

# REGULATION

## BRIEFING 3: REGULATING IN THE STUDENT INTEREST



Distinction and Diversity  
in Higher Education



APRIL 2023



# Introduction

GuildHE members have a long track record of engaging students in their activities and this is something that we at GuildHE seek to embody as well. That is why our work is driven by ensuring that national policies work for students (as detailed in our [organisation strategy](#)) and we consistently champion a partnership approach to student engagement. Our members have found [many benefits of working collaboratively with students](#) and there is a significant academic evidence base for [partnership](#) supporting better outcomes for students both in terms of academic and personal development. We have also supported two of our staff to undertake PhDs looking at specific aspects of the student experience: student engagement and value for money.

Our members provide smaller, supportive and inclusive communities that support student achievement and develop meaningful relationships. We therefore not only work with staff in our member institutions but students in our member institutions too, through supporting their engagement in regulatory activity such as the Teaching Excellence Framework (TEF) and by providing opportunities to grow and develop students' unions through our member students' union network. Our policy positions are shaped by the impact they will have on the student experience and we support students to understand and respond to national policy and work in partnership with their institutions.

We therefore firmly believe that defining what is in the student interest must actively involve students. Decisions about what and how to regulate elements that directly impact on their experience, and drawing on the views, feedback and evidence of what students consider to be important, seems a fundamental component of good regulation in the student interest.

This briefing is part of a series GuildHE are publishing on how we ensure regulation is robust but not overburdensome and is in line with the principles underpinning the Higher Education Research Act 2017 (HERA). One of these principles is how regulation works in the student interest and this document outlines how we think this is best achieved. It was created in collaboration with the GuildHE Students' Union network.

## Consumer engagement principles

Whilst a somewhat contested space ideologically, students who take out a student loan for their studies are granted consumer protections administered through the Office for Students (OfS) and the Competition and Markets Authority. The OfS is also a regulator which must adhere to the Regulators' Code. So what can we learn about the approach taken by other regulators to engage consumers?

The Regulators' Code outlines that "Regulators should have a range of mechanisms to enable and regularly invite, receive and take on board customer feedback, including, for example, through customer satisfaction surveys of those they regulate". A 2017 report by [The UK Regulators' Network](#) stated effective consumer engagement is now recognised as being an essential part of the regulatory process. They note:

*“Regulators and regulated companies need to engage with consumers when consumers have limited or no choice over the services they receive, or when choice alone doesn’t drive companies to meet consumers’ needs. Regulators and regulated companies also need to demonstrate legitimacy in their policies and decision-making. To do this, regulators and regulated companies engage directly with consumers to help ensure their short and long term interests are being met at efficient and affordable prices. This also increases transparency in regulatory decisions and helps to build consumer trust and confidence in a sector.”*

This engagement takes place in a variety of different ways and with varying degrees of success. Increasing customer engagement in some regulated sectors has therefore been led by the regulators, in part as a way of enhancing their legitimacy, but also participatory governance mechanisms have been rising in profiles in other sectors. There is also a recognition that customer engagement can enhance the quality of regulatory decision-making processes ([Heims and Lodge, 2016](#)) and indeed is seen as the obvious next step in regulation ([Littlechild, 2016](#)).

### **CASE STUDY: Ofwat - The Water Services Regulation Authority**

Ofwat regulation of the energy sector very clearly shows an expectation that the businesses they regulate actively consult with customers. An example of this is their expectation that energy companies business planning processes “take account of customers’ needs, priorities and preferences.” [Policy paper](#) February, 2022.

As part of this regulatory requirement they expect energy companies to show high-quality research into the customer experience, for customers to be able to challenge businesses on the nature, quality and use of customer engagement evidence, and provide assurances to the regulator of the quality and use of customer engagement evidence.

Their policy position on the use of customer voice in business planning was also developed in collaboration with energy customers directly.

Conceptually there are two broad models of consumer voice representation (Eyre, 2016), the ‘bottom-up’ complaint-handling model and the ‘top-down’ think tank model. The first model considers the successful resolution of complaints as reflecting the actual preferences of consumers, compared to the top-down approach of creating consumer advocates. In practice both models are important features of customer engagement, although they are likely to be approaching the situation from different perspectives with the first consumers detailing their concerns with the business and offering potential solutions, and the second perhaps being more involved in the overall strategy of the business and preempting consumer issues.

The current evidence based on consumer engagement suggests that consumers should not just be seen as the prime beneficiaries of regulation, but are also co-producers in business development (McAuley, 2016, p11). In this context the consumer voice isn’t just enhancing decision-making and building trust with the consumer through feedback, but partnership can only happen where the engagement genuinely influences decision-making and answers are co-constructed. For that reason regulators need to be clear what they mean by engagement activities, and the “differences between informing, consulting, involving, collaborating and empowering” (ibid, p12). Of course, consumers are not a homogenous group and their involvement needs to be supported by a robust research evidence base and with a variety of views considered. Therefore practically, a co-production approach to consumer engagement is a combination of all of the above.

## The Darlington approach

After reviewing the approach to other regulated sectors, [Darlington \(2016\)](#) outlines three different models for providing consumer engagement:

1. **A body within the regulator** – such as the Communications Consumer Panel in Ofcom, the Customer Panel in the Civil Aviation Authority, and the Customer Advisory Panel in Ofwat
2. **A body outside the regulator** – such as the former Postwatch and former Energywatch which were merged to form Consumer Focus and then became a unit in Citizens Advice plus bodies like CC Water and Passenger Focus
3. **A body within the regulated company** – such as the Customer Challenge Groups in the water and sewage companies in England and Wales and the External Advisory Board in mobile operator EE

These three different approaches (coupled with the top-down and bottom-up approach) are all necessary to provide a coherent strategy for consumer engagement and these models resonate with the approaches taken within the higher education sector.

## Student engagement in England

Reflecting on Darlington's three models and overlaying Eyre's bottom-up and top-down approaches, the HE sector doesn't just follow one of those models but does them all and has a strong history of engagement and partnership models with students ([Ashwin & McVitty 2015](#)) including various frameworks and guidance produced by national organisations such as [AdvanceHE](#), [QAA](#) and [NUS](#). Encouraging student engagement is also a requirement of International Quality Standards and is a key characteristic of many HE systems across the world. This activity is based on the principles of multiple conceptions of a student - as investors, as consumers and as co-producers ([Tomlinson, 2017](#)).

Currently student engagement is embedded within the regulator - through the OfS' student panel. There is also an independent body outside the regulator, the National Union of Students, and there is a body within the regulated company, a students' union or equivalent body in most providers. These top-down processes are also supported by strong bottom-up approaches with complaints and appeals processes within institutions, a national body investigating these complaints, the OIA, and a separate concerns process for individual student to contact the OfS - as principal regulator - directly. In individual HE providers, collective student representation is also important and students are also routinely members of governing boards and other deliberative committees, and there is a long and strong history of collective student involvement in internal quality assurance, culture and strategy through formal course representatives, students' unions funded by the HE provider and other student community groups.

This different starting point for engaging students in decision-making, compared to other regulated sectors, does mean that expectations may be higher than elsewhere. In GuildHE institutions our members have a strong history of working collaboratively with students to provide a high quality student experience and the sector's commitment to student engagement is embedded at all levels across institutions. Consequently, we expect to see similar approaches in the regulator as well.

# How does the OfS engage students?

In practice the OfS has a number of processes for engaging students in its general duties and **aims and objectives**:

- There is a student who sits on the main OfS Board;
- There is a Student Panel made up of a diverse range of students;
- There is a **Student Engagement Strategy**, supported by a Student Engagement Manager;
- They commission research into the student experience and run the National Student Survey
- Student reviewers are included in TEF panels and students were encouraged to submit a separate student written submission in the TEF process for the 2022 exercise;
- There are student focused webinars on some of their consultations;
- There is a students concerns process for students to provide direct feedback;
- Providers are encouraged to involve students in the development of Access and Participation Plans.

So on paper it could be argued that the OfS has a strong and robust process for engaging students in regulation. It is, however, important to reflect on the impact of this involvement especially as the first OfS CEO noted there could be tensions in how value is regulated, with the taxpayer having a different conception of value for money from students (**Dandridge, 2018**) due to the 'outcome driven approach' to HE regulatory models not capturing the day-to-day experiences of students and the quality of the services they receive.

## Outcomes of OfS student engagement

There are a number of structures and processes where students are officially involved within the OfS. However, as an outcomes-based regulatory system it is important to assess the outcome of student engagement rather than just considering the processes by which this engagement happens. This should include the extent to which students themselves are satisfied with the outcomes of regulation.

The OfS highlights the power imbalance between students and universities as one of the key reasons for the need for regulation. There is, though, a question about the extent to which the student feedback is actually listened to and the strength of their voice compared to other stakeholders. For example, the student panel is a welcome process but to what extent is it shaping the agenda of issues that it discusses or are just responding to information from officials, and is it clear the impact that those discussions have on the final decisions taken by the OfS?

The OfS has a number of processes for engaging the student voice but there is still no universal approach across the OfS on whether and how they consult with students on prioritisation of OfS' activities or identifying policy areas. The TEF process, with a separate student and institutional submission, is highly valuable to ensure the student voice is heard in the process. But in some other areas, for example in relation to quality, there are questions about the extent to which students are involved in the areas for prioritisation when looking at B3 (student outcomes) data. Students have also been removed as members of inspection teams and Quality and Standards Reviews and Degree Awarding Powers assessments, something which students had previously been involved in since 2008.



There have also been recent concerns about the way in which the OfS has consulted the sector, such as the example of the consultation of the National Student Survey being carried out in late July and August when students were on holiday and so not able to respond. This was particularly true in smaller and specialist institutions without full-time student officers, or even students' unions in some cases, and then the extent to which the outcomes of the consultation disregarded the views of students in retaining the overarching summative question. We believe that consultation periods should be long enough, and at a time when students are able to respond.

The current regulatory approach is not always transparent in explaining why it chooses to focus on certain areas of compliance over others. It is therefore often impenetrable to students seeking to understand what OfS does, how it decides what to prioritise, and what evidence it uses to decide the extent to which an issue is a significant concern for students. Furthermore they have been slow to action decisions that directly impact students, such as getting providers on the register efficiently (for students to access student finance) and supporting market exit in a way that enables students to have choices about where to go. The current approach is heavily reliant on data to raise concerns, which is reductive and does not always serve students' best interests.

### **Student Protection Plans**

Whilst institutional failure is, fortunately, still quite rare there can also be significant impacts of course or campus closure that can hugely impact on students' experiences.

In 2019 the OfS announced that it wished for the sector to dramatically improve the quality of student protection plans it developed as part of initial OfS registration, but as yet this guidance is still to appear and it would be a higher priority for many students than some of the other areas currently prioritised. It will also be important in the case of market exit to consider the views of students and what outcome they would most value.

This is likely to be to prioritise course completion with as similar an experience as possible rather than simply jumping to compensation but without being able to complete.

The current regulatory approach has also seen postgraduate students fall through the cracks. The over-reliance on data to monitor quality means that postgraduate taught and research students are not routinely monitored by the regulator, as this data does not exist in the same way for these students. This is also in contrast to other types of HE students who are funded in other ways (such as through apprenticeships) which are double counted by the regulators OfS and Ofqual (The Office of Qualifications and Examinations Regulation).

The OfS' updated Student Engagement Strategy, published in April 2022, sets out an ambition to "take the perspectives of past, present and future students into account in all our work". This is a positive ambition, but the strategy runs until 2023 and so this could be a good opportunity to reflect on how students could be more deeply embedded in the activities of the OfS. It would be interesting for the OfS' annual report - or even a separate report by the student board member - to highlight the ways in which they have explicitly listened to the voices of students and the impact that this has had on the way that they regulate.

## Regulating for students, with students by Martha Longdon and Ben Hunt

*Martha Longdon was formerly the student experience member of the OfS' board and chair of its student panel, and now works at the University of Nottingham in education and student experience. Ben Hunt led the OfS' approach to student engagement, was previously an inaugural member of the OfS' student panel, and now works at specialist higher education consultancy Strive Higher. They write here in a personal capacity.*

As ex-sabbaticals with a combined 15 years of experience in student engagement and representation within providers, regulators, and government policymaking, we have viewed the student experience from several angles.

Previously, we collaborated in our OfS roles on a **refreshed student engagement strategy**, which distinguished between OfS' activity to engage students in its own policymaking, and, OfS' regulation of student engagement in higher education institutions.

This initial OfS student engagement strategy focused on positioning the OfS as a regulator on behalf of students. With the next iteration due in 2024, we've been reflecting on practical suggestions for a step-change in OfS' engagement with students. This will also bring the OfS into line with the practices of several regulators in their engagement with consumers.

### **Why should the OfS do more on student engagement?:**

- Student engagement improves policymaking and outcomes. The evidence shows this, as does our own experience. It will improve policy at the OfS as it does in universities and colleges. This is especially pertinent given the increasing breadth of the OfS' regulatory responsibilities which directly affect students' lives and experiences.
- To demonstrate further legitimacy as acting in the student interest.

### **The regulation of student engagement**

We are deeply supportive the OfS' focus on students. To enable credible regulation in the student interest, we believe that the OfS should be bolder in its engagement with students in the two pillars of the OfS's strategy: quality and equality of opportunity. Firstly, there should be mandatory student involvement in shaping access and participation plans: these plans impact the life chances of underrepresented and underheard students for years after they are written. As a matter of social justice and credibility, providers should demonstrate how they have involved underrepresented students in the formation of these plans.

Secondly, students are **experts in their own experience**, and as such, their views should be harnessed as part of any future quality regime. Student views are integral to quality assessments, both as student assessors which OfS should facilitate, and the views of students on the ground.

## Engaging students in regulation

The OfS' regulatory framework commits to student involvement in regulatory activity, including the existence of a student panel. The student panel has been pivotal over the last few years in beginning to develop a student-centred culture.

To act in the student interest, however, the OfS must understand broader student views on regulatory issues.

Firstly, the panel should be supported to undertake student-led research and publish evidence in line with OfS' priorities, **as was initially envisaged when it was established.**

Secondly, OfS should publish an annual report detailing the impact of student engagement on its policymaking and priorities, and a scorecard as part of consultations affecting students on how their views have shaped resultant policy. This will enable OfS to walk the talk when it comes to engaging with students.

We believe these actions will start to enable the OfS to translate current well-intentioned student interaction and 'closed doors' influence into transparent and legitimising engagement. This puts students at the heart of regulation, as well as the system.

This briefing has so far focused on how the OfS itself engages students in its own processes but there are also questions about how it engages with the body outside the regulator, the National Union of Students (NUS), and also how it engages - or encourages providers to engage with - the bodies within the regulated company (local students' unions/associations/guilds).

There is likely to be much that the OfS could gain by more formal engagement with NUS - the national representative body of students whose role is to coordinate the voices of students' unions across the country to inform policymakers of student issues. Furthermore, there is the opportunity for the OfS to encourage greater alignment with the Darlington principles by requiring student engagement practices within HE providers. This would enable the regulator to have confidence that students are broadly satisfied with their day-to-day experience.

## Conclusion

There is evidence that the OfS has made a good start at developing the processes by which it can engage students. We would now like to see how they are able to develop this further to be able to measure and articulate the ways in which they have listened to students and how this has impacted on the outcomes of students.

We also believe the OfS should have more awareness of the impact their regulatory approach has on the student experience. We argue in our other briefings that there is a risk that the sheer volume and cost of regulation could restrict student choice in the longer term as providers can no longer afford to remain a small HEI and/or negatively impact on what providers are able to offer students in support.



We believe that genuine student involvement in regulation would include:

- The OfS to be more explicit about how it involves students in its internal decision making and highlight the views of students in its work more explicitly.
- The OfS to produce a student engagement impact report annually about how it engages students in decision making.
- The OfS Student Panel setting their own agenda and highlighting what they think are important aspects of the student experience for the OfS to consider, and be supported to undertake student-led research.
- Expect providers on the register to actively include students in decision making and quality assurance, to champion a partnership approach and to provide reassurance to the regulator that students are broadly satisfied with their day-to-day experience.
- For the OfS to ensure student involvement across its own regulatory activities, including in quality, DAPs, governance investigations, and formalising involvement in the Access and Participation Plan process.
- To champion good practice in student engagement and encourage a partnership approach across the sector.
- To ensure that students, and representatives of students, are supported to contribute to all regulatory consultations.
- To ensure students are involved in the development of research into the student experience by the OfS.

## About GuildHE:

GuildHE is an officially recognised representative body for UK Higher Education, championing distinction and diversity in the sector. Our 60 members include universities, university colleges, further education colleges and specialist institutions, representing over 150,000 students. Member institutions include some major providers in professional subject areas including art, design and media, music and the performing arts, agriculture and food, education, business and law, theology, the built environment, health and sports.

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