

## EPC response to the OfS consultation on the integrity and stability of the English higher education sector. May 2020.

*Question 1: Do you agree or disagree with the proposed introduction of a new ongoing condition of registration and associated changes to the OfS's regulatory framework as set out in Annex A?*

The Engineering Professors' Council (EPC) **disagrees** with the extension of powers proposed in the consultation. As the representative voice of engineering academics, we do not have a vested interest in the activities or practices of any individual provider but are concerned about the impact of this on the sector as a whole and on our members (comprising both individual engineering academics at all levels and whole departments).

### **The new ongoing condition of registration is unnecessary.**

OfS is concerned that universities may be “using the coronavirus epidemic to take advantage of a temporary reduction in regulatory requirements” and it cites “making misleading statements about other providers or failing to comply with public commitments” as examples. We note that these example activities are already forbidden as a condition of registration; there is no need for extra powers.

We see no sound reason for these exceptional changes. We are not aware of evidence that the cited activities have been widespread and, on the contrary, the evidence is that the sector has voluntarily followed the moratorium on unconditional offers. Providers saw that it was the right thing to do, which suggests that this approach is sufficient and at least as effective as changes to the regulatory framework with the same aim. The EPC would support that continuing situation which includes OfS advice and guidance to encourage providers to do the right thing.

Finally, while we believe these changes to the framework do not add anything in this context, we fear they may have unintended consequences.

### **The new ongoing condition of registration is overreaching.**

The OfS' “current judgement... that the interests of students outweigh the autonomy of providers, including in relation to admissions matters, in a way that in more usual times might not be the case” might be open to legal challenge. A successful challenge to the regulator in this regard would undermine its powers and be counterproductive.

Concern has already been expressed by legal and policy experts whether the Universities Minister – in imposing a moratorium on unconditional offers – already overreached her powers under HERA which calls for a competitive market through autonomy.

HE providers accept that they cannot be held responsible though for the rules of admissions competition, which were established by HERA, not by the HEIs. The Minister and OfS must be bound by them in the same way.

The additional powers are not conducive to delivery and progress.

**It is unreasonable to ask an individual institution to avoid damaging the sector as a whole when individual institutions are not responsible for effects that rely on behaviour outside their individual control.**

The proposed changes require individual institutions to act in the interests of the whole sector in ways that they cannot see – unless they engage in anti-competitive practices in order to see them. It is not the responsibility of individual providers to be able to appreciate sector-wide effects, but rather the responsibility of the regulator to establish rules that individual providers can follow which, in aggregation, protect the sector. Adopting powers to pass this responsibility to providers is an abdication of the responsibility of the regulator, it is unlikely to be effective.

The extended powers seek to protect the sector as a whole. However, **the student number cap** (even though it was based on a recommendation by Universities UK made on behalf of its member universities) **may seriously disadvantage recruiting universities anyway**. Research by London Economics has found that that the 5% cap over forecasts allows such a lot of leeway for selecting universities to increase numbers that impacts on recruiting providers are likely.

*Question 2: Do you agree or disagree with the proposals for implementation of the proposed new general ongoing condition of registration?*

The Engineering Professors' Council believes that the implementation of the proposed new general ongoing condition of registration is unnecessary, therefore **disagrees** in principle with the proposals for implementation.

It is self-evidently unjust to use a retrospective change in regulations to hold anyone or any institution to account for actions made in good faith under rules at the time. This is not in the interests of students as it means that offers made to them and accepted by them may have to be withdrawn or reneged. This may result in legal challenges which would, at best, be a drain on the already pressed finances of HE providers (diminishing their ability to serve current students) and, at worst, would result in widespread legal damages and consequent claims against OfS.

**Any implementation which imposes retrospective control prior to announcements is inappropriate and unprecedented.**

*Question 3: Do you have any comments about any unintended consequences of these proposals, for example for particular types of provider or for any particular types of student?*

UCAS is a paid-for provider service, not a sector control mechanism. The contract between universities opting into the service and UCAS is arguably not in the remit of the OfS. This step may have unintended consequences on UCAS' authority over the sector.

It is easier to adopt new powers than to relinquish them. There is a likelihood that what are intended as temporary conditions adopted under extreme circumstances will become a crutch that the regulator would be reluctant to deprive itself of (or allow to be removed) when the circumstances are less extreme. It is likely that they will remain extreme for longer than the proposed initial year and so, if the new condition is adopted, it is likely to be extended and, quite probably, made permanent in due course. We cannot support what would amount to either the accidental or deliberate exploitation of the current public health crisis a power grab that clearly contravenes the intentions of the HERA with regard to autonomy, which are recognised by OfS in the consultation, but which it argues are in conflict with the student interest.

It is possible that OfS will have no objection relinquishing the new condition if it has not needed to exercise its new powers, but that would serve only to reinforce our belief that the new condition is not unnecessary and over-reaching.

*Question 4: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?*

### **UK Engineering needs confidence in contextual admissions**

Eliminating equality gaps in Engineering education is critical to the nation's recovery and progressive strategies. Work to ensure that we draw from the widest pool possible to meet the well documented underlying engineering skills gap is essential.

The widening participation agenda in Engineering differs from many other subjects. Engineering, in particular, tends to focus actively on its gender problem; typically fewer than 1 in 5 higher education (HE) engineering enrolments are currently women.

In 2018, Engineering and technology students from a BME background accounted for 31.4% of UK domiciled first degree entrants. However, degree attainment outcomes for BME first degree engineering and technology qualifiers are consistently lower on average than white qualifiers

Harnessing contextual offers in these areas is crucial to equity in engineering. The EPC would seek assurance that contextual offers cannot be misinterpreted as the use of incentivised offers that would result in students not choosing the provider or course best suited to their needs; this would be unfair on individual students.

*Question 5: Do you have any other comments?*

We note that a new sector agreement and statement of fair admissions practices will be published by Universities UK (UUK). This work also features in the paused OFS consultation on university admissions. We would welcome feedback on how these two existing workstreams will be progressed in an un-paused or amended admissions consultation.