

London Higher Response to Consultation on Student Outcomes, TEF and Constructing Indicators

Introduction:

This document provides London Higher's response to three consultations published by the OfS for response before Thursday 17 March. The consultations are:

1. [A New Approach to Regulating Student Outcomes](#)
2. [Teaching Excellence Framework \(TEF\)](#)
3. [Constructing Student Outcome and Experience Indicators](#)

These consultation responses were created after extensive discussion with the London Higher membership and seek to represent the diversity of London HE.

Student Outcomes Consultation Response:

General questions:

Question 1: Are there aspects of the proposals you found unclear? If so, please specify which, and tell us why.

This consultation was published alongside two other consultations (TEF and Constructing Indicators) on major and interconnected changes to the sector. It followed several other consultations (including Data Futures, Approach to World-Leading Specialist Provider Funding) and was then proceeded by a further two DfE consultations (LLE and HE Reform). The ways in which these consultations interact and the implications (foreseen and unforeseen) makes many of the potential consequences of these proposal unclear to providers and difficult to predict.

We suggest that the implications and links between this consultation and the more recently published consultation from the DfE on HE Reform is more clearly set out. For example, there is no reference in either consultation to the thresholds for triggering the imposition of a student number control. This leads to perception that there is a lack of join up between the DfE and OfS proposals, which causes concern across the sector regarding the workability of the many different proposals. We ask for a clarity about the interaction between these proposals.

Given the number of ongoing consultations, the recently announced Government Post-18 education reforms and the significant pressure on providers to support students' educational recovery as the country rebuilds after the Covid-19 pandemic, we urge the regulator to ensure that the timeline for implementation (discussed subsequently in this response) for these proposals is adequate to maximise clarity for providers and reduce regulatory burden. Furthermore, we suggest that the capacity of small, specialist (often world-leading) providers are considered when introducing new regulation.

Question 2: In your view, are there ways in which the objectives of this consultation (as set out in paragraph 7) could be delivered more efficiently or effectively than proposed here?

There are three objectives set out in the consultation. We agree that the proposals meet the second objective; 'protecting taxpayers' money by ensuring that student support funding and OfS public grant funding are not given to providers whose students are unlikely to complete their course or achieve positive outcomes, because such students will be less likely or unable to repay their loan', as this framing is based primarily on an economic understanding of positive outcomes.

We suggest that the other two objectives could be achieved more effectively. The first objective, 'protecting students from providers, and courses, where performance falls below our minimum requirements' would be more effectively delivered if a broader metric of 'positive outcomes' was used, which reflects the many benefits of higher education to both the individual and society outside salary levels, progression rates and arbitrary grade thresholds.

We suggest that the proposals in this consultation risk actively undermining the final objective of, 'maintaining public confidence in the performance of individual providers and the higher education sector in England more generally.' The English higher education sector is currently considered world leading and higher education is a major export for the UK government. The consistent rhetoric around low value courses and the high profile focus on the minority of courses and providers where provision is deemed to be falling below particular standards risks unduly damaging public confidence both within England and internationally.

Questions relating to Proposal 1: Revising condition B3 and associated guidance in the regulatory framework

Question 3: Do you agree or disagree that the proposed wording of condition B3 will enable the OfS to meet its policy objectives? If you disagree, what changes do you think are necessary to do so?

N/A

Questions relating to Proposal 2: Constructing indicators to assess student outcomes

Question 4: Do you agree or disagree with the proposals for how we will construct a student outcome measures? Do you have any alternative suggestions?

The construction of indicators is subject to a separate consultation, to which London Higher has provided a response which details specific concerns over the construction of indicators.

We welcome the decision not to set numerical thresholds for TNE courses at this time, given the complexity and multiplicity of delivery across TNE and its international focus.

We remain concerned that the proposals disincentive partnerships by confusing the accountability between teaching and awarding providers, the differences between 'validation' and 'franchise' arrangements, and increasing the regulatory burden of partnership work, as well as the double counting of students.

We raise concerns that the in absence of any measures for the lifelong learning entitlement (LLE), such a regulatory approach may quickly be rendered inappropriate for parts of the student population. We

suggest that the implementation of these proposals for the academic year 2022-23 should be delayed in order to better understand the implications of the LLE on the sector as a whole.

Questions relating to Proposal 3: Setting numerical thresholds for student outcomes

Question 5: Do you agree or disagree with our proposed approach to setting numerical thresholds set out in Annex E? If you disagree, please provide reasons and any alternative suggestions.

The construction of indicators is subject to a separate consultation, to which London Higher has provided a response which details specific concerns over the construction of indicators.

We would welcome clarity around the process of reviewing the numerical thresholds every four years and the level of sector involvement in this process. We would suggest that any review was independent and expert led, with engagement from the sector.

Question 6: Do you agree or disagree with the proposed numerical thresholds set out in summary in Table 1 and shown in full in ‘Setting numerical thresholds for condition B3’?

The construction of indicators is subject to a separate consultation, to which London Higher has provided a response which details specific concerns over the construction of indicators.

Questions relating to Proposal 4: Publishing information about the performance of providers in relation to the OfS’s numerical thresholds

Question 7: Do you agree or disagree with our proposal to publish information about individual providers’ student outcomes and performance in relation to our numerical thresholds, as well as sector-wide data, on our website?

We agree that transparency is an important principle of regulation and welcome further transparency in all forms, across the regulatory process.

We share the concerns highlighted in the proposals that the publication of such granular data will result in potentially inappropriate use by third parties who may not use the data with appropriate care for its limitations and the level of statistic certainty available. This is further exacerbated by the number of indicators and sub indicators which will be published, creating a huge amount of data which is not accessible to most individuals in its current form.

We suggest that it is unlikely that such data will be accessible to most students and other interested parties, who do not have significant experience in data handling and question whether the publication of data in this form serves to benefit students, as is suggested.

Questions relating to Proposal 5: Making judgments about compliance with condition B3, including consideration of context

Question 8: Do you agree or disagree with the proposed approach to assessment set out in Annex F? Is there anything we could do to improve the clarity of this information for providers?

We welcome the idea of a risk-based approach to regulation and accept this is aligned with the broader approach of the OfS has taken to regulation. This risk-based approach is suggested to reduce regulatory burden, however we think that the current approach poses two key issues.

Firstly, although this may reduce the regulatory burden for some providers it risks creating a vicious circle, whereby those institutions who undertake the 'heavy lifting' of improving social mobility (many of which are found in London) and the 'levelling up' agenda shoulder the greatest regulatory burden. In order to reduce risk within the proposed regulatory framework, providers are incentivised to reduce recruitment from those groups who incur the greatest risk. This directly contradicts the Access and Participation agenda and risks undermining the OfS' own commitment to ensure that those from underrepresented groups are able to access higher education, participate and succeed.

Secondly, given the number of indicators and sub indicators proposed in the consultation, a vast number of providers will have at least one benchmark which falls below the proposed thresholds, thereby making them eligible for potential regulatory action. This creates an environment where large numbers of providers will feel the need to pre-empt this, which will create additional workload for staff.

Whilst we wholeheartedly support work focused on improving student outcomes, this will also create additional and unnecessary work for providers to identify and create justification for provision for all indicators which are in breach of thresholds. We do not believe the number of indicators and sub indicators is necessary to incentivise providers to improve student outcomes and suggest that sub indicators are not used to justify regulatory action.

Question 9: Do you agree or disagree with our proposed general approach to prioritisation? If you disagree, do you have any alternative suggestions for how we should approach prioritisation?

As explicitly acknowledged in the consultation document, the proposed approach to condition B3 would generate a very large number of indicators and split indicators, and even providers which are generally performing above the numerical thresholds may have small pockets of provision that are below a threshold. This creates an environment where prioritisation is necessary, due to the number of breaches which will inevitably occur each year. Given that a huge proportion of providers will be eligible for prioritisation, we believe clarity of approach is critical to ensure that the proposals do not create significant unintended workload. We supported UUK in suggesting that there is scope for reducing the burden associated with the assessment and prioritisation process.

The current proposals suggest that the approach to prioritisation will vary annually but that the process will not be transparent to providers. We suggest that this is inconsistent with the principle of transparency set out earlier in the consultation with regard to the publication of data. It is also inconsistent with the transparency duty put on providers. Moreover, this lack of transparency risks creating a perception that prioritisation is unfairly focused on particular institutions, subjects or areas and could be seen to be open to politicisation. Such a perception would seriously undermine the credibility of the independent regulator.

The prioritisation process suggests several different approaches. We suggest that an approach which focuses on the most severe breaches in terms of both number of students and the distance from the threshold, and where there is the strongest statistical confidence for this data, would be the most

appropriate. This would give a clear steer to providers over where to focus their own improvement work and would maximise the impact upon student outcomes.

If the OfS were to go ahead with a collection of prioritisation measures, we suggest this would create additional regulatory burden across the sector and would lead to less focused work on improving the pockets of provision where the most severe breaches occur. A way to make this option more viable would be to appoint an independent panel to agree upon the prioritisation measures each year and to publish these to the sector significantly in advance of the process in order to support improvement work in focused areas. One of the proposals is for there to be a random approach to prioritisation. We disagree with this proposal on the basis that it would not drive concerted improvement and would lead to significant additional regulatory burden across the sector.

Given that those prioritised for regulatory action regarding B3 breaches may become ineligible for the TEF, the regulator should recognise the significant implications of prioritisation for providers which increases the need for transparency.

Question 10: Do you think that the OfS should adopt Option 1 or Option 2 (see paragraphs 207) when defining the scope of each assessment for ongoing condition B3?

We suggest that Option 1/A, accessing only the indicator selected through prioritisation aligns with the general approach we have suggested above. This ensures that providers focus upon areas of provision which are furthest from the baseline and spreads the regulatory burden more evenly across providers in order to improve standards. Option 1/A concentrates the limited regulatory capacity on agreed areas of assessment and on those areas which have been prioritised rather than a myriad of additional breaches which are not the focus of the initial regulatory action.

Option B/2 risks focusing limited regulatory capacity on a very small number of providers where all breaches are examined. These breaches may not represent the most severe breaches across the sector, nor areas of agreed focus or interest from the OfS. Moreover, Option B would create significant regulatory burden for a small number of providers, many of whom are achieving excellent outcomes for students in other areas of provision. This could limit the providers' ability to focus work on the areas of highest need and achieve meaningful improvement.

Question 11: Do you agree or disagree with our proposals for considering the context of an individual provider when assessing compliance with condition B3?

We welcome some clarity over the use of context but urge that OfS to provide further detail about how this information will be used consistently, the weighting of these factors will be given as part of the assessment process, and what types of context will be accepted.

Whilst we acknowledge the difficulty in providing clear guidelines, the lack of transparency regarding the extent to which contextual factors will be applied creates uncertainty across the sector, not to mention mistrust in the regulator and its independence from the Government. This also risks creating unnecessary additional regulatory burden for providers who may gather significant amounts of information to justify their context. This does not incentivise improvement but, rather, creates additional burden and bureaucracy for providers. This can be seen through Ofsted's regulation of other parts of the education sector.

We continue to suggest that the absolute, rather than benchmarked nature of the thresholds for individual providers does not recognise the structural inequalities which have existed throughout the education system up to the point of entry into higher education, and creates the expectation that higher education is a silver bullet for inequality. Wide ranging educational research suggests this is misguided and risks undermining the excellent work of many higher education institutions to improve the outcomes for students from under-represented groups. We advocate for the application of contextual considerations, including taking a benchmark approach, at the point of generating institutional metrics.

Questions relating to Proposal 6: How the OfS will address statistical uncertainty in the assessment of condition B3

Question 12: Do you agree or disagree with the proposed approach to using statistical measures when considering a provider's performance in relation to numerical thresholds?

The construction of indicators is subject to a separate consultation, to which London Higher has provided a response which details specific concerns over the construction of indicators.

Question 13: Do you have any suggestions for additional steps the OfS could take to provide greater clarity about the impact that the proposed approach to statistical confidence may have for individual providers?

The construction of indicators is subject to a separate consultation, to which London Higher has provided a response which details specific concerns over the construction of indicators.

Questions relating to Proposal 7: Taking regulatory intervention when a breach is identified

Question 14: Do you agree or disagree with our proposals to impose an 'improvement notice' where we find a breach of condition B3?

N/A

Question 15: Do you agree or disagree with our proposals to take account of a provider's compliance history in relation to condition B3 for the purpose of determining eligibility for other benefits of OfS registration?

We raise concerns regarding the link between regulatory action regarding B3 breaches and TEF eligibility and in particular, the potential for retrospective removal of a TEF award mid cycle, as a result of B3 breaches. This could lead to providers being penalised by the lack of a TEF award even after regulatory breaches were resolved and conflates. Change to awards within the four year TEF cycle risks undermining the stability of the exercise and could cause confusion amongst prospective students.

Questions relating to Proposal 8: Timing of implementation

Question 16: Do you agree or disagree with the proposals for the implementation of the proposed approach to regulating student outcomes? If you disagree, do you have suggestions for an alternative timeline?

As an umbrella organisation representing over forty higher education providers across the Greater London region, we are highly concerned about the timing of the next exercise for the following five reasons:

First, recent consultations (such as Data Futures, Approach to World-Leading Specialist Provider Funding) and the other consultations published alongside this one (TEF and Constructing Indicators) and the DfE consultations on Lifelong Loan Entitlement (LLE) and HE Reform all deal with major and interconnected changes to the sector. It is difficult for both the sector and the regulator to anticipate the potential consequences of these proposals without knowing the outcomes of these other consultations.

Second, it will put undue pressure on institutions at the start of the next academic year. As a rule, September to November has always been the busiest time of the year for university staff as this is the point when the traditional academic year commences. Since 2020, the workload for professional services staff at this time of the year has only increased due to the heightened uncertainty and workforce pressures brought about by the Covid-19 pandemic. Autumn 2022 is set to be no different, particularly given the increased need to support students' transitions at every year of study following two years of Covid-induced disruption and the anxiety and mental health pressures this brings with it.

Third, the introduction of new regulation to student outcomes at this busy point in the year will be compounded by the additional proposed pressures to submit evidence for TEF assessments and devise new Access and Participation Plans – both of which will also fall in the autumn and will put extra strain on all providers, but particularly smaller providers without large teams to deal with the regulatory bottleneck.

Fourth, we are concerned about potential overlaps between B3 decisions and the allocation of TEF awards; aware that in some cases B3 eligibility may be denied after a TEF award has already been made. Any retrospective removal of a TEF award as a result of B3 conditions belatedly being deemed not to have been met clearly risks causing confusion to prospective students and could instigate legal action if students who enrol at an institution later find it to have been stripped of a standard it previously laid claim to. We believe the legal responsibility should cases like this arise ought not be on providers, and we appeal to the regulator to consider measures to protect providers' reputations should appeals need to be made.

Fifth, and finally, we feel the short window of time between the provision of B3 data to providers in September and regulatory action commencing in October is not aligned with the proposed aims of such regulatory action; to improve the number of students achieving positive outcomes. We ask the regulator to consider supplying B3 data to providers for the academic year 2022-23 but to delay regulatory action until academic year 2023-24 in order to allow providers to take meaningful action, based on the data in order to improve student outcomes.

Question relating to Considering regulatory burden on registered providers

Question 17: Is there anything else we could consider that would reduce regulatory burden for providers while regulating minimum requirements for student outcomes?

Whilst providers use data in order to understand and support positive student outcomes already, the proposals in this consultation represent a significant additional burden for providers. It is important to highlight that this disproportionately impacts upon smaller providers who have less capacity to cope with the significant additional demands. This additional burden covers several different issues, set out below.

Firstly, although OfS measures are helpful in allowing an institution to understand how they are performing in relation to the rest of the sector, they are not the same as those used internally by providers. Providers use both more timely and granular measures than the OfS data providers. This enables them to understand their current student cohort and plan interventions to improve outcomes more effectively than lagged data. We think this use of data should be encouraged, rather than inhibited under OfS regulation.

Secondly, many providers across our membership have reported the significant additional burden already incurred by the proposals and multiple consultations. This has been created by the need to review the methodology and compare the latest measures to previous OfS metrics and to 'translate' this into explanations for colleagues across providers. We suggest that the OfS consider ways to improve the accessibility of the data it provides so that this burden is not incurred each year. One way is to ensure file formats are maintained so if providers build any automation, it doesn't break the next time data is released. The OfS could also make their technical documentation easier to understand, which would have particular benefit in institutions with smaller technical teams, as well as ensuring staff across the provider could interact with the data. In order to facilitate this and other reductions in burden, we suggest the OfS formalises regular, sector feedback in the form of an advisory group and this is reflected in the OfS' own target to reduce burden.

Thirdly, in order to meaningfully work with the data provided, institutions need to be able to replicate the OfS' calculations on their own live data. This requires translation of the data from OfS fields into HESA fields and then into provider live system fields. Ensuring this process is straightforward would better support providers to access and work with their data whilst incurring lower regulatory burden.

Fourthly, the use of split indicators has created a huge number of data and regardless of the efficiency of data analysis, this is inherently a huge task for providers to understand their data. The threat of regulatory action, as discussed above will drive internal provider behaviour in pre-emptive ways. Many providers will also look at localised data in ways specific to institutions e.g. Faculties, Departments, Schools, in reference to APP targets, all of which create additional burden.

Finally, data is not consistently used or applied across B3, where absolute thresholds are used, APPs where gaps are used and TEF where -assuming a provider remains eligible – benchmarking is then used. This creates many different data requirements and challenges in communicating data within providers in order to create a coherent, sustainable and meaningful approach to improving student outcomes.

Teaching Excellence Framework (TEF) Consultation Response:

Question 1: To what extent do you agree with our proposal for provider-level, periodic ratings? Please provide an explanation for your answer. If you believe our approach should differ, please explain how and the reason for your view.

N/A

Question 2: To what extent do you agree with our proposal for aspects and features of assessment? Please provide an explanation for your answer. If you believe our approach should differ, please explain how and the reason for your view.

N/A

Question 3: To what extent do you agree with our proposal for the rating scheme?

In as far as the TEF is intended to recognise different degrees of excellence, we understand the rationale for a tiered rating system. However, we share the concern highlighted in Dame Shirley Pearce's independent review of the TEF that the existing three tiers of Gold, Silver and Bronze awards can create confusion among prospective students and other stakeholders. Bronze, in particular, is perceived not as a marker of excellence, but as a badge of inferior quality.

Although the new addition of a fourth category to sit underneath the existing Gold, Silver and Bronze awards has been proposed to mitigate this confusion, we believe it will not resolve the issue, as it does nothing to correct the negative perceptions of 'Bronze' as a 'third place' category. Its name – 'requires improvement' – also creates a new problem for the sector because it sends out the message that any provider meeting baseline criteria of quality is inadequate. Yet, providers finding themselves in this new category, although not displaying excellence, would not have breached B3 criteria and deserve to be in a category with a name that reflects their neutrality not negativity.

For a scheme which is supposed to mark out and reward examples of teaching excellence, the proposed four-tier rating scheme appears more intent on highlighting cases of poor standards than excellent ones – therefore taking the positive spin off the exercise and making it a process which creates nervousness in the sector. A clearer and more palatable approach for the general public would be to rename this new fourth category along the lines of 'above any regulatory minimum', 'meets approved baseline quality and standards', 'exceeds baseline requirements', or similar. This would also help to elevate perceptions of the Bronze award category sitting above it and remove any connotations of failure.

Question 4: To what extent do you agree with our proposal for where there is an absence of excellence?

In an exercise which is intended to reward excellence, it is logical that no Gold, Silver or Bronze awards will be given in cases where there is an absence of excellence, as these awards are intended to mark out performance that is 'above the line'. What is not logical, however, is to propose to put a provider that does not display teaching excellence in a category that is called 'requires improvement', as that signifies that their provision is 'below the line' as opposed to already meeting baseline accepted quality and standards requirements. This proposal is pitched in the consultation document as using "clear language accessible for prospective students and other audiences", when in fact it is misleading and suggests sub-standard performance and a need to improve to satisfy baseline conditions rather than achieve excellence.

Moreover, there is a risk that providers who could fall into this new absence of excellence category are those in specific regions like London, or with students with particular characteristics. Earlier [analysis by the Department for Education](#) showed that higher education providers with a large proportion of 'local' students, who commute to and from campus on a daily basis, were more likely to obtain the lowest TEF rating, which was formerly Bronze, and less likely to obtain a Gold award. It also found that the proportion

of providers located in London getting a Bronze award was higher, and the proportion getting a Gold award was lower, when compared to other regions. The introduction of the absence of excellence category could therefore become unfairly and disproportionately dominated by providers in the capital and those with commuter student populations due to this inherent bias in the system, which we appeal to the regulator to recognise as being statistically significant.

Question 5: To what extent do you agree with our proposal for provider eligibility?

As an organisation that represents a diverse range of higher education providers in England, we are worried that provider eligibility for the TEF, in as far as quality and standards requirements are concerned, will not always be determined before TEF awards are allocated. This means a situation could occur where a provider will submit themselves for the TEF assessment and receive an award, but then could have its TEF rating suspended if the regulator later deems it not to have satisfied quality and standards requirements retrospectively. Not clarifying provider eligibility in advance of the TEF assessment process commencing is unfair to both providers putting much effort into compiling their TEF submissions and prospective students who may then use the TEF rating, which ends up being eventually retracted, to inform their choice of provider.

Moreover, it is entirely possible for a provider to be in breach of B3 conditions related purely to its post-graduate activity. Yet, under current proposals, this would affect its performance in the TEF, which is intended to award undergraduate teaching only, which may actually be very good at the provider in question. This unintended consequence needs to be prevented and adds weight to our ask for the regulator to be proportionate when assessing if B3 conditions have actually been breached for the undergraduate teaching which the TEF is designed to assess. This should be done by taking into account the population size of the breach area.

Question 6: To what extent do you agree with our proposal for courses in scope? Please provide an explanation for your answer. If you believe our approach should differ, please explain how and the reason for your view.

N/A

Question 7: To what extent do you agree with our proposal for provider submissions?

Having seen the power of the provider submissions in earlier iterations of the TEF to move providers up into higher award categories than they would have been allocated to on the basis of metrics alone, we agree there is value in maintaining and enhancing the provider submission element to the exercise. For providers with diverse student cohorts with complex needs, or with specific data trends unique to their geography or disciplinary specialism, as is often the case for our members in London, it is important that the quantitative metrics are fully contextualised so as not to disadvantage some providers against others. We believe the qualitative evidence that is conveyed in the provider submissions is important to this process and helps create fairness in the assessment system.

We would however argue that the decision to increase the length of the provider submissions to a maximum of 20 pages to include an explanation of 'educational gain' puts undue burden on providers by asking them to account for a concept that the regulator itself has heretofore been unable to define and explain under its previous guise of 'learning gain'. By passing the burden on to providers to define

‘educational gain’ themselves, the measure will not be consistently defined across the sector. This undermines the concept of the level playing field that the regulator should be seeking to uphold and could create further distortions in judgements during the panel assessment stage.

Finally, we remain concerned that the increased length and substance of the provider submissions will give them greater influence in the overall TEF award decision process, putting smaller providers without the human resource to dedicate to preparing the provider submissions at a distinct disadvantage.

Question 8: To what extent do you agree with our proposal for student submissions?

As TEF awards are intended to inform student choice, we understand the principle of including the ‘student voice’ in providers’ TEF submissions. As a representative body for providers in a city with the most diverse student population in England, we are however concerned that the 10 pages that are proposed for the new student submissions component will not be sufficient to capture the many views and considerations of all student groups that need representing. In London, these will comprise a good mix of commuter students, international students, mature students, part-time students, students from Black and Minority Ethnic communities and students from backgrounds experiencing high levels of household deprivation, as well as the more ‘traditional’ residential students typical of universities elsewhere in the country.

Similarly, we are concerned that the student submissions will naturally be limited by the fact that the students writing them can only talk about their own experiences, or those of their peers that they represent, and they generally have no useful comparator with the situation at other providers. This puts more responsibility on the TEF panel to view the student submissions objectively and assess them according to the same criteria, which will be inherently difficult to do.

As is mentioned later in this consultation as part of our response to Question 15, we are also concerned that the timing of the student submission element does not work with the traditional university cycle, as the student submissions will need to be written and submitted precisely at the time that sabbatical officers traditionally change over in students’ unions. This will mean that, under the current proposed timetable, the students writing the submissions will not have had time to settle into their new roles and will likely not be able to write a submission as well as they could were they to do them near the end of their term in office, rather than right at the start of it.

In addition, although the student submissions are currently designated as optional, we feel this is misleading because all providers having to take part in the TEF assessment process will want to ensure that they are not the only institution missing a student voice in their submissions. So, all providers will be feeling the pressure to find students to compose a submission as part of the TEF assessment process. If the student submissions are to be truly optional then the regulator needs to give assurance to providers that they will not be penalised for not including a student submission in their overall TEF submissions.

Finally, we are concerned that the addition of the student submissions could allow some providers to interfere in the content of the students’ statements. We therefore urge the regulator to put clear parameters in place that will allow for providers, such as those in London with diverse student populations with complex support needs, to support their students in the submission-writing process in the best way possible, while preventing undue and unfair institutional intervention in the shape and nature of the

submissions. Clear guidelines and a framework for support is urgently needed to ensure fairness in the system.

Question 9: To what extent do you agree with our proposal for indicators?

We welcome the fact that, under the current proposals, there is to be no initial hypothesis based on data. We also broadly welcome the principle of integrating student responses into the TEF if it is to be an instrument that is designed to assist prospective students in their choices. However, we remain concerned about the use of National Student Survey (NSS) data for the reasons which will be explained below. We also feel it unjust that some institutions will lack NSS data but still achieve TEF ratings which will sit alongside those of providers whose NSS data formed part of the TEF assessment process.

As the representative body for higher education providers across London, we are pleased that overall satisfaction levels in the NSS will not be used in the TEF, as this could risk extraneous concerns associated with 'big city life' influencing the specific issue of teaching quality (such as the high costs of living, loneliness, commuting strains and personal safety concerns). We nevertheless urge caution that these wider place-based frustrations may well still influence the tone of students' responses throughout the NSS and, so, we would appeal to the regulator to include geographically contextualised benchmarks in this data to prevent undue disadvantage to providers in the capital or in other large, expensive cities where students' overall satisfaction levels and morale may be lower.

In a similar vein, we are also concerned about the negative impact that the Covid-19 pandemic has had on the NSS metrics of late and, in particular, some of the negative experiences that students may have had over the past two years, not as a result of provider decisions, but as a direct result of Government actions beyond the sector's control. These include, for example, the placements of medical students being stopped as staff found themselves repatriated to the frontline as part of the initial pandemic response. Examples like this will inevitably have disproportionate impacts on providers offering placement courses in sectors affected by the pandemic including, but not limited to, health, the creative industries, business and education.

Finally, we are concerned that some of the data that is used to inform the TEF is lagged. This needs to be made transparent to anyone in the public looking at the data, else prospective students could be lured into making a decision about their future place of study based on very outdated data sources. Moreover, we have doubts that the dashboards used to display the indicators will be widely used by prospective students in order to help them make an informed choice when applying for university, as the dashboards contain huge amounts of information and are cumbersome to navigate by anyone except a data expert in higher education. As a result, there is a danger that the amount of information being pushed towards potential applicants is vast and overwhelming.

Question 10: To what extent do you agree with our proposal for expert review?

As a representative body for a diverse range of higher education providers, we broadly agree with the proposal for expert review and the establishment of a new TEF panel comprising members with experience of diverse types of providers and from diverse backgrounds. We would however also like to add to this the need for the panel to reflect the diverse geographies of England, including London with the largest concentration of higher education providers in the country, and would urge the regulator to adopt this as a further criterion when compiling the TEF panel. Having awareness of geographical

sensitivities on the panel will help mitigate providers' concerns particularly when it comes to indicators originating from NSS data and the student submissions, which may need contextualising themselves.

In addition, we should like to use this occasion to wholeheartedly endorse the reappointment of Professor Sir Chris Husbands as the Chair of the new TEF panel, as he has unparalleled understanding of the TEF assessment process and provides the sector with continuity and much-needed reassurance.

Question 11: To what extent do you agree with our proposal for the assessment of evidence?

While we agree with the proposal that indicators should contribute no more than half the evidence of excellence in each aspect, we take issue on behalf of our membership over the amount of data that will be required to form these indicators, as this is felt to be excessive and especially so when they form only half the evaluation process. For example, the several thousand lines of metrics, created by the proposed tabs, that will need looking at against benchmarks is neither feasible nor reasonable for providers with multiple demands converging on them at the same time, and almost impossible to manage for small specialist providers.

Moreover, given the fact that benchmarking cannot fairly capture all relevant aspects of a provider's student body, subject mix and context, we are particularly keen that the regulator include advice to TEF panelists that absolute scores in indicators which are clearly above the regulatory minimum should also be taken as evidence of very high quality or excellence. While benchmarks are useful advisory information, absolute scores should in general have greater prominence in identifying very high and outstanding quality above a regulatory minimum.

Question 12: To what extent do you agree with our proposal for published information? Please provide an explanation for your answer. If you believe our approach should differ, please explain how and the reason for your view.

N/A

Question 13: To what extent do you agree with our proposal for the communication of ratings by providers? Please provide an explanation for your answer. If you believe our approach should differ, please explain how and the reason for your view.

N/A

Question 14: To what extent do you agree with our proposal for the name of the scheme? Please provide an explanation for your answer. If you believe our approach should differ, please explain how and the reason for your view.

N/A

Question 15: To what extent do you agree with our proposal for the timing of the next exercise?

As an umbrella organisation representing over forty higher education providers across the Greater London region, we are concerned about the timing of the next exercise for the following six reasons:

First, it will put undue pressure on institutions at the start of the next academic year. As a rule, September to November has always been the busiest time of the year for university staff as this is the point when the traditional academic year commences. Since 2020, the workload for professional services staff at this time of the year has only increased due to the heightened uncertainty and workforce pressures brought about by the Covid-19 pandemic. Autumn 2022 is set to be no different, particularly given the increased need to support students' transitions at every year of study following two years of Covid-induced disruption and the anxiety and mental health pressures this brings with it.

Second, the need to submit evidence for the TEF assessments at this busy point in the year will be compounded by the additional proposed pressures to react to B3 data and devise new Access and Participation Plans – both of which will also fall in the autumn and will put extra strain on all providers, but particularly smaller providers without large teams to deal with the regulatory bottleneck of analysing both the B3 and TEF data together.

Third, we are concerned about potential overlaps between B3 decisions and the allocation of TEF awards; aware that in some cases B3 eligibility may be denied after a TEF award has already been made. Any retrospective removal of a TEF award as a result of B3 conditions belatedly being deemed not to have been met clearly risks causing confusion to prospective students and could instigate legal action if students who enroll at an institution later find it to have been stripped of a standard it previously laid claim to. We believe the legal responsibility should cases like this arise ought not be on providers, and we appeal to the regulator to consider measures to protect providers' reputations should appeals need to be made. We suggest the regulator consider building a set-period into the timetable pre-TEF award announcement to allow providers to appeal decisions before they become public knowledge and potentially inflict reputational damage on the providers in question.

Fourth, we are concerned that the proposed timeframe for providers to compile both the provider submissions and student submissions in the autumn will prevent a high standard of qualitative evidence being included in the assessment process. For providers, the need to start composing provider submissions at the same time as their qualitative data is available means that providers have very little time to review the data before they put pen to paper to contextualise it. Similarly, for students being asked to contribute student submissions, it is highly likely that they will be new sabbatical officers who would have only just been appointed to post and, therefore, will lack the experience, confidence, connections and handover-time with previous student officers to enable them to compile detailed submissions in time for the proposed deadline.

Fifth, we are concerned that rolling out the next iteration of the TEF so close to the disruption caused by the Covid-19 pandemic will mean that some of the data that is used to form judgements about providers would have been unfairly distorted by recent events. Earlier in this consultation, in our response to Question 9, we alluded to the potential for NSS data to be negatively impacted by students' experiences during the pandemic as a result of Government, not provider, decisions. Here, we should also like to add to this the potential for the Graduate Outcomes survey data to present a misleading picture of the reality at higher education providers today, since two of the three years' worth of data that will be used to inform the next iteration of the TEF would have been collected during Covid-related lockdowns and the third and earliest set of data – from the first ever running of the survey – only had an overall response rate of 47%; all of which makes for a limited and misrepresentative data source on which to base judgements which providers will have no opportunity to redress for a further four years.

Sixth, and finally, we feel the short window of time which is allocated for the providers' TEF submissions in the autumn is inappropriate to the gravitas and authority that it is hoped the TEF awards will carry. The Research Excellence Framework (REF) assessment, by contrast, has a four-year lead-in process built into the assessment cycle to allow for high-quality submissions and rigorous consideration. The proposed timescale for the TEF pales in comparison and undermines the anticipated influence of the eventual TEF awards. Moreover, the proposals for the new TEF awards, which are set to last for four years, means providers may have to hold a lower award when clear improvements may have been made before the next TEF assessment cycle comes around. For this reason, we would encourage the regulator to build-in to the four-year TEF assessment cycle clear points of reassessment which providers can use to 'upgrade' their awards to reflect any improvements to teaching quality that may have been made. This is particularly urgent for providers finding themselves in the new proposed 'requires improvement' category who would otherwise have their reputations blemished and be prohibited from charging higher fees by this award for four full years. We believe changes of this nature would move the TEF into a more staggered, continuous assessment process and be more positively received by providers, as it reduces bottlenecks of burden for staff as well as for TEF assessment panel members.

Constructing Indicators Consultation Response:

London Higher has elected to respond to a sub-set of the questions in this consultation in order to set out a number of high-level principles that best capture the views of our diverse provider membership.

Question 1: Are there aspects of the proposals you found unclear? If so, please specify which, and tell us why.

London Higher has discussed this consultation extensively with our members and in doing so has identified certain aspects of it that are not entirely clear. These relate less to individual proposals and more to the consultation's overarching policy intent and longer-term vision. We list them below:

Firstly, we (and our members) are uncertain about the sustainability of these proposals given the recently launched government consultations on wider reforms to the post-18 education landscape. The planned creation of more modular opportunities in higher education through the introduction of the Lifelong Learning Entitlement raises a fundamental question about the suitability of the indicators set out in this proposal as they are, by the OfS' own admission, not appropriate for capturing the outcomes of modular study.

Secondly, it is unclear how the general interrelationship between assessments of B3, TEF and access and participation will be experienced by individual providers. We welcome the greater consistency of definition across the indicators used, but the fact remains that providers will be held to account on performance via three different regulatory mechanisms and will therefore need to invest considerable staff time and resource in managing this process. As an illustration of this fact, at a split indicator level a provider could be simultaneously outperforming against an Access and Participation Plan target, in line with its TEF benchmark, and in breach of a B3 condition. It is hard to see in this instance what judgement the provider should form about its general progress in improving quality and standards. We address this issue further in our response to question 4.

Thirdly, it is not clear how the OfS' policy intention aligns with that of the government, which (whilst also focussed on driving up quality and student success) sees an important role for universities in the wider

levelling up agenda. The outcome indicators set out here are notable for the absence of any weighting against regional levelling up goals and as such, the OfS' proposed approach to regulation in this area may inadvertently undermine progress across the sector in meeting civic objectives.

Question 2: In your view, are there ways in which the objectives of this consultation (as set out in paragraphs 8 to 16) could be delivered more efficiently or effectively than proposed here?

As the OfS makes clear in paragraph 10 of this consultation, one of the key commitments underpinning the exercise is to ensure that 'the methods and definitions used in the production of data and statistics are fit for purpose and meet the expectations of the Code of Practice for Statistics' (p.8). In order to test fitness for purpose, it would be advisable for the OfS to undertake an independent evaluation of any experimental measures or measures not already in established use, for example as a UK Performance Indicator, before they are adopted in its regulation of quality and access and participation.

This is because, in some cases, recommended split indicators for student characteristics are yet to be developed – for instance split indicators based on the ABCS method for later stages of the student lifecycle. In other cases, such as the proposed response thresholds for the Graduate Outcomes Survey and the NSS, the OfS itself has constructed the data sets with which it intends to regulate, thus making it both arbiter and regulator. External validation – as we call for in our responses to questions 19 and 27 – would lend robustness to the data sets.

Question 4: To what extent do you agree with the proposed annual publication of separate but consistently defined and presented resources that inform TEF and condition B3 assessments, using the formats that we have indicated (interactive data dashboards, Excel workbooks, data files)?

We broadly agree with the proposed approach, which in and of itself is logical. Likewise, we support the aim of greater consistency in the use and definition of metrics across the OfS' regulatory activity.

We are concerned about the regulatory burden that this approach may present for London Higher members – who range from large, multi-faculty to small/specialist providers. As we reference in our response to Question 1, it is unclear how the different assessments (B3, TEF, access and participation) cohere, despite the overlap in the indicators underpinning these. Under this approach, the OfS may scrutinise a provider's performance at the level of a specific split indicator in three related but differing ways: in respect of outcomes *gaps* that form part of its Access and Participation Plan commitments; against a *threshold*, as part of a B3 assessment; and against a *benchmark*, to inform a TEF award. The confusion and blurring of internal priorities this may create for providers when developing an institutional response to regulatory judgements could well frustrate, as opposed to accelerate, efforts to improve quality and outcomes.

Question 5: To what extent do you agree with our proposed reporting structure for student outcome and experience measures?

The reporting structure itself is logical. We question the extent to which it is appropriate to report on certain outcomes in connection with B3 assessments for postgraduate research or higher technical cohorts specifically. This is because these outcome measures were originally developed for an undergraduate student population typically studying courses of approximately three years in length. As

such, the proposed reporting structure has the potential to unfairly disadvantage postgraduate-only providers such as the Institute for Cancer Research and the Royal College of Art.

Question 15: Do you have any preference for one of the proposed approaches to measuring completion outcomes over the other?

Consultation with London Higher members has not revealed a clear preference for one approach to measuring completion outcomes over the other.

We note that the two approaches generate quite different sets of completion outcomes for part-time students.

As London Higher members have pointed out to us, provision at an individual provider level can change drastically within the four-year census period and in the period of time between the end of the (lagged) cohort-tracking window and the year in which the data is reported. This may have a bearing on the predictive power of the cohort-tracking approach for student completion rates.

The cohort-tracking completion measure also makes no accommodation for students returned to HESA with an end date but an as-yet-unknown outcome in Reason For Leaving. In the case of students who have been granted extensions to final assessments – something that has not been uncommon during the pandemic – normal practice would be to return students as having completed their structured studies but with results still to be finalised. Such cases would be regarded as negative outcomes if utilising the cohort-tracking measure as it is constructed here. The OfS have addressed this issue in the compound completion indicator; it would be logical to do the same for the cohort-tracking measure.

Question 18: To what extent do you agree with the proposal to exclude international students from the calculation of progression measures?

We accept that there are valid reasons for doing this, however we would welcome further work that explores ways of accounting for international student outcomes, either via benchmarking or in the form of split indicators. Many London HE providers educate large numbers of international students and as such we are pleased to see that the OfS intends to ‘explore the feasibility of developing alternative progression measures covering international students in future’ (p.36). London Higher stands ready to support this work on behalf of a provider membership that hosts (as of 2018/19) 25% of all overseas students studying in the UK.

Question 19: To what extent do you agree with our proposed approaches to survey nonresponse (including the requirement for a 30 per cent response rate, and not weighting the GO responses)?

The main rationale for the 30 per cent response rate threshold – to ensure that progression data is based on representative Graduate Outcomes samples – is sound. However, we would expect the OfS to seek independent validation of this threshold via a Designated Data Body to ensure its statistical soundness, especially as the 30 per cent figure has no historical precedent. Indeed, it is a more conservative approach than HESA uses for reporting on graduate outcomes.

Question 21: To what extent do you agree with our proposed definition of positive progression outcomes and the graduates we propose to count as progressing to managerial and professional

employment or further study? In particular, do you have any comments about the approach to caring, retired and travelling activities, or to employed graduates without a SOC code? Please provide an explanation for your answer. If you believe our approach should differ, please explain how and the reasons for your view.

We agree with the proposed definitions and welcome the inclusion of self-employed graduates in those counted as progressing to managerial and professional employment. We believe there is potential value in disaggregating destinations data in future iterations of the dashboards where this enables providers to demonstrate their value in training student entrepreneurs specifically (as indicated by the rates of students progressing into self-employment).

Question 23: Do you have any comments on the advantages and disadvantages of the proposed definition of managerial and professional employment?

Our general view is that the proposed definition of managerial and professional employment over-focuses on Standard Occupational Classification Codes 1-3. Though the consultation document does consider and weigh up some of the alternatives to SOC, it remains the case that this categorisation omits important graduate pathways, including in care professions and in certain creative jobs, for example crafts.

In addition, the definition runs counter to current government expectations of HE providers, which centre as much around providers' local economic contribution and their role in equipping graduates for roles in key local growth sectors as around professional-level employment per se. Insisting upon a narrow definition of managerial/professional employment in the regulation of progression outcomes could inadvertently create an incentive for providers to deprioritise their civic mission.

We recognise that current and prospective students as well as taxpayers give regard to progression to professional employment in their assessment of the value of higher education. At the same time, for these groups the value of HE may also derive from non-pecuniary factors and from the experiences and opportunities it offers besides employment. For others, managerial/professional employment will be something they aspire to or reach at a later stage in life, and whilst HE study can equip them meaningfully for this, that fact will not be reflected in the GOS, focussed as it is on immediate post-study destinations.

We would welcome efforts to develop more sophisticated future iterations of the progression measure that take into account graduate and employer views. Not only will this better enable a fuller range of positive outcomes to be captured; it will also encourage the HE sector to continually improve the quality of provision by taking into account multiple dimensions of value. As recent work by Universities UK has argued, it is important to 'look at the many ways that higher education delivers value. Focusing on one measure of one type of benefit will always be limited and have negative effects...By moving beyond graduate earnings and a select type of employment to assess the value of higher education, universities will be able to design courses that deliver on the aims of universities, students, employers and taxpayers.' (see <https://www.universitiesuk.ac.uk/what-we-do/policy-and-research/publications/graduate-employment-its-limits-measuring>).

Question 25: Do you have any comments or suggestions on the potential future use of graduate reflective questions?

London Higher is strongly in favour of graduate reflective questions being used in future iterations of outcomes indicators. This data can help to build more nuanced understandings of the employment

outcomes that providers are delivering. HESA's experimental composite measure of 'fair work', which draws on graduate reflections, provides a promising basis for further exploring how this data could be used.

Question 27: To what extent do you agree with the proposed approach to NSS survey nonresponse (including the requirement for a 50 per cent response rate)? Please provide an explanation for your answer. If you believe our approach should differ, please explain how and the reasons for your view.

As with our response to Question 19, we agree with the approach, subject to independent evaluation and validation of the 50% response threshold.

Question 30: To what extent do you agree with the selection and proposed definitions of split indicators for student characteristics?

We support the selection and proposed definitions of split indicators for student characteristics and welcome the alignment with the access and participation data dashboard. If the full range of indicators are published as part of the dashboards, this will generate a very significant number of data points and will therefore have staffing implications for providers who will need sufficient analytical and planning resource.

Question 38: Do you have any comments about the opportunities and challenges that result from our presentation of the student outcomes and experiences indicators, and on the effectiveness of the guidance we have provided for users of our data dashboards?

The OfS' proposed approach to presenting outcomes and experience indicators in degrees of confidence rather than in absolute terms certainly allows data-literate users to grasp the nuances behind arriving at quality and standards judgements. Likewise, the user guidance accompanying the data dashboards is in our view helpful and clear. We expect it will enable most non-specialist users to engage with the data.

The challenges we perceive relate firstly to how published data from the dashboards may be presented to prospective students. Recent guidance from the universities minister suggests that HE providers will be required to reference completion and progression rates in course-specific marketing materials from 2023 onwards. It is difficult to see how data published in this format could convey statistical uncertainty in the same way that the data dashboards do. Moreover, if headline completion and progression rates were to be published without commentary or context then the vey data 'cliff edges' (p.144) that the OfS wishes to avoid could be widely (mis)reported by third parties – with attendant reputational risks for providers.

Secondly, and in relation to the above, users may also seek to make comparisons between provides based on data available through the dashboards. These could potentially be misleading and unhelpful. The OfS in one of the annexes to this consultation advises users to be more conservative and make judgements based on higher levels of confidence in their interpretation of statistical uncertainty the more comparisons they are making (that is, higher than the proposed threshold that will inform initial assessments of compliance by the OfS). But there is nonetheless considerable scope for problematic comparisons to be made by third parties, especially as the OfS is not proposing to set separate numerical thresholds for subjects and as such, comparisons could potentially be made at subject level between providers with very different sizes of student population.

Further Information:

If you would like to discuss this consultation response further or require any further information, please contact Sally Burtonshaw, Senior Policy and Advocacy Officer at London Higher on sally.burtonshaw@londonhigher.ac.uk