to actually charge less than £1000, but a grant from government paid it up for qualifying students.

Higher Education Act 2004

- Established the statutory post of Director of Fair Access.
- Enabled institutions to charge 'top-up' fees more than £1000, if they obtained approval from the Director of Fair Access for their 'plan to promote equality of opportunity in higher education' (which we now know as 'Access Agreements'), up to a maximum limit defined by Parliament.
- Gave the Secretary of State the power to specify a student complaints scheme, and designate a body to run it (which was then applied to the OIAHE); also required institutions to comply with obligations imposed on it under the approved scheme, including a requirement to pay fees to the designated body.
- Removed any right to have SLC loans cancelled in the event of bankruptcy.

The Prime Minister was Tony Blair, and the Secretary of State was Charles Clarke. This legislation extended the fees system so that institutions could charge higher fees, conditional on meeting new obligations to support fair access for students from disadvantaged backgrounds. The political left, including NUS and also much of the Labour Party (which were at that time more closely connected), hated the fees proposals and campaigned vociferously against them. The political right hated the new access duties (branding them the 'OF-TOFF' regime). At the vote after the second reading, the government's majority was reduced from more than 170 to just five.

After the Act had become law, Parliament set the new maximum fee level at £3000; unlike 1998 it was explicitly envisaged that a variable prices market would emerge between £1000 and £3000, but this was always a very dubious notion, and it proved fallacious. In 2010, Parliament moved again under this legislation to endorse a Con-Lib coalition proposal to increase the maximum to £9000.

The left is lost on higher education

Emran Mian, Social Market Foundation

I was the civil servant who led the independent review of higher education funding in 2009, the precursor to fees shooting up to £9,000 a year. I received many detailed and searching criticisms of our proposals inside government. By contrast, the critique from Labour and the broader left was beside the point. Now, four years after the introduction of much higher fees, and on the publication of a new White Paper for universities, nothing much has changed.

There are two basic errors in how much of the left thinks about higher education; two muddles; and a big gap where its proper scrutiny of the government's plans ought to be.

The first error is that the left has never got to grips with how fees work. They believe that students now bear the whole cost of higher education whereas in fact it is graduates who pay through the equivalent of a tax. Those who study high cost courses like lab-based science subjects receive a big chunk of public funding, and almost everyone gets some public contribution towards the cost of their course. This is up to 100% for those graduates who never go on to earn above £21,000 per year.

The most obvious proof that the left has failed to grasp these straightforward descriptions of the system is the policy on fees that Labour took into the 2015 general election. Ed Miliband professed that the long-term aim was a graduate tax – presumably so that high-income graduates would pay even more for higher education – while in the short-term avowing that a Labour Government would drop fees to £6,000 a year. In practice, dropping fees like this would mean that middle-class graduates pay less than they would otherwise. Miliband's policy was the promise of a future tax rise combined with an immediate tax cut. Make sense of that if you can.

Liam Byrne, then Labour's higher education spokesperson, did at least try. In the light of worsening forecasts for the cost of student loans, he argued

for a reduction in fees on the basis of making the system more sustainable. But the government has found a different solution to that problem – freezing the repayment threshold and updating its assumption about the long run cost of government borrowing. These measures taken together reduce the impact of student loans for the public finances, so much so that the government is now gradually extending student finance to postgraduate students and some part-time ones.

The second error that the left makes is to oppose on instinct the expansion of higher education. The latest version of this is to be scornful about the government's aim to certify more providers of higher education. Yet Labour in government also sought to expand the number of providers, most recently through the University Challenge initiative that I also worked on in 2007. One of the objectives of that scheme was to create higher education provision in parts of the country where there wasn't enough. Those gaps still exist. Equally, expansion will typically benefit students from more disadvantaged backgrounds who may, due to persistent inequalities in school outcomes, have fewer opportunities to enter established universities. We need to change that too – and the government agrees – but opposing expansion in higher education per se is to protect incumbents in the sector at the cost of diminishing the potential opportunities available for students. There's nothing egalitarian about that.

Then there are the muddles, criticisms too murky in their aims to even be called errors. The first of these is that the government is turning higher education into a market. To the left, plainly that's a bad thing, and we don't even need to say why. But what does it mean for higher education to be a market? Students choose universities and universities choose them; that much is clear. By necessity, there are choices and contracts. But I don't think many on the left want to forcibly allocate students to courses and universities, regardless of their own decisions. Nor do they want to place students under the control of universities – giving them some rights is the decent thing to do.

The left might argue that such rights could be more like those of citizens than consumers. Take the point that far and I can understand it, but then

citizens should have plenty of information about the communities they are citizens of, and a say in what happens inside their community. The government's White Paper can easily be read as giving students these very rights. Arguably the government's view doesn't differ so much from the NUS conception of a partnership between students and institutions. At the very least, there is the basis for a constructive dialogue. But instead of joining such a dialogue the instinct of many on the left is to deploy the bogey terms 'market' and 'consumer' and never clarify what it is they object to in detail.

The other dimension of this magical thinking is university autonomy. There's plenty of talk on the left about universities now being subject to the vicissitudes of the market. They are no longer free sites of knowledge because they are under the discipline of the market. Yet this criticism is informed by amnesia. Before fees became the leading source of funding for universities, most of the funding was allocated by the government. The government set the amount of funding for every course – in other words, determined to a large extent the model for teaching – and capped the number of students that each university could recruit. Those controls have gone or are diminishing in the new system envisaged by the current government.

It's a common view on the left to assume that a government bureaucracy will always give truer expression to the public good than members of the public making choices for themselves, but the unlikelihood of that claim is particularly pronounced in higher education where universities are more autonomous now (in the so-called market) than they were in the bosom of the state.

By now I must sound like an apologist for the present government. But there are real issues about the White Paper proposals: the Teaching Excellence Framework runs the risk of further bureaucratising university departments. It may also drive a wedge between some students and their teachers, replacing the sense of a common endeavour with abstract metrics. The system for regulating new providers of higher education needs to show a high level of vigilance. And the potential for fees to vary in the future will revive a long-postponed controversy.

Proper scrutiny of what the government is proposing on issues like these is necessary. In the context of the government's small parliamentary majority, it is also likely to yield results. But for the moment the left is poorly equipped to manage the task. On the topic of higher education it is muddled and lost.



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