

# Our response to the Office for Students' consultation on the payment of fees for investigations

Universities UK (UUK) is the collective voice of 140 universities in England, Scotland, Wales, and Northern Ireland. Its mission is to create the conditions for UK universities to be the best in the world, maximising their positive impact locally, nationally, and globally. Universities UK acts on behalf of universities represented by their heads of institution.

This document outlines UUK's response to the [Office for Students \(OfS\) consultation](#) on fees charged to providers subject to regulatory investigation.

## Background

The Office for Students (OfS) has invited responses to a consultation on how it may charge universities and colleges to cover the cost of investigations. Section 71 of the Higher Education and Research Act 2017 (HERA) enables secondary legislation to be made that provides for the OfS to charge fees for other activities and services undertaken in the performance of its functions. The Higher Education (Investigation Fees) (England) Regulations 2022 came into force on 8 December 2022. They give the OfS the power to charge a fee that recovers the costs of investigating a registered higher education provider's activities.

### **Question: Do you have any comments about the guidance?**

UUK welcomes a risk-based approach to regulation. We agree with the principle that low-risk providers which consistently demonstrate compliance with OfS conditions of registration should not face increases in their registration fees to meet the costs of investigations into other institutions where breaches have occurred. However, to

consider the proposals fully, we are reiterating that the OfS should be more transparent in explaining the processes that will trigger an investigation and what an investigation is likely to involve. Once it nears the end of its current rounds of investigations, we would encourage the OfS to publish themes around lessons learnt and use these to update their guidance to providers.

In the meantime, we would like to see the following revisions made to the proposed guidance to improve transparency, help build the trust and confidence of the sector and wider public, and maximise cost efficiency for students.

## **1. Defining an investigation**

While we broadly agree with the conditions under which a fee would be payable, we are concerned that some of the activities listed as examples of “an investigation” are those the sector would expect a regulator to undertake as a matter of course – for example, engaging with an institution and asking an institution to provide information on a voluntary basis. We are also concerned that the point at which an investigation begins, and thus a fee is incurred, is unclear. We strongly believe that making a decision to conduct an investigation should be based on evidence gathered prior to the start of an investigation, and therefore not be billable to an institution.

We are therefore asking the OfS to set out a clearer definition of what counts as an investigation and at what point an institution will incur fees.

## **2. Cost efficiency: defining the remit of an investigation**

The OfS should be cost efficient to benefit the students it represents, and transparency around its processes and costings could help boost sector and public confidence in the regulator. We ask that an institution is informed at least 10 working days ahead of an investigation taking place, to ensure they have time to prepare for the process, and that the OfS demonstrates understanding that in periods such as REF and TEF submissions and at certain times in the academic year an institution will have less time and fewer resources. The OfS should be mindful that the investigation itself does not incur additional unnecessary costs on the institution.

The OfS should provide an estimated timeline for the investigation, as well as an estimate of the costs before the investigation takes place. We suggest that the OfS develops ‘fee bands’ based on the nature of its enquiry, clearly defined and communicated, and an estimate of the time and cost of its investigations. While an

investigation can inevitably encounter issues that incur unexpected costs, having an estimated figure would allow a provider to plan financially, and ensure there is a basis upon which the regulator is held accountable.

We would like to see the maximum travel and subsistence costs of the OfS's investigators stated clearly in the guidance once published on its website.

Where external organisations contracted to the OfS are considered necessary, these should be put out to tender, and the costs of the chosen provider should be communicated to the institution before the start of an investigation.

### **3. Recovering costs**

Given the current perceived lack of clarity around the evidence-base and timeline for investigations, we are concerned that the planned approach risks jeopardising trust between the sector and the regulator. Institutions may fear that investigations become drawn-out 'fishing exercises' and a 'no win, no fee' system, which may often be perceived as a cover for high hidden costs, could also be detrimental to public trust in the regulator. It is for these reasons that we would encourage the OfS to be more transparent about their approach to investigations and clearly communicate the scope of an investigation with individual providers before the process begins.

We therefore suggest the following amendment in addition to those given above.

- If the OfS wishes to change the remit of an ongoing investigation on the basis of an additional or a separate concern, the regulator should follow the same procedure for starting a new investigation. The institution should receive at least 10 working days' notice and be provided with the evidence and sources of evidence upon which the enquiries are based, as well as an estimated timeline and set of costs for the process.

### **4. Waiving fees**

We ask that the OfS defines a set of criteria which would constitute the "compelling and exceptional circumstances" under which it would waive all or part of an investigation fee.

We suggest that where an investigation is concerned with the financial solvency of an institution or where there is a risk of the fee impacting an institution's ability to make the changes the OfS deems necessary, this should be factored into the OfS's

assessment of fees payable. Wherever possible, regulation should seek to protect the student interest by minimising disruption to study and securing improvements. Where there is a risk that the fee will undermine these goals, the OfS should engage with the provider to consider alternative approaches. We suggest a payment plan by instalments as a potential alternative.

## **5. Transparency**

Increased transparency around investigatory processes would help providers understand how regulation is being applied. Once a decision has been reached, the provider must be made aware of how the decision has been made, how any penalty has been decided, and how they can appeal. They should also be engaged in a discussion of how any information will be made public, recognising the potential impact on students at the provider in question.

We would also encourage greater transparency between the regulator and the wider public through the publication of reports, strictly anonymised, on the perceived value of any investigations that take place, including a justification of fees levied and explanations of how and why decisions have been made.