Office for Students Consultation on a new approach to regulating equality of opportunity in English higher education: London Higher's response

Proposal 1: Risks to equality of opportunity

1. To what extent do you agree with our proposals relating to risks to equality of opportunity? Please provide an explanation for your answer.

London Higher broadly agrees with the proposals outlined in this section of the consultation. Conversations with our members have however identified three areas of the proposals where greater clarity is needed before broader judgement on the proposals can be reached.

Firstly, the OfS should as a matter of priority publish a first draft of the EORR so that higher education providers can understand how it will work in practice.

Secondly, the consultation presents but does not explain the relationship between different levels of risk – from sector-level, to regional/geographic, to provider-level – all of which may be either established or newly emerging risks. Understanding more about how exactly the OfS expects providers to give regard to these risks will support them in the prioritisation of work and of commitments in Access and Participation Plans (APPs).

Thirdly, the consultation acknowledges that, owing to the complex and multi-faceted nature of certain risks, not all will be best addressed through an APP. As paragraph 49 outlines: 'some [risks] may be better addressed through other aspects of our provider-level regulation, OfS-funded programmes or our forthcoming revised equality objectives.' Further clarification is needed here as providers are exhorted elsewhere in the consultation (p.39ff) to take a 'whole provider approach' to the design and delivery of their plans and reference is made in paragraph 113 to non-delivery of APP commitments being treated as reportable events. With respect to areas of institutional performance such as student outcomes at a split indicator level, which could conceivably be regarded as either an access and participation issue or a quality issue (or both), it would be helpful to understand more about the OfS' proposed regulatory approach. As it stands, it will be extremely difficult for providers to develop suitable mechanisms not just for delivering APPs but also for monitoring performance internally. This presents a wider challenge in terms of understanding the complexity and burden of APP regulation.

Notwithstanding these concerns, London Higher sees some distinct advantages to the proposed risk-based approach to regulating access and participation work. We welcome the consultation's stated aim to 'move away from a model in which the OfS cascades through the higher education system a set of national targets on equality' (p.4). As our members have stressed to us, such targets often have the unintended effect of incentivising behaviours that are not in the long-term interests of students or institutions. Similarly, we believe a focus on risks to (as opposed to gaps in) equality of opportunity will encourage the sector as a whole to reflect on what interventions are most urgently needed and in which contexts rather than looking at the outcomes of interventions in isolation.

With respect to the context in which providers are operating, it is clear from the consultation that the OfS wants providers to take greater account of this (see paragraph 48). However, the consultation does not explain in concrete terms how providers should respond to risks associated with 'place' – understood as their locale or home region – when giving regard to the EORR. Any clarification the OfS can provide on whether it expects to capture place-based risks to equality of opportunity in the EORR or whether providers will be expected to identify these independently, for instance as part of developing theories of change for interventions, would be welcome.

2. If you consider our approach should differ, please explain how and the reasons for your view.

We do not believe the approach should differ, however we would welcome further support from the OfS, beyond the worked examples provided in the consultation documents, to help providers understand the operational realities of the new approach. This will be essential if providers are to commence work on APPs in good time and if they are to develop them in a way that properly engages students and the wider public in the process (as is implicit in paragraphs 89 and 95). We elaborate further on this point in our responses to Proposal 3 regarding the format and content of an APP.

Proposal 2: Plan duration and publication of information about a provider's delivery of a plan

3. To what extent do you agree with our proposals relating to a four-year plan duration and publication of information about a provider's delivery of a plan? Please provide an explanation for your answer.

While London Higher agrees that the regulatory burden of shortening plans to four-year rather than five-year duration will not be too great for most providers, it is likely to disproportionately affect smaller providers with small teams responsible for planning the work.

There are some concerns among London Higher member institutions about the impact the shorter plan duration will have on providers' capacity to plan high-impact access and participation interventions with measurable outcomes. Because so many of the risks providers will be aiming to mitigate are deeply rooted, long-term problems, which will take significantly more than four years to tackle, providers may struggle to design interventions which can be easily reported on within the four-year window. For example, work that aims to address longstanding ethnicity awarding gaps is likely to require more than four years to meaningfully address the issue. We know from research previously conducted by London Higher that issues related to diversifying the pipeline to research and academia take many years to change. It may well be difficult to reflect this accurately in the evaluation plans included as part of the four-year APPs.

The new approach to identifying risks to equality of opportunity using the EORR is likely to lead to the identification of new risks that have not been tackled in this way by providers. For London providers working with diverse local communities where many risks to participation may co-exist, there may be complex and overlapping risks informing access and participation work. This may include work with groups who have not been the focus of interventions under previous versions of the access and participation plans, such as the broader risk categories referred to in paragraph 47 of the consultation document. In this context, London Higher is not opposed to the OfS's plans to publish information about their judgement about whether a provider has appropriately delivered the commitments in its approved access and participation plan, but these judgements will need to be informed by a recognition of what is possible to achieve in four years when tackling large-scale, long-term issues with complex, intersectional causes.

4. If you consider our approach should differ, please explain how and the reasons for your view.

When the regulator considers how effective plans to evaluate the success of new access and attainment-raising work have been, it would be best if they could consider what is possible to achieve within the four year timeframe for projects and evaluation. The OfS's judgement about how appropriately providers are delivering on commitments will need to be informed by an awareness of what it is possible to achieve in four years.

Proposal 3: Format and content of an APP

5. To what extent do you agree with our proposals related to the format and content of an APP? Please provide an explanation for your answer.

London Higher and its member institutions are not opposed to the creation of accessible summaries for APPs in principle. However, the additional administrative burden of creating these summaries may not be the best use of time for provider staff aiming to engage with current students and other stakeholders referred to in paragraph 73 of the consultation documents. London Higher's member institutions do not believe that the creation of a shorter summary document will necessarily be more interesting or accessible to students than the full APP. In many cases, the barrier to students and other relevant stakeholders not engaging with access and participation plans is not the length of the document, but their level of interest and knowledge of what and where the documents are. It would be unfortunate if time and resources were spent creating these summary documents if the resources could have been better used engaging with students through other methods.

London Higher agrees in general with the proposals surrounding page length, standard formatting and the linking of access and participation targets to named objectives.

6. If you consider our approach should differ, please explain how and the reasons for your view.

London Higher proposes that more consideration be given to other ways of engaging with current students and other stakeholders through other methods than the accessible summary of the APP. These could involve the creation of shorter, specific documents on the individual areas of the plan contents set out in paragraph 72, which aim to present the information most relevant to students on separate themes that do not require readers to engage with the entire plan at once. It may well be the case that some sub-areas of the APP are more interesting and relevant to students than others.

Engagement with current students may be better facilitated through working with Student Unions and consulting with students who are already a part of consultation and co-creation work with the provider, to better understand how students would find it most useful to receive this information. Students, community members and other stakeholders may be keener to take part in work that takes a different, more engaging form than a shorter summary of the access and participation plan.

This wider engagement work would not need to be constrained to within the walls of individual institutions. At regional or local levels, institutions could work collaboratively with their communities to engage on access and participation work and risks to equality of opportunity. In London, this could follow the model of King's College London's 'Parent Power' work, or the community work surrounding the Mayor of London's Young Londoners Fund.

Proposal 4: Targets

7. To what extent do you agree with our proposals related to targets? Please provide an explanation for your answer.

We tend to agree with the proposals relating to targets, which are consistent in many respects with the approach to targets in the current APPs. More specifically, we agree with and support the use of intermediate outcomes (see paragraph 100) where access and participation objectives do not easily translate into a target linked to the access and participation data dashboard.

Whilst this is welcome, the overarching approach to and proposed use of targets is quite rigid in conception and may inhibit 'continuous improvement in practice' (paragraph 90) rather than encouraging it. Efforts to address the ethnicity awarding gap in HE illustrate this point. London Higher research has indicated that this is the most common outcome gap in the capital and could therefore conceivably be regarded as a priority risk to equality of opportunity in London HE. Yet addressing it will depend in part on driving longer-term culture change (for instance, diversifying the academy) and this is a complex, messy and generation-long process that does not easily lend itself to conventional targets – or even to intermediate outcomes.

The same applies to the theory of change as a heuristic device, which whilst undeniably useful as a tool for developing access and participation interventions and/or for setting goals and targets, is one of several available tools for mapping and understanding social change and should be recognised as such in the consultation. If one accepts that certain risks to equality of opportunity are complex and multi-faceted, then it follows that progress towards addressing them may be non-linear and/or require questioning the normative assumptions that are often built into theory of change models. In this respect, 'continuous improvement in practice' may require a certain degree of experimentation and it is important that the OfS' approach to targets allow for this.

8. If you consider our approach should differ, please explain how and the reason for your answer.

When first announcing the new approach to regulating access and participation in early 2022, the Director of Fair Access and Participation had made explicit reference to exploring 'the sandbox of regulation to give providers committed to generating robust evidence the space to do so.' It is not immediately clear from this consultation how and where such space will be afforded to providers to ensure the next APP cycle contributes to broader sector-level learning. We would therefore welcome any further detail the OfS can provide on its tolerance threshold for more exploratory access and participation interventions.

Proposal 5: Evaluation

9. To what extent do you agree with our proposal related to evaluation? Please provide an explanation for your answer.

On balance we agree, though we have some concerns about the implications for some parts of the sector. For instance, while we welcome the enhanced focus on evaluation, we expect the administrative burden of increasing both the quality and volume of evaluation to disproportionately impact small/specialist providers. As such we recommend that the OfS explores additional measures for mitigating this impact – we detail these in our response to question 10 below.

When initially setting out expectations of the sector in respect of evaluation, the OfS had referred to 'independent' evaluation. The terminology does not appear in the consultation; reference is made instead to 'rigorous and objective' evaluation. Providers looking to develop evaluation strategies would benefit from clarification as to what exactly this means. In particular, providers will need to understand whether processes such as peer review (as distinct from externally commissioning evaluation) will be accepted by the OfS as evidence of rigour and objectivity. Equally, if this is a judgement for providers to make themselves on a case-by-case basis, that should be stated clearly for the avoidance of any doubt. This is especially important as there are resource and cost implications to deciding either to seek external support with evaluation or to utilise internal/external peer-review and evaluation planning cannot proceed without clarity on which approach(es) are deemed acceptable.

10. If you consider our approach should differ, please explain how and the reason for your answer.

We recommend that the OfS offers targeted support for small/specialist providers in enhancing their evaluation practice. This could take several different forms. London Higher/AccessHE runs a Research, Monitoring and Evaluation Forum that enables practice-sharing across London and our experience of convening this pan-regional network has shown the advantage of enabling providers of different kinds to connect and engage with one another on this issue. Similar networks in other English regions that expressly encourage small/specialist provider participation could prove useful.

The OfS may alternatively, or in addition, wish to provide funding that enables clusters of small/specialist providers to access shared evaluation resource (for example a staff member servicing multiple institutions). This would be a time-limited initiative focussed on driving professionalisation of evaluation practice in the early stages of developing new APPs. Asking providers to jointly fund this themselves is a less viable option given the budgetary constraints within which small/specialist providers often operate.

Proposal 6: Investment

11. To what extent do you agree with our proposals related to investment? Please provide an explanation for your answer.

London Higher believes we must be mindful of the fact that the need to report investment in each intervention strategy will increase regulatory burden, particularly for smaller providers. The London higher education landscape contains many small and specialist providers who may be disproportionately affected by the administrative burden of reporting on investment individually for each access intervention.

In addition, London Higher has concerns around the removal of the requirement to report on overall access investment. In practice, this may amount to removing a ringfence around access and participation funds within higher education institutions. If reporting on the total amount of access spending is no longer required, the funding may come under threat in difficult economic times when institutions are looking for areas in which belts can be tightened. Continuing to require reporting on how much money is allocated for access work would help safeguard continued investment in access work.

12. If you consider our approach should differ, please explain how and the reason for your answer.

London Higher believes the requirement to report on overall access investment should remain in place for the reasons stated above.

Proposal 7: Raising attainment in schools and collaboration

13. To what extent do you agree with our proposals related to raising attainment in schools and collaboration? Please provide an explanation for your answer.

The rationale for increasing attainment raising work is clear and we are confident, based on the track record of London Higher's members in supporting schools to raise standards, that this can be achieved. We do not feel that the proposals have been sufficiently well developed with respect to driving greater collaboration; indeed, the consultation represents a missed opportunity in this regard, as we explain in our responses below.

14. How might the OfS support providers to develop strategic partnerships to raise attainment in schools?

In the Uni Connect programme, there already exists an established, England-wide infrastructure for facilitating school-HE attainment raising partnerships. It is surprising that the consultation makes no mention of the programme, especially given the obvious overlaps between the attainment raising objectives outlined in this consultation and the 'strategic outreach' strand of Uni Connect, which also aims to streamline access to HE-led activity for schools and target the activity itself towards regional cold spots.

If it is serious about the HE sector contributing to a step change in pre-16 attainment, the OfS will harness the significant expertise that has been developed in the area of school partnerships by the 29 regional Uni Connect partnerships in England. It will also address the funding cliff that the programme currently faces in 2025 to ensure that it can be properly aligned with and support delivery of the next iteration of APPs.

In London Higher's view the decision about the future of Uni Connect is a stark but straightforward one: without the programme, the sector's ability to partner with schools is set back by five years (the accumulated experience of the programme since it commenced in 2017) and progress in attainment raising does not return to 2022 levels until the end of the 2023/24-2027/28 APP window.

In addition to continuing Uni Connect, the OfS could support providers through formalising mechanisms for involving schools in the development of attainment raising work. While all providers have established relationships with local partner schools, there is currently no agreed or uniform approach across the sector to the scoping and co-creation of activity that aims to improve pre-16 attainment. We therefore recommend that the OfS establishes regional school-HE forums that enable more coordinated interactions between the two sectors and give direction and focus to the work of developing attainment-raising partnerships. The forums could be operated by the 29 Uni Connect partnerships as part of the wider attainment raising role sketched out above.

15. What support would help foster collaboration between higher education providers, schools and colleges around information advice and guidance (IAG), outreach and attainment raising, and why?

The most impactful form of support that could be provided is a sustainable long-term funding settlement for the Uni Connect programme, for the reasons we have outlined above. Independent evaluation of the programme has already pointed to its effectiveness as a vehicle for delivering collaborative IAG and outreach and we have suggested above how this role could straightforwardly extend to coordinating attainment raising activities.

16. If you consider our approach should differ, please explain how and the reasons for your view.

We suggest that the OfS clarify how it will coordinate the delivery of attainment raising activity at a regional and sectoral level and how it will minimise unhelpful duplication of activity. The consultation makes clear (paragraph 135) that a coordinated, collaborative approach is important and desirable, yet it offers no detail on how the OfS plans to achieve this. It is particularly disappointing that the consultation makes no mention of existing platforms such as Uni Connect that are well positioned to foster collaboration and minimise the burden for schools associated with accessing HE-led attainment raising work.

We recommend that the OfS sets out as a matter of priority how it sees the Uni Connect programme contributing to the attainment raising objectives outlined in the consultation. It is London Higher's view that Uni Connect is an eminently suitable vehicle for coordinating collaborative attainment raising work between HEIs, schools, colleges, and third sector partners.

Proposal 8: Assessment process

17. To what extent do you agree with our proposal related to the assessment process? Please provide an explanation for your answer.

While London Higher agrees that the use of a broad range of indicators in calculating access and participation dashboard is good, we are concerned with the choice of indicators being used here. In the context of the recent OfS announcement of new key performance measures for access to higher education, London Higher has concerns around the use of individual measures of disadvantage in the access to higher education key performance indicators while the contextual data summarised in Proposal 8 retains use of area-level measures of disadvantage. Continuing to use area-level measures of disadvantage may be problematic for London providers; previous London Higher research on the role of POLAR data in London access work has shown other measures of disadvantage might be more useful. While London Higher welcomes the use of a wider range of measures of potential disadvantage, we are concerned that the use of TUNDRA and ABCS will be used as a 'fix' to the previous issues with POLAR, when many of POLAR's issues for London providers are also true of TUNDRA and ABCS.

18. If you consider our approach should differ, please explain how and the reasons for your view.

Within London, gaps in access to higher education exist at both area- and individual characteristic-level in different amounts for different institutions (more detail is available in London Higher's recent briefing note on the topic). Higher education providers would benefit from a more joined-up approach to the use of different indicators of disadvantage. This would help London providers avoid the risk of being held to account on issues that are less important than other risks to equality of opportunity in their local context.

Questions relating to all proposals

19. Do you have any feedback on the whole proposed approach to regulating equality of opportunity regulating equality of opportunity in English higher education, including regulation of access and participation plans as described in the draft Regulatory notice 1 (Annex C)?

N/A

20. Do you foresee any unintended consequences resulting from the approach set out in this consultation? If so, please indicate what you think these are and the reasons for your view.

As we outline in our responses to questions 9 and 10, Proposal 5, relating to evaluation, may have the unintended consequence of disproportionately burdening small/specialist providers. This is because they have reduced internal resource to draw on, whether that is funding or staff expertise, when it comes to scaling up evaluation activities. We have suggested possible mitigations in our response above.

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

N/A

22. Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

N/A