



ASSOCIATION
OF COLLEGES

OfS consultation on Quality and Standards

Written evidence submitted by
Association of Colleges

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Question 1a: Do you agree or disagree with the proposed definitions of 'quality' and 'standards' set out in Table 1 of Annex A and that this should be used to express minimum baseline requirements for quality and standards in revised B conditions?

While we broadly agree with the areas that should be considered when defining quality, we believe the proposed definitions do not clarify how these should be interpreted by providers. We support the OfS's principles based approach to regulation that recognises the diversity of the sector however in practice OfS's regulatory approach is not purely principles based but elements of 'rules based' approach feature strongly in the regulation.

AoC agree with the broad areas identified in Table 1 however the proposals do not offer sufficient clarity on what is included and how OfS will assess providers against each requirement. With the exception of 'successful outcomes', quantitative baselines are not applicable to the other categories. For instance, under 'Access and admissions' there is a requirement that 'students admitted to a course have the 'capability and potential to successfully complete the course', assessing 'capability and potential' can be quite subjective and it is not clear how OfS will judge providers on whether they meet the minimum 'qualitative' baseline. We feel entry qualifications are an objective measure of academic ability at a fixed point in time whereas the capability and potential to complete a course is fairly subjective. Likewise, under 'Course content, structure and delivery' while it is fair to expect that the 'course content is up to date' we feel this is a matter of academic judgement and it can be complex to set minimum baselines expectations on the 'updated-ness' of a course.

We are concerned about the requirements listed under 'Resources and academic support'. There is an expectation that 'staff who design and deliver a course and sufficient in number, appropriately qualified'. It is not clear how OfS will form a judgement on 'appropriately' qualified. For instance, staff who teach HE in FE colleges may not be qualified to Doctoral levels but have the industry expertise that is more desirable to teach technical and professional courses taught in colleges. Similarly, as part of the proposal 'Physical and virtual learning resources are adequate' it is not clear how 'adequacy' will be ascertained and whether there will be a standardised requirement that each provider will be required to fulfil. Also, 'students are effectively engaged' can be subject to interpretation- for instance, the level and forms of engagement of young students is notably different to that of older students. We suggest that these definitions and the minimum expectations should be discussed and consulted with the providers in the next stages of the consultation process. Clear

criteria and guidance should be provided to the sector so these definitions can be meaningfully applied to providers operating in different contexts.

The expectations under 'successful outcomes' are underpinned by numerical baselines and we are concerned about the proposals to increase these baselines in the future. The details of the proposed new baselines have not been provided in the current consultation however we are very concerned about the proposals to 'raise the bar' on continuation, completion and progression metrics. In theory, it is difficult to argue against a high minimum baseline for outcomes for students from all backgrounds. We agree that students from underrepresented groups should not be expected to accept lower quality however we believe student outcomes on their own are not the best measure of quality.

We believe that a disproportionate level of emphasis has been placed on student outcomes and there is an assumption that it is the quality of HE alone that shapes the outcomes for students. There are several factors that influence student outcomes that are beyond the control of providers. There are a range of socio-economic factors that shape the decision making, behaviours and aspirations of students and these factors cannot be controlled by the providers. While we agree course design and delivery, academic and non-academic support can help students continue and complete their courses, this cannot guarantee that students will complete their qualification. The employment outcomes are also impacted on by regional economies – for instance geography plays a crucial role in the availability of graduate jobs and the salaries.

It is important to highlight here that College HE is different from mainstream HE delivered in universities. It is characterised by employer focused, local, accessible, low cost, sub-Bachelor HE, often studied by students from disadvantaged backgrounds and students who find studying even at post-92s intimidating. Many colleges are sole providers of HE in cold spots in the country. Small class sizes, one to one individualised tutor support, internal progression pathways from FE to HE enable students from less privileged backgrounds to study HE at colleges. Circa 50 percent students study on a part time basis and more than 50 percent students are mature students (25 and over) and less than 30 percent students are young (under 21).

The context of college HE is crucial when assessing quality of provision at colleges. For instance, mature students are more likely to drop-out of their courses because of a change in their personal circumstances. Students may not be able to continue because of financial hardship that may arise as a result of loss of employment. Female students in their late 20s or 30s prioritise family or caring commitments and when students are

unable to continue for such reasons, this does not reflect on the quality of the provision.

Colleges largely deliver Level 4/5 qualifications and provide opportunities for flexible learning and courses are designed to enable students to 'step on and step off'. For instance, if a student registered for a HND course in Engineering is offered employment and chooses to exit the course having completed an HNC, this is often considered to be a 'successful outcome' by the student as well as the provider but is seen as a failure for regulatory purposes.

Therefore, we believe when defining quality and setting minimum baselines a providers' context is taken into account and OfS should seek to develop a transparent framework through which contextual information will be considered as part of regulatory assessments. There are significant differences between characteristics of students studying at a 'selecting' Russell Group university and a 'recruiting' low cost, accessible HE in FE provider. We believe that benchmarking is a more reasonable alternative than using absolute performance for regulatory decision making.

Setting high baselines can have the unintended consequences of providers becoming increasingly selective in their recruitment to avoid regulatory consequences. Providers could choose to close some of their low performing courses rather than face regulatory penalties. Providers that fail to meet the increased numerical baselines at a subject level can result in course closures at regional and national levels which will ultimately limit student choice.

OfS needs to assess and evaluate the role of HE delivery in the cold spots of the country and also the impact of the void that may result if these providers ceased to deliver HE. FE colleges provide opportunities to those who would otherwise not have the opportunity to study HE. It is crucial that OfS fully takes a provider's context into account to ensure the absolute performance is interpreted appropriately. We agree that it is not sufficient for any provider to recruit students from underrepresented backgrounds and it is even more important to support these students to succeed. However, it needs to be acknowledged that students from disadvantaged backgrounds need more support than that required by their more privileged peers. Supporting students from disadvantaged backgrounds requires more resource and investment, and it must be noted that colleges are the only providers that did not raise the tuition fee to the highest levels, colleges uniquely offer low cost, local and accessible HE.

OfS proposes that its approach to quality and standards covers all type of provision, including higher technical education, apprenticeships, modular and flexible provision. It

is not clear how numerical baselines on continuation, progression could apply to short cycle courses (of less than one year in duration) and this data is presently not collected by OfS or other agencies. This also applies to courses that were formerly referred to as non-prescribed higher education courses. We note a new term to describe these courses 'non-recognised higher education' in point 35. We believe this label is unhelpful in describing a range of courses that are often professional courses very much valued by students as well as employers and a different terminology should be used to identify these courses. Regulation of these courses would require OfS to fully understand the nature of these programmes and to take into account the context of the provider even more holistically. AoC is keen to support any work OfS may undertake to construct indicators for NPHE courses in the future.

Lastly, we do not agree with the proposal to remove the reference to the 'Expectations and Core Practices' of the Quality Code. References to the quality code should be maintained in the regulatory framework and attempts should be made to make the links more explicit rather than removing them. We also believe the Quality Code provides a framework for quality assessment across the four nations and plays a binding role. This feature needs to be retained.

Question 1b: Do you have any comments about how the proposed definitions of quality and standards set out in Table 1 of Annex A should be assessed for individual providers?

Answer 1b: As above. We are concerned that OfS's regulatory approach is largely data-led and it is extremely important that OfS takes provider's context into account for regulatory assessments and this approach is clearly explained to providers. An increased focus on data poses a particular risk to small providers where even a minor variation in data year on year can indicate significant fluctuations. These data issues will be even more pronounced at a subject level. It is also important that the baselines are not too reactive to population shifts. For instance, the disruption caused by the pandemic will impact on the grades at Level 3 during the current academic year and this will be reflected in the admissions and offers made by HE providers in the current academic year and in 2021/22.

Although colleges are large providers of further education, HE provision is relatively small at most FECs. Small and specialist providers of HE have small datasets and are unable to demonstrate fulfilment of registration conditions through data alone. The definitions of quality should also be judged by using quantitative and qualitative data

with reference to contextual information about each provider, nature of provision and student characteristics.

We recognise that the consultation is taking place at an early stage of policy development however it is difficult to respond to this consultation more fully (in places) in the absence of details on OfS's approach to constructing indicators and setting numerical baselines for student outcomes, which will be consulted upon at stage two.

Question 1c: Do you agree or disagree with the proposal in paragraphs 41 to 43 to express initial requirements differently from the equivalent ongoing requirement for providers seeking registration?

Answer 1c: Agree.

We agree that the outcomes focused formulation used in current B conditions will present challenges for new providers who have no track record of delivering HE. They will not be able to meet the B-conditions when they have no students. We agree that if there is no data point for at least one of the student outcome measures, the relevant initial condition should be disapplied for the purpose of initial registration.

This would largely not apply to FECs as most FECs are long standing providers of HE however we agree with the proposals that will work favourably for other new providers to the HE sector.

Question 2a: Do you agree or disagree with the proposed approach to assessing student outcomes set out in Annex B?

Answer 2a: Disagree.

As above. There appears to be an underpinning assumption that providers have a high degree of control over student outcomes. Continuation rates, completion rates and progression are impacted on by a range of personal circumstances as well as broader socio-economic factors. Employment outcomes can be a reflection of structural inequalities in the society as well as regional economies. Benchmarked data enables more meaningful comparisons between providers that recruit students with similar characteristics. OfS should consider developing alternative tools (more robust benchmarking) when assessing provider performance. Adopting a single numerical baseline will pose a threat to diversity, innovation and choice across the sector.

A key question is the regulatory consequences for providers who fail to meet the baselines and the proposals outlined in this consultation do not clarify this. If the motivation to increase the numerical baselines is to discourage providers from delivering courses that have weaker student outcomes, this will lead to a gap in the provision that is studied by a larger proportion of students from disadvantaged backgrounds. Alternatively, providers are likely to be steered towards exercising a greater degree of selectivity in admissions- which will affect students from disadvantaged backgrounds disproportionately. This will in turn disincentivise providers to fulfil the access and widening participation agendas.

Also, for the purposes of the progression metric, the new SOC 2020 codes should now be used as it allows for a better classification of graduate roles. For instance, teaching assistants, early year practitioners are now listed in bands 1-3 in SOC 2020.

OfS proposes to assess and regulate student outcomes in a more granular way to identify and take regulatory action in relation to pockets of performance that are below a numerical baseline. This could mean OfS could target subjects or disaggregate direct or franchise provision at a provider. This level of granularity will be less meaningful for providers with small cohorts and disaggregating data any further than at a provider level will require interpreting very small numbers. TEF assessments at a provider level include students taught at a college and those registered with the college as well as those registered with franchising HEIs. We believe when assessing providers, all students should be taken into account (based on the teaching institution) which will offer consistency with TEF but in order for the data to be reliable, it should not be disaggregated any further. On the other hand, aggregating data over time can also be unhelpful because a small variation in data in one year can disproportionately affect provider performance. Hence the need for a contextual analysis based on qualitative as well as quantitative information.

In point 16 in Annex B- OfS is proposing that the percentage point gap between the number of leavers from Level 6+ undergraduate degrees who were awarded a first or 2:1 as a percentage of all those leavers from Level 6+ UG degrees who were awarded classified degrees- should not be a measure of baseline regulation of student outcomes for providers that have an approved APP but consider this indicator for any provider without an approved APP. The rationale for this proposal is not clear and requires more detail. 85 of the 170 FE colleges on the OfS register do not charge higher fee but are registered under the approved (fee cap) category and do not have an approved APP in place. It is important to ensure that no additional disproportionate regulatory requirements are posed on such colleges.

Point 29 in Annex B suggests HEIs will hold responsibility for students for whom it is the awarding body- while we understand HEIs as well as colleges share responsibility for direct as well as franchised students, we are less convinced about role of HEIs in case of students registered and taught at FECs. We agree and support that validating HEIs share a joint responsibility for course content/structure/academic standards, we believe the quantitative baselines for students registered and taught at colleges should not be part of validating HEIs assessments. These proposals can have unintended consequences for colleges and disincentivise partnership working between HEIs and FECs. For instance, universities may become nervous about working with FECs if any disaggregated data is judged without the provider's (in this case college's) context which could pose a challenge for collaborative working between HEIs and colleges. We believe that all students should only be included in the teaching provider's data, as is the case with TEF.

Question 2b: Are there any other quantitative measures of student outcomes that we should consider in addition to continuation, completion and progression (see Annex B paragraph 18)?

Answer 2b: Yes.

HEFCE piloted some work on measuring the value added or distance travelled which can be a useful measure to quantify the 'heavy lifting' done by some institutions and celebrate the achievements of students as well as the providers for the role they play in the student journeys. We acknowledge the challenges associated in quantifying any 'learning gain' however we recommend that as an established regulator, OfS revisits the work that HEFCE had initiated. The 'distance travelled' by the student will be more meaningful and provide the contextual data that will be particularly useful if benchmarked data is not used.

There is a reference to 'start to success' metric in point 18 in Annex B. Colleges were not included in this experimental work and we are unable to comment on the detail, however, we believe any derived metric that is not contextualised should not be used for regulatory assessments.

Additionally, aside of student outcomes, student voice is an important indicator of quality. OfS is currently undertaking a review of NSS and this indicator is already used as part of TEF. As used in TEF, we believe benchmarked NSS scores for both direct and franchised provision should be used at a provider level in conjunction with other metrics.

Question 2c: Do you agree or disagree with the proposals for the levels of study at which indicators should be constructed? Should any additional indicators be considered (see Annex B paragraph 25)?

Answer 2c: Agree.

We agree that level of study should be taken into account when constructing any baselines. This particularly applies to the progression metric, the employment outcome baselines for Level 4 or Level 5 graduates are expected to be lower than those for Level 6 graduates. We also feel the continuation and completion metrics should take the level of study into account. As noted earlier, students who may exit a HND in Construction to accept a job and often return to study later should not be treated as a failure. We also support additional indicators for apprenticeships, top-up courses, and distance learning provided these do not add any data burden on providers.

Question 2d: Do you have any comments about an appropriate balance between the volume and complexity of indicators and a method that allows us to identify 'pockets' of performance that are below a numerical baseline (see Annex B paragraph 32)?

Answer 2d: We believe that institutions rather than OfS should be responsible for identifying their pockets of performance. OfS should provide the data dashboards so providers have access to the data that OfS uses for regulatory decision making. This will be particularly valuable for small providers that do not have the resource or capacity to generate data using the algorithms used by the OfS. While colleges naturally have access to their own data, owing to small numbers, a minor variation in the methods used by OfS on continuation and completion can skew the statistics.

We also feel that HE providers are autonomous institutions that have the ability to identify their own pockets of performance and any intervention from OfS should be the last resort rather than the norm. Further detail is required to understand how will OfS identify these 'pockets' of weak performance and how it intends to deal with this.

Question 2e: Do you agree or disagree with the demographic characteristics we propose to use (see Annex B paragraph 36)? Are there further demographic characteristics which we should consider including in the list of 'split indicators'?

Answer 2e: Agree.

We support the proposed demographic characteristics for inclusion as 'split indicators'. Where possible, intersectional analyses can be particularly helpful provided the datasets are not too small and present a meaningful analysis.

Question 2f: Do you agree or disagree that the longitudinal educational outcomes dataset should be used to provide further indicators in relation to graduate outcomes (see Annex B paragraph 46)?

Answer 2f: Disagree

We strongly disagree with the use of salary data as a proxy for quality. Graduates in lower paid jobs often make significant societal contributions, and this has been particularly notable during the pandemic. College HE graduates do not progress to jobs and sectors that attract high salaries, for instance, those preparing for careers in early years and social work. Providers should not be disincentivised from delivering courses that may not lead to high profile careers but make significant social contributions. Also, the LEO data currently includes those who graduate with first degrees only and colleges mainly teach Level 4/5 courses and therefore this data is not available for the majority of college HE graduates. Another limitation of LEO data is that it excludes those who become self-employed, for instance, self-employment is common amongst those graduating with degrees in creative arts.

Question 2g: Do you have any comments about how the range of sector-level performance should be taken into account in setting numerical baselines (see Annex B paragraph 57)?

It is not clear whether focussing on bottom 10-20 percent will be used to identify the minimum absolute baselines and whether this will be made public. For instance, if the providers in the bottom 20 percent were made public, this could lead to a downward spiral for these providers. Some providers may remain in this category which could lead to further narrowing of the field.

Also, a focus on the bottom 10-20% would work to continually raise the baseline and those in that tier will be subject to regulatory intervention regularly and routinely. As

noted earlier, such an approach could result in providers with a widening participation mission penalised and opportunities for students from disadvantaged backgrounds reduced. Further detail is required to better understand how such methodology will operate in practice and any unintended consequences are mitigated.

Question 2h: Do you have any comments about the other contextual factors that should be taken into account and the weight that should be placed on them (see Annex B paragraph 68)?

Answer 2h: The consultation signals that OfS will consider provider behaviour to cease some courses. On the one hand, it appears that teaching underperforming courses will have regulatory implications and on the other closing low performing courses could also result in regulatory penalties. We feel the decisions to deliver new courses or close existing ones should reside with providers as autonomous bodies rather than excessively having to respond to the OfS's use of regulatory levers.

Question 3: Do you agree or disagree with the proposals in Annex C for monitoring ongoing compliance with regulatory requirements for quality and standards?

Answer 3: Disagree

While we agree that the use of lead indicators together with the lag indicators is positive, we have concerns about use of some of the proposed indicators for regulatory purposes. For instance, point 4e in Annex C outlines OfS proposals to undertake further assessment or investigation if a provider receives a TEF award in the lowest available category. This is concerning because the stated aims of TEF are to recognise excellence in teaching above the minimum baselines therefore it is not clear whether TEF will focus on enhancement or serve as a tool to assure minimum standards. The sector has been awaiting the publication of the independent review of TEF (and the government's response) and OfS announcements on the future of TEF (that have both just been published). It is also not clear what the 'lowest possible categories' will mean in the future, we assume this will refer to those with bronze ratings at a provider level. This also raises questions about the use of some of the same indicators that are benchmarked in case of TEF whereas baseline assessments use absolute performance.

We also feel more clarity is required for the proposals listed under '7a iv) on the type of staff a provider employs'. This is again a contextual decision autonomous providers make, for instance, colleges do not demand their teaching staff to be research active. Colleges teach technical and professional HE and often recruit teachers with relevant industry experience rather than based on academic and research expertise.

A separate consultation on reportable events has also been published and the sector will fully respond to the consultation in due course. However, point 12b in Annex C lists changes to the algorithms used for degree classification purposes as a reportable event. The majority of colleges do not have Degree Awarding Powers of their own and any changes made by partner HEIs affect grades and degree outcomes for partner colleges. We ask that there should be an explicit requirement for HEIs to consult with their partner colleges when making any changes to the algorithms.

Also, point 12d suggests that loss of senior staff responsible for effective oversight of quality and standards should constitute a reportable event. We do not support this proposal, colleges often have small teams with responsibility for planning and delivering HE. Senior management teams at colleges are responsible for succession planning and recruiting staff, such decision making should not require any reporting to the OfS.

Question 4: Do you agree or disagree with the proposals in paragraphs 86 to 101 for our approach to intervention and gathering further information about concerns about quality and standards?

Answer 4: The proposals in this section seem broadly in line with OfS's current and intended approach to intervention. We suggest that in relation to para 91, the indicators of breach are clearly shared with providers so that a provider is suitably aware of the stance of the OfS with regards to their own institutional performance. As highlighted in para 91, it is open to interpretation as to what constitutes a breach (i.e. impact of the condition, the provider, the history). We believe OfS should clarify exactly how this methodology will work and review the intended and unintended consequences of this, particularly on small providers.

We are concerned about the use of a single numerical metric to trigger an intervention. We also feel there gathering additional qualitative information via the DQB can be helpful, however, colleges incur a fee for any QSR Monitoring and Intervention visits and these visits have been costly for colleges.

Question 5: Do you have any comments about any unintended consequences of these proposals, for example for particular types of provider or course or for any particular types of student?

Answer 5: As stated previously, the proposals to increase numerical baselines will steer providers to close low performing courses or providers will exercise a greater degree of selectivity in recruitment to avoid regulatory implications. We feel in both such cases students from disadvantaged backgrounds will be disadvantaged further. We also feel that these proposals need to take account of the recent higher technical education reforms. The government is keen to improve the uptake of Level 4/5 qualifications and the White paper (only just published) will be crucial in determining how the providers and students can be better funded and supported to deliver higher technical qualifications. It is important that the approach to quality encourages flexible learning and does not penalise providers that teach increasingly diverse (and less conventional) forms of HE.

The proposals to construct indicators for what has been labelled as 'non recognised HE' require particular consideration to the nature of these courses and the students who study them. NPHE courses include a range of technical, vocational and professional courses that are less than one year in duration and are often studied by older students. Conventional notions of continuation and progression will not apply to these courses in the same manner as they do to recognised HE.

It is not clear from the proposals how the providers' context is currently into account and how this will be done in the future. We feel quantitative indicators are not very reliable when assessing small providers, a genuine holistic assessment requires taking into account the geography (and cold spots), local economies, type of courses and characteristics of students undertaking them.

Colleges genuinely offer opportunities for HE to those who would otherwise not be able to study HE. Small class sizes, local and accessible provision is a unique characteristic of college HE. Students with disabilities often choose to study at their local college because of mobility reasons or other constraints in commuting far from their homes. Choices of mature students to study at local colleges are also shaped by their preference to live at home to study HE while they balance their studies with personal or employment commitments. OfS needs to assess and evaluate the impact of its proposals to mitigate any unintended consequences for local economies and communities in the event of course closures at colleges or in the extreme cases of ceasing HE at colleges.

Question 6: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

Answer 6: As above. We believe these proposals can limit choices for mature students who study HE locally, disabled students who may be less mobile and cannot study at geographically distant locations. It is important that students with long term health conditions or those taking a break from their studies for maternity are supported in doing so and providers are able to offer this support to students without having to worry about any regulatory implications of continuation and completion rates.

Question 7: Do you have any comments about where regulatory burden could be reduced?

Answer 7: We do not support OfS assessments at a subject level and believe that TEF awards should not be made at a subject level. We also feel sharing with providers any data that is available to the OfS can help reduce the regulatory burden for small providers such as FECs.

We suggest any new approaches are tested or piloted before they are fully implemented and that the sector is offered the opportunity to engage with future consultations meaningfully.

Question 8: Do you have any other comments?

Answer 8: We welcome the OfS plans to reduce regulatory burden including data burden although more detail on these proposals are required. We feel OfS needs to consider that regulation and the proposed changes should not be disproportionately burdensome for small providers such as FE colleges. ESFA is the principal regulator for FECs and any unnecessary duplication of regulation should be minimised. We welcomed OfS's interest (expressed in early 2020) in conducting a pilot piece of work to help minimise burden on FE colleges. We recognise Covid required OfS to prioritise other work, however we feel OfS should consider such pilot activity which AoC will be keen to support.

It is challenging in places to respond to the consultation considering the lack of detail that arises as a result of the parallel reviews of NSS, discussions on a new metric (start to success that colleges have not had the opportunity to engage with so far), and the much awaited review of TEF and the government response (that have only been

published few days before the consultation closes). We also feel it is a real challenge for colleges to respond to multiple OfS consultations at a time when they are dealing with the operational challenges of delivering high quality teaching and learning during another national lockdown. It would be helpful if future consultations are timed and spaced to help facilitate a better engagement with the sector.