



Department
for Education

Higher Education and Research Bill:

Factsheet on Validation

January 2017

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Introduction

Our proposals under the bill are designed to maximise choice and flexibility for students through ensuring that high quality providers are not unnecessarily restricted when they first enter the market and offer innovative provision. Under our plans for the new system providers will therefore have more flexible options and be able to choose between building a track-record (i.e. under a validating service) in the first instance or going directly for probationary Degree Awarding Powers (DAPs).

As set out in the White Paper *Success as a Knowledge Economy*, “we will encourage providers to improve validation arrangements, and take a power enabling the OfS to designate a validation service if validation services remain restrictive.”

As part of its duties, in particular to have regard to the need to encourage choice and competition where this is in the interests of students and employers, the OfS will be able to take concrete steps aimed to improve validation services, and address some of the barriers new providers can face when seeking a validating partner. In particular, we would expect the OfS to address the lack of transparency and opportunity for providers to compare various offers. This will enable a more diverse sector and greater choice for students.

We would expect this to also include the OfS actively encouraging providers to develop validation services, and setting out exemplar validation arrangements to help informed negotiation between validators and providers who seek validation.

In the event that the OfS’ interventions as part of its duties are not sufficiently successful, the Higher Education and Research Bill gives the OfS powers to enter into commissioning arrangements and, ultimately, act as a validator of last resort. The latter is only possible if the OfS is authorised to do so by the Secretary of State by regulations which will be subject to Parliamentary scrutiny. The OfS will need to make a case and present evidence for why such a power is needed, and we do not expect the power to be used unless all other interventions to improve validation services have failed to support an open and competitive market.

This note sets out in more detail how we expect the OfS to use its powers with regards to validation, and it should be read alongside the note on *Introduction to the Market Entry Reforms*, published in parallel.

Validation

At present, there are over 600 bodies that do not have their own degree awarding powers but offer courses where students get a degree from another provider – one that has Degree Awarding Powers.

These arrangements are commonly known as validation or franchising.

A validated course is described in the UK Quality Code for Higher Education as a module or programme which a degree-awarding body approves to contribute, or lead, to one of their awards. Students on the course normally have a direct relationship with the provider delivering the course rather than the validating body.

The Quality Code explains that in a validation relationship, the degree awarding body is ultimately responsible for the academic standards of any awards granted in its name, and for the quality of the learning programme. The delivering institution is normally still subject to independent quality assurance scrutiny itself.

A 'franchise course' or sub-contractual relationship is as a course subject to an agreement by one institution that another organisation may deliver all or part of a programme approved and owned by the first institution. The franchising institution retains overall control of the programme's content, delivery, assessment and quality assurance arrangements.

Generally, if an awarding provider is in a franchise relationship with a delivery provider, the students have a direct relationship with the awarding provider, and the same assurances will apply as for provision delivered by the awarding provider.¹

Validation and franchising arrangements are only part of a wider spectrum of partnerships that Higher Education Providers may enter into. Such partnerships can take a wide variety of forms, including the award of joint degrees, or international collaboration.

¹ See <http://www.hefce.ac.uk/reg/gateways/Partnerships/> for more information.

Current landscape

We know from the Green Paper consultation responses that validation agreements can be mutually beneficial for new providers and incumbents alike. They enable new providers to draw on the knowledge, skills and expertise of more well-established providers in the design and delivery of their awards, whilst building up their own track record of performance. Providers in well-established partnerships generally feel well supported and maintain an appropriate level of input into programme design and syllabus development. A number of providers report that the strongest element of their partnership is the collaboration at programme level, often facilitated by a link tutor. And for incumbent providers, validation can serve as an additional funding stream.

Validation arrangements can be between a wide variety of providers. Perhaps the most common patterns are HEFCE funded higher education institutions validating degrees at Alternative Providers or Further Education Colleges.

Facts and Figures:

As of October 2016, there were 139 English institutions with Degree Awarding Powers (DAPs) and 47 of them have validation relationships with alternative providers with specific course designation.

Approximately a third of English institutions with DAPs validate alternative providers with specific course designation.

The majority of DAPs holders active in this market have a relationship with a single alternative provider with specific course designation. 18 have relationships with multiple alternative providers.

Higher Education Institutions with the highest numbers of relationships with Alternative Providers with specific course designation:

- Middlesex University 17
- University of Durham 6
- University of Chester 5
- University of Gloucestershire 5
- The University of Manchester 4
- The University of West London 4

These figures do not reflect the full breadth and scale of validation agreements in place, as they do not capture arrangements with providers without specific course designation, and there are over 200 Further Education and sixth form colleges delivering Higher Education – in the vast majority of cases via validation arrangements.

Figure 1: Facts and Figures

The majority of such arrangements are on a contractual basis – via a validation or franchising agreement – and involve the validator charging a fee for their services. Some validating partners' model for validation includes sharing of resources, for example access to online and physical libraries; staff training opportunities; access to student counselling services. There are differing approaches to providing support to validated institutions. Some support formal committees and groups, whereas other facilitate informal networking opportunities.

The services included as well as the fees charged can vary widely, to the extent that one validating body may charge different fees to different providers, for very similar services. Our evidence suggests that this complexity, and the inability to compare offers from different providers makes it difficult for new entrants to know how to find the best validating partner for them and thus successfully access the market.

A few big players provide the bulk of validation service, with contracts worth millions of pounds in some instances. We believe, however, that most DAPs holders take part in some form of partnership with other providers, amounting to a highly complex picture for new entrants who may lack the necessary experience or connections to be able to navigate the validation market effectively. Often there is no easily accessible contact or resource at an institution with DAPs that would enable providers to make enquiries about potential validation arrangements.

There are other issues cited by providers that can prevent validation arrangements from working effectively, and delivering benefits for both parties. Validation agreements can be one-sided as the power to enter into, and charge for, a validation agreement lies with the validating body. The change of validating partner can often be a lengthy and complex process, and represent a financial burden. Often reporting and data requirements are radically different, adding high implementation costs.

In addition, anecdotal evidence suggests that validation arrangements can restrict innovation as validators can be unwilling to support courses that do not conform to a tried and tested format, or are too dissimilar to their own standard practice. In practice, this supports the dominance of the traditional, full time three year degree – and the proportion of first degree undergraduates on such courses stands at 78% in 2014/15. This limits student choice.

Increasing the flexibility in and accessibility of the validation market can therefore have benefits in other areas such as encouraging innovation and widening access.

Improving Quality and Accessibility of Validation Arrangements

We fully recognise that not all providers have ambitions to seek taught degree awarding powers (TDAPs) partly because they value the support and guidance provided by their validating partners. Other providers have clear plans to seek TDAPs but do not see this as marking the end of their partnerships.

It is therefore important that there continues to be an environment where validation arrangements can continue to flourish, whilst seeking to address some of the barriers frequently encountered. Barriers for new entrants can hamper the provision of more innovative courses and models. Improving choice of validation services, together with the new probationary Degree Awarding Powers can therefore help increase student choice.

As the single regulator of the HE sector the OfS will be uniquely placed to monitor individual provider performance and to assess the extent to which its activities are supporting competition and choice. The OfS will be able to identify gaps in good validation provision via the performance of its regulatory functions and/or following information that its delegated bodies, stakeholders and/or providers may share with it.

This may be evidenced by a sudden or unexplained shift in validation agreement trends, OfS receiving complaints from high quality providers who are unable, despite reasonable efforts, to find partners to validate their provision or significant numbers of validators reporting that they are withdrawing from existing agreements. Another indicator may be consistently poor outcomes for students in validated provision.

Some unmet demand may be reasonably explained. For example, we would not expect validators to enter into or continue to maintain validation agreements with any provider who cannot demonstrate their ability to meet and maintain standards and quality.

As set out in the White Paper, we expect the OfS to address these issues as part of its duty to promote choice and competition. “The OfS [...] will actively encourage providers to develop validation services, and will support exemplar validation arrangements to help good negotiation between validators and providers who seek validation. The OfS will work with the sector to revise and simplify the Quality Code, being clear on what ‘good’ and ‘excellent’ validation looks like.”

In practice, we would expect the OfS to take active steps to seek to improve validation services. Measures could include:

- Collection of data on current validation practice, including numbers and scope
- Working with providers to fully understand obstacles
- Publication of example or model validation agreements to serve as a benchmark

- Publication of benchmark fees
- Guidance on best practice for setting up validation arrangements
- Accessible list of providers offering validation services
- Guidance on validating less traditional provision, such as accelerated degrees.
- Encouraging simplification of the Quality Code with regards to validation

A joint project between the Open University, Independent HE and the Quality Assurance Agency is currently underway, and is looking at similar issues. The project aims to test a new validation model that can be promoted as an exemplar of best practice for UK HE providers. As part of its work on improving validation services, we would expect the OfS to draw and build on this and other work already carried out.

In addition, we would expect the register of providers to include information on which providers hold their own degree awarding powers, and which are in validation arrangements, helping students make informed choices.

These are interventions and steps the OfS can take place prior to and in support of the additional powers conferred to it under clauses 46 and 47. We would not expect the OfS to use these additional powers unless other interventions have proved unsuccessful.

Clause 46: OfS Commissioning Arrangements

In addition to actions the OfS can take as part of its general remit, duties and functions, clause 46 provides the OfS with a power to enter into Commissioning Arrangements with authorised Higher Education Providers. The intention is for these powers to be used only where the sector itself is not adequately responding to market demand, and the OfS has not been successful in encouraging providers to offer validation arrangements on a sufficient scale or quality, or in the areas required. This may include, for example, the OfS commissioning providers to step in as validators for teach-outs if there is insufficient teach-out provision to cover providers' student protection plans.

Providers will be free to choose whether they wish to enter into commissioning arrangements with the OfS. However, once a commissioning arrangement is in place the OfS could require providers with the necessary degree awarding powers to offer to validate awards that are not research awards (i.e. taught degrees and/or foundation degrees) that are delivered by other registered higher education providers, in line with the agreement.

This power can only be exercised if the Higher Education Provider in question agrees to enter into such a commissioning agreement.

Addressing a market gap and improving quality of validation services

Validation services offered by different providers can vary widely. There is no sector-wide agreement or benchmark as to what services should be included, what fees are charged, or indeed how to approach potential validating partners. There is also no register or list of providers willing to offer validation services. As a result, it can be difficult for new providers to know where to start and how to compare what is on offer.

The OfS entering into commissioning arrangements with one or several high quality Higher Education Providers could help address these issues, and provide a clear route for approved, high quality validation services that are easily accessible and transparent.

Where the OfS identifies specific issues that the sector seems to be unable to address – such as a region or specialism with no or little validation provision on offer – it could also make use of these powers, and appoint providers to specifically address those shortcomings. In entering into any commissioning arrangement, the OfS may attach certain conditions, for instance provision of validation services for a particular specialism.

Through such commissioning arrangements the OfS will be able to stimulate the market and address any particular market failures in a targeted and potentially time-limited way, as appropriate.

At the same time, the OfS will have to have regard to its duties in entering into any commissioning arrangements, and as such we expect them to be clearly focussed on quality and student need.

Format

It will be a matter for the OfS to decide how to fulfil this commissioning function but we envisage this would involve OfS actively encouraging registered providers with degree awarding powers who are offering “good” or “excellent” validation arrangements to extend their validation services to other registered HE providers. This may involve the OfS contracting with providers to offer their validation services to other registered providers. Crucially, the OfS cannot force providers to enter into commissioning arrangements with it; this is a voluntary process.

These commissioning arrangements may be subject to conditions set by the OfS. That could include for instance offering validation for particular subjects, or playing a role in setting benchmark fees. However in all cases we expect that the commissioned provider would need to be assured of the quality of the provision it agrees to validate. This is designed to protect students and ensure the OfS does not inadvertently support poor providers entering the market. In addition, all providers with Degree Awarding Powers, like any other providers in the approved or approved fee cap category, are expected to have a student protection plan in place. In the event that the provider being validated has not been required to put in place a student protection plan itself², we would expect the validator’s plan to cover students on courses it validates. For more information on these plans, please refer to the information note on student protection plans.³

We expect that validation services offered as a consequence of a commissioning arrangement will be visible, transparent and more easily accessible to providers seeking to enter the market.

We would not expect the OfS to get involved in day to day operations of the validating partners. However, we do expect the commissioning arrangements to contain conditions on the quality, type and level of provision, and for this to be monitored. This means that from the perspective of the provider being validated, the arrangement would feel like any other validation relationship, except with the added peace of mind that the validator is OfS approved. Students would receive their degrees from the validating body.

² For instance in case they are registered at the basic level only.

³ <https://www.gov.uk/government/publications/higher-education-and-research-bill-student-protection-plans>

Both the validating body and the provider being validated need to be registered Higher Education Providers, and will therefore be subject to the new quality regime.⁴ In addition, we expect the OfS to monitor the actual Commissioning Arrangement to ensure any terms and conditions, such as quality conditions, are being met. As such, students can be reassured that they are getting high quality provision. We would expect such commissioning arrangements to be in force for a specified period of time, with clear terms and conditions that are fully transparent.

Example of a Commissioning Arrangement:

In course of performing its regulatory functions and monitoring the validation market, the OfS has identified that there are no providers willing to validate courses in Conservation Studies. As no other interventions seemed to address the issue, the OfS decides to seek to enter into a commissioning arrangement. It approaches providers in the market with its requirements and likely conditions. It gets interest from several providers, but University A's offer is most persuasive, and they enter more detailed negotiations. The OfS and University A can agree on an approach, and a contractual agreement is drawn up which requires University A to offer validation in Conservation Studies that meet certain conditions, as set out in the contract. The conditions include having to put in place strong structures around quality, whilst at the same time being accessible to providers seeking to be validated. As a result of the commissioning arrangement, University A enters into 5 validation contracts in the first year, with small providers that would not otherwise have been able to offer degree level courses. This provides greater choice for students, whilst ensuring they are getting high quality provision.

Figure 2: Example of a Commissioning Arrangement

⁴ Outside of such commissioning arrangements, providers will remain free to enter into validation agreements as they wish, including with providers that are not registered.

Clause 47: OfS as Validator of Last Resort

In the unlikely event that the OfS' has been unable to address significant shortcomings in the validation market through use of its general powers as well as its powers to enter into commissioning arrangements, it has the ability to set up a validation service of last resort. It can do so only if authorised by regulations made by the Secretary of State, which are subject to Parliamentary scrutiny.

When exercising its functions the OfS would need to have regard to the need to:

- Promote quality, greater choice and opportunities for students;
- Encourage competition;
- Promote value for money; or
- Promote equality of opportunity.

We therefore do not expect the OfS to seek any such powers in a well-functioning market, which already addresses these areas.

This power enables the OfS to validate all, or certain specified, awards (taught degrees and foundation degrees only, research awards are not included) delivered by other registered providers. The OfS may also authorise registered providers to do this on its behalf.

Authorisation by the Secretary of State would allow the OfS to grant all or some of these awards. There is therefore no need for the OfS to hold separate Degree Awarding Powers.

Circumstances and Process

This is not a power the OfS will automatically have under the bill, but rather the Secretary of State may by regulations authorise the OfS.

The Secretary of State may exercise this power if he or she considers it necessary or expedient to do so, having taken OfS advice. The OfS as the regulator will be best placed to assess whether such an intervention would indeed be needed, and can advise the Secretary of State accordingly. This advice is most likely to come in the format of an evidence based report, clearly setting out the nature and severity of the issues in the validation market. Before advising the Secretary of State, we would expect the OfS to consult with key stakeholders and the wider sector to gain a full understanding of the root causes of any problems.

The Secretary of State may then exercise this power, and make regulations to allow the OfS –and other providers on behalf of the OfS – to act as a validator of last resort. Such

regulations would be subject to the negative resolution procedure, meaning both Houses of Parliament have a set period of time to pray against the regulations, and trigger a full debate and vote, if they do not consider them to be appropriate.

We expect the Secretary of State would use this power only where other interventions to stimulate the validation market have failed to address its shortcomings, and the OfS can evidence this. This includes the OfS' powers to enter into commissioning arrangements.

Set-up of OfS Function

There is historic precedent in an independent degree awarding body: The Council of National Academic Awards (CNAA) was the awarding body for degrees from the former polytechnics and various other institutions until it was abolished by order under the Further and Higher Education Act 1992.

If the OfS was authorised by the Secretary of State to act as a validator of last resort itself, we would expect the regulations to attach certain conditions to this, to ensure the service the OfS sets up is underpinned by the necessary expertise, and is sufficiently independent from its regulatory function. The Secretary of State also has powers to issue guidance to the OfS, for example, to help set the context within which OfS' validating powers would operate.

In practice, it would be for the OfS to decide how to set-up an internal structure to run its validation service, however we would expect this to be suitably independent from its other functions, to avoid any conflict of interest. This could for instance take the form of a separate internal division.

The OfS could, however, draw on expertise from across its organisation to ensure that their invaluable experience of good and bad practice in the system can inform the set-up and shape of their own validation service. As we expect that the OfS board will between them have experience of providing Higher Education in England, the organisation would have the necessary expertise to recruit the staff needed to set up a validation function, and would be able to ensure it is equipped with the right skills and resources for this task.

As such, we would expect the OfS to be "best in class" in terms of demonstrating that its validation services abide by best practice validation principles and deliver to the highest standards.

Validation Agreements

Once authorised by the Secretary of State, we would expect the OfS to operate its validation service in much the same way as other validators.

We would expect it to enter into contractual validation agreements with providers to deliver specified services, in return for a fee. As with any commissioning arrangements, we would expect such contracts and terms and conditions to be fully transparent.

Students would be taught by their provider, and although the OfS – as the degree awarding body - would be ultimately responsible for the academic standards of any awards granted in its name, and for the quality of the learning programme, it would not have any day to day involvement in teaching. As the institution being validated has to be a registered higher education provider, it needs to abide by the quality regime. We would expect the OfS to require any providers it validates to have a student protection plan in place.

As now, we would expect students and alumni to talk about having studied at x institution – i.e. the institution teaching the course, not the OfS.

We would expect any degree certificate to reflect this – i.e. name the institution the student studied at - whilst also making reference to the fact that the degree was validated and thus awarded by the OfS.



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Reference: DFE-00036-2017



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