

Effectiveness in implementation of access and participation plan reforms:

OfS response

Reference **OfS 2021.04**

Enquiries to app@officeforstudents.org.uk

Date of publication **11 March 2021**

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Introduction

This report responds to the key themes identified in an independent evaluation of the OfS's reforms to access and participation. The evaluation, carried out by the Nous Group (the evaluation), examined how far the reforms led to ambition and positive change in provider behaviour necessary for equality of opportunity in higher education and gathered feedback on the OfS's approach to assessing plans.

This report summarises the key themes that appear in the independent evaluation and should be read alongside the evaluation's full report.¹ It sets out our response to the key themes raised in the evaluation by reference to our current policy position and the relevant legislative requirements for access and participation plans (APPs). It is not intended as guidance.

How access and participation plans have changed

Regulatory notice 1 sets out that English higher education providers are required to have an approved APP if they are registered in the Approved (fee cap) category of the OfS Register and wish to charge above the basic tuition fee cap for 'qualifying persons' on 'qualifying courses'.

This requirement stems from ongoing registration condition A1 and was put in place pursuant to section 12 of the Higher Education and Research Act 2017. Condition A1 states that an Approved (fee cap) provider intending to charge fees above the basic amount to qualifying persons on qualifying courses must:

- a. Have in force an access and participation plan approved by the OfS in accordance with HERA.
- b. Take all reasonable steps to comply with the provisions of the plan.

In 2018, the OfS consulted extensively with providers, students and others on fundamental reform to APPs, which emphasised the need for providers to be more ambitious and focused on outcomes.² The key elements were:

- a longer timescale for plans (a maximum of five years) based on risk, which allows providers to take a more strategic view of their investment and activity, while ensuring that those with weaker APPs are appropriately monitored
- a requirement for providers to develop a smaller number of outcomes-focused targets to capture the impact of their work, aligning with the OfS's key performance measures (KPMs) where appropriate

¹ See www.officeforstudents.org.uk/publications/evaluation-of-access-and-participation-plan-reforms/independent-evaluation/

² See www.officeforstudents.org.uk/publications/a-new-approach-to-regulating-access-and-participation-in-english-higher-education-consultation-outcomes/

- predicted expenditure on measures to improve access to higher education, financial support for students, and investment in evaluating access and participation activity.

Following the consultation, in February 2019 we published updated guidance about APPs submitted from 2020-21.³ From this point, all plans had to include:

- a detailed self-assessment of the provider's progress in closing equality gaps across all stages of the student lifecycle and among students from underrepresented groups
- clearly articulated and measurable aims and objectives relating to each underrepresented group and stage of the lifecycle identified in the performance assessment
- ambitious, clearly defined, outcomes-based targets reflecting areas for development, aligned to the OfS's KPMs where appropriate, and set over five years with milestones to monitor progress
- strategic measures which demonstrate continuous improvement in practice and outcomes for students in relation to access, success and progression
- evidence of how students from a range of backgrounds have been involved in the design, implementation and evaluation of the plan, and the mechanisms in place for students to engage in a meaningful way
- a robust and credible evaluation strategy
- how the plan will be monitored, including engagement of governing bodies and students in the process
- forecast investment in respect of access measures, financial support, and evaluation and research.

We commissioned Nous Group to conduct an independent evaluation of the APP process once we had completed most assessments of the 2020-21 to 2024-25 APPs. The overarching purpose of the review was to consider to what extent the OfS's reforms relating to access and participation have led to the increase in ambition and positive change in provider behaviour necessary for equality of opportunity in higher education. The review was completed in two parts:

- Part 1: Analysis of changes in the content of the 2018-19 Office for Fair Access (OFFA) access agreements, to the OfS 2019-20 APPs and the five-year 2020-21 to 2024-25 APPs.
- Part 2: A comprehensive stakeholder review, involving provider staff (senior leaders and operational staff), students (elected students' union officers, students' union

³ See www.officeforstudents.org.uk/publications/regulatory-notice-1-access-and-participation-plan-guidance/

staff and student representatives), and sector representative bodies, to understand whether regulatory changes and the OfS guidance and actions have resulted in changes in behaviour that reflect a greater ambition and commitment to access and participation.

Our response in this report relates to the findings from Part 2.

The evaluation complements our own analysis of 2020-21 to 2024-25 APPs.⁴

⁴ See www.officeforstudents.org.uk/publications/transforming-opportunity-in-higher-education/

Overview

The independent evaluation by the Nous Group supports the OfS's own evaluation of its reforms to APPs.⁴ Both show that the sector has set out more ambitious commitments that support underrepresented students to access, succeed in and progress from higher education.

The independent evaluation found that the OfS's reforms were one of the main causes for this increased ambition. Most notably:

- The main elements of the reforms we put in place, such as the move to five-year plan approval, outcomes-based targets, a focus on whole-provider approach, and being part of the registration process, have significantly contributed to the engagement of senior management and increased ambition within APPs.
- There has been significantly more robust evaluation which has underpinned providers strategic measures.
- Student engagement in the development and delivery of APPs has significantly increased following the reforms.
- The support resources we put in place, such as guidance documents (notably regulatory notice 1), briefings and telephone surgeries, were helpful to providers in understanding our expectations and requirements.

Delivering on access and participation ambitions

Condition A1 sets out that providers intending to charge fees above the basic amount to qualifying persons on qualifying courses must:

- a. Have in force an access and participation plan approved by the OfS in accordance with HERA.
- b. Take all reasonable steps to comply with the provisions of the plan.

While we welcome the increased ambition in APPs, our priority is to ensure that providers deliver the commitments set out in them. We note that the evaluation highlighted that providers would like more clarity on the actions and sanctions we may take if commitments and target milestones in the APPs are not met. We note that regulatory notice 1 sets out how we will monitor progress against APPs.⁵ Further, in a letter regarding 2019-20 APP monitoring published after this evaluation was conducted, we set out the actions we may take if providers do not take all reasonable steps to deliver the commitments in their plan.

This letter stated that:

'Where we are concerned that a provider may not have taken all reasonable steps to comply with the provisions of its plan, we may request further information to

⁵ See www.officeforstudents.org.uk/publications/regulatory-notice-1-access-and-participation-plan-guidance/ at page 13.

assess the steps that have been taken by the provider. We may consider further interventions, including the imposition of a specific ongoing condition of registration to ensure that reasonable steps are taken and sufficient progress made. If we are concerned that a provider has not taken all reasonable steps on the basis of the information it has received through annual monitoring, we will contact the provider to seek further evidence of compliance.

‘Where the OfS determines that a provider has not taken all reasonable steps and we intend to impose a sanction or otherwise reach a formal finding of non-compliance, we will inform a provider of our provisional decision and provide the opportunity for representation in line with the relevant provisions of HERA.’⁶

More information on the full range of regulatory sanctions available to the OfS, such as specific conditions of registration and financial penalties, can be found in regulatory advice 15⁷ and the OfS regulatory framework.⁸

The coronavirus pandemic and underrepresented students

We are mindful of the disproportionate impact the coronavirus (COVID-19) pandemic is having on underrepresented groups and that providers have had to adapt the commitments in their APPs because of the pandemic. Through engagement with the sector and students, we are aware of the challenges, such as student hardship, barriers to face-to-face engagement with schools and students, the resources needed for blended and online learning and labour market constraints affecting progression into some employment sectors. However, we also recognise the pandemic has led to some positive outcomes, including high levels of demand for higher education from the lowest participation groups and mature students, and innovations in practice, such as greater flexible learning opportunities.

Engagement with the sector and students has reinforced the importance of prioritising support for underrepresented and vulnerable students and has informed our approach to monitoring 2019-20 APPs. It is important that we continue to understand the impact the pandemic has had on students and the delivery of providers’ APPs across the sector. We will therefore collect information on the impact of COVID-19 on the delivery of 2019-20 APPs and on commitments made in 2020-21 to 2024-25 APPs through our 2019-20 monitoring process, which is taking place in spring 2021.

⁶ See www.officeforstudents.org.uk/publications/monitoring-of-access-and-participation-plans-2019-20/

⁷ See www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/

⁸ See www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/

In the 26 November 2020 letter referred to above we also set out our position regarding how we will monitor 2019-20 APPs in the context of the COVID 19 pandemic:

'If a target or milestone has been missed and the commitments made in the plan relevant to that target not delivered or only partially delivered as a result of the pandemic, we expect you to have a clear and robust rationale, and to have explored reasonable alternatives. It will be useful in that explanation to consider what progress had been made to deliver those commitments prior to the lockdown announced on 23 March 2020'.⁹

⁹ See www.officeforstudents.org.uk/publications/monitoring-of-access-and-participation-plans-2019-20/

Key themes and findings identified in the evaluation

Alongside the report's many positive findings, we acknowledge some of the challenges that it has raised.

Increased senior leadership oversight

There is now a greater strategic priority given to access and participation at the highest levels in providers. A significant cause for this has been changes in regulation, which required governing bodies and senior leaders to have greater accountability and oversight of APPs.

OfS response

We welcome the increased engagement of senior leaders and governing bodies in access and participation across the sector and that it has been given greater strategic priority. For example, the evaluation found that senior leaders had been more engaged with supporting the planning, implementation, delivery and monitoring and evaluation of APPs compared with before the reforms. We are also encouraged by increased scrutiny from governing bodies.

In the regulatory framework we state that one of the behaviours that may indicate compliance with ongoing condition A1 is that a provider's governing body is appropriately engaged with monitoring of performance against the provisions of its APP.¹⁰

In Regulatory advice 6: How to prepare your access and participation plan - effective practice advice, we state that access and participation objectives and targets are more likely to be achieved when providers have a clear organisational-wide commitment to access and participation, including leadership from senior management and governing bodies.¹¹ In our effective practice topic briefings, we have provided advice and examples of how governing bodies can have effective oversight of their provider's APP.¹²

We will continue to engage with senior leaders and governing bodies about their APP commitments. This will include initiating engagement with providers that are at risk of not meeting our regulatory requirements in respect of access and participation, and responding to requests from providers and their representative bodies.

¹⁰ See www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/, p.84

¹¹ See www.officeforstudents.org.uk/publications/regulatory-advice-6-how-to-prepare-your-access-and-participation-plan-effective-practice-advice/

¹² See www.officeforstudents.org.uk/advice-and-guidance/promoting-equal-opportunities/effective-practice/governing-bodies/

OfS key performance measures and APP targets and objectives

The evaluation found that providers set ambitious and stretching targets to reduce gaps for underrepresented groups, but there have been some misconceptions from providers regarding our approach to sector-wide KPMs.

OfS response

In regulatory notice 1 we specify the range of student groups which we have identified as being underrepresented in higher education and which should be a focus of APPs.¹³

The OfS KPMs are ambitious targets the OfS has set for itself and the sector, which reflect some of the largest and most persistent equality gaps in higher education. But our APP guidance (regulatory notice 1)¹⁴ explains that we expect providers to take account of the OfS KPMs and align their targets to them where appropriate.

During our discussions with providers, we challenged those that had most progress to make in closing their equality gaps. Furthermore, we encouraged greater ambition in the setting of targets where we considered providers would be able to meet them due to the measures contained in their plans. This meant providers' plans having well-evidenced, strategic approaches. The plans set out the measures the provider would put in place, as well as the strategy to evaluate those measures so that there is continuous improvement in relation to both practice and student outcomes. In tandem, these elements of the plan give confidence about its delivery, subject to providers taking all reasonable steps to deliver on their commitments.

We encouraged providers to use the national access and participation dataset made available and were clear that they should develop their own self-assessment of performance. Use of the national access and participation dataset should help determine the student groups and stages of the lifecycle for which each provider has the largest gaps, the targets they should set and the measures they should implement, which should reflect their specific location and context.

Further details about the OfS's KPMs can be found in the report detailing the outcomes of the access and participation reforms consultation¹⁵ and on our website.¹⁶

We will work with any provider that would like to apply to vary its APP in order to strengthen it with regards to any underrepresented group, including to respond to new imperatives arising from the pandemic. We are also developing the access and participation dataset to include more measures and intersections of measures.

¹³ See www.officeforstudents.org.uk/publications/regulatory-notice-1-access-and-participation-plan-guidance/ p, 16-17.

¹⁴ See www.officeforstudents.org.uk/publications/regulatory-notice-1-access-and-participation-plan-guidance/

¹⁵ See www.officeforstudents.org.uk/publications/a-new-approach-to-regulating-access-and-participation-in-english-higher-education-consultation-outcomes/ for more information.

¹⁶ See www.officeforstudents.org.uk/about/measures-of-our-success/participation-performance-measures/

Competition for underrepresented students

Concerns were expressed that meeting ambitious and stretching access targets will create competition between providers for recruiting students and undermine collaboration. There is an increased desire for more sharing of effective practice in the sector.

OfS response

In developing our approach to access and participation regulation, we have had regard to the OfS's general duties – see section 2 of HERA. Section 2(1)(c) sets out the need to have regard to 'the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers'. Regulatory notice 1 states that the OfS 'encourages collaborative targets being set in partnership with other providers to address national, regional and local priorities.' We are encouraged by the level of collaboration already described in APPs. For example, the providers involved in the Realising Opportunities programme have set a collaborative target to improve access to research intensive universities.¹⁷

Alongside this, the OfS is supporting collaborative approaches to access and participation where this is needed for activity that could not be delivered by a single university or college. This is demonstrated by the commitment made to the Uni Connect programme and the development of outreach hubs in each area. We have also established TASO (the Centre for Transforming Access and Student Outcomes in HE)¹⁸ and we are working with the higher education tracking services to develop further the data and systems needed to understand the destinations from outreach work, regardless of which university or college has delivered the activity.

We will continue to explore this issue in dialogue with providers and partnerships. This could include providers:

- Working longer-term and collaboratively to achieve their targets, for example through local partnerships, including with schools and colleges.
- Looking at how to define and understand the context in which grades have been achieved and what support may be provided before entry to higher education, with the aim of supporting a wider range of students who have the potential to succeed in higher education.
- Making provision more accessible to mature students, rather than focussing on 18–19 year-olds as the only source of students to achieve targets.

¹⁷ See <https://www.officeforstudents.org.uk/publications/transforming-opportunity-in-higher-education/> paragraphs 158 to 165

¹⁸ See taso.org.uk/

- Working with further education partners to facilitate different pathways into higher education, which could appeal to students for whom the traditional three-year degree route may not be suitable. These pathways could include higher and degree apprenticeships, level four and five provision, higher technical courses, and could be particularly attractive to mature students.

We want to facilitate and encourage the sharing of good practice between providers in access and participation, so have published on our website effective practice advice on how providers can support a range of underrepresented groups.¹⁹

Student engagement

Students were more meaningfully engaged in the development and delivery of plans after the reforms. Nearly 80 per cent of providers which responded to the evaluation mentioned that student engagement had moderately or greatly increased compared with previous years.

These findings from providers align with the student respondents who generally agreed that they had more opportunities to engage in the development and delivery of the plan. However, in some cases students reported that they found engagement in APPs to be tokenistic.

The evaluation also highlighted that the timescales had led to challenges for some providers in being able to effectively engage with their students in the plan development.

OfS response

The Higher Education (Access and Participation Plans) (England) Regulations 2018 state that in deciding whether to approve a plan, the OfS must have regard to:

- a. Whether the governing body of the institution provided its students with an opportunity to express their views about the content of the plan before it was submitted for approval.
- b. If it provided such an opportunity and received views from its students in response, what steps were taken subsequently by the governing body in relation to the plan.²⁰

Further, in regulatory notice 1, we state a provider's APP must demonstrate how their students have had the opportunity to express their views about the content of the plan before it was submitted for approval, and what steps were taken as a result. If the

¹⁹ See www.officeforstudents.org.uk/advice-and-guidance/promoting-equal-opportunities/effective-practice/

²⁰ See www.legislation.gov.uk/ukdsi/2018/9780111162422

views of students have not resulted in any steps being taken, the plan must include an explanation of why students' views have not been followed.²¹ It also states an APP must include information on how students are engaged with the monitoring of the performance and provisions of the plan.²²

In our effective practice topic briefings, we have provided advice and examples of how providers can effectively engage with their students in the development and delivery of APPs.²³

We have also given students a prominent role in the development of the 2019-20 monitoring process. Students attended and contributed to roundtables we held with the sector to gain insight on the impact of COVID-19 on access and participation, which helped to inform our monitoring approach. We also engaged with students in the development of the student submission – an independent and optional report which enables students to reflect and comment on progress made by their university or college in delivering their APP.²⁴

Evaluation

There are moves towards more evidence-informed, whole-provider approaches to access and participation with increased focus on evaluation.

Some providers were confused by explanations of a 'theory of change', and this resulted in some variation in the ways it was represented in APPs.

The evaluation reported concerns, particularly from smaller providers, in respect of their capacity and capability to carry out effective evaluation activity. However, it is also the case that many small providers included ambitious evaluation strategies in their APPs.

OfS response

We will reflect on how we could explain more comprehensively what we would expect a provider's theory of change to cover and will make sure this is communicated in an accessible way. Regulatory notice 1 outlines that a plan should:

- use an evidence base to identify the key issues

²¹ See www.officeforstudents.org.uk/publications/regulatory-notice-1-access-and-participation-plan-guidance/ p.30

²² See www.officeforstudents.org.uk/publications/regulatory-notice-1-access-and-participation-plan-guidance/ p.35.

²³ See www.officeforstudents.org.uk/advice-and-guidance/promoting-equal-opportunities/effective-practice/student-engagement-and-consultation/examples/

²⁴ See www.officeforstudents.org.uk/publications/regulatory-notice-1-access-and-participation-plan-guidance/ p.13

- set aims and objectives relating to these issues
- create an evidence-based strategy to address the issues
- create an evaluation strategy to ensure best use of limited resource.²⁵

We also encourage providers to engage with TASO, which can support providers both through the work it does to identify robustly evidenced effective practice and its guidance on conducting effective evaluation.

Access and participation data dashboard

The OfS access and participation data dashboard has supported a more in-depth understanding of access and participation challenges in the provider, but smaller providers mentioned it was less useful for them, due to data limitations.

OfS response

The OfS access and participation data dashboard is published annually as official statistics and is subject to ongoing development and enhancement as it is updated. We welcome feedback and suggestions about the ongoing development of the dashboard through the feedback form on our dashboard webpages.²⁶

We will continue to develop the OfS access and participation data dashboard at both a provider and sector level. In 2020, we added information about student's eligibility for free school meals when they were in school. We plan to introduce additional characteristics at sector level later in 2021, such as those reporting on a student's Associations Between Characteristics quintile,²⁷ their household residual income, and whether they have experience of care.

Three and five-year aggregate data will be available on the dashboard from March 2021. This will allow us to report more data for small providers, while ensuring that the statistics we produce are reliable, appropriate for use, and mitigate the risks of disclosing information about individuals. This may help small providers overcome data limitations and allow them to set meaningful objectives and targets for underrepresented groups. However, where providers have reportable data using absolute gaps for individual years in the time series, we would continue to expect providers to use this data as opposed to aggregate data.

²⁵ See www.officeforstudents.org.uk/publications/regulatory-notice-1-access-and-participation-plan-guidance/ p.18

²⁶ See survey.officeforstudents.org.uk/s/appdatadashboard/

²⁷ See www.officeforstudents.org.uk/data-and-analysis/associations-between-characteristics-of-students/

As an official statistics producer, we are committed to producing statistics that are relevant, accessible, and clear to users. We have redesigned the OfS access and participation data dashboard with a view to making it easier to use.²⁸ We have an important role to play in reducing data burden and improving the data landscape for access and participation for all providers and are committed to innovate and adopt best practise where we can.

We will continue to work with DfE, UCAS and HESA to explore possible ways to facilitate better access to individualised data for providers, such as free school meals and care-experience data. We hope this will support providers in identifying these students and providing them with targeted support throughout the student lifecycle.

OfS communications

Providers raised concerns over the tone of the OfS's communications. Many highlighted concerns that this did not facilitate a collaborative approach to tackling access and participation challenges. There was acknowledgment that as a regulator the OfS needed to take a firm tone when required to ensure compliance.

The report also highlighted that our briefing events and guidance had supported understanding of our expectations and requirements, and these were particularly valued by smaller providers. Opportunities to engage 'one on one' with OfS staff, including the Director for Access and Participation, were the most valued and useful in communicating OfS expectations.

OfS response

We have been reviewing the tone of our communications with the sector. In a blog published last year, our Chief Executive outlined that we believe effective regulation in the student interest requires a degree of distance from the sector, and an ability and willingness to be a dispassionate judge of what is and what is not in the interests of students. Nonetheless, we believe the relationship should entail mutual respect and, ultimately, work towards shared objectives.²⁹ All providers now have a named OfS contact for all regulatory queries.

The regulatory framework says that our conversations with providers will focus on regulatory issues and helping providers to understand our regulatory approach.³⁰ In regulatory advice 15, we state that our principles-based approach means that how we engage with registered providers is of particular importance. Any system of principles-

²⁸ See www.officeforstudents.org.uk/data-and-analysis/access-and-participation-data-dashboard/

²⁹ See wonkhe.com/blogs/how-can-ofs-improve-its-regulatory-relationship-with-the-sector/

³⁰ See www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/ p.19.

based regulation must be founded on open dialogue between the regulator and the regulated about the purpose and application of the principles. Our engagement with individual providers is intended to allow us to make appropriate regulatory decisions about managing the regulatory risk associated with that provider. We will seek an open and trusting relationship with the providers that we regulate.³¹

Providers with small numbers of higher education students

The evaluation highlighted some of the specific challenges that providers with small higher education student numbers face when developing their APPs. Some of those providers suggested that our approach was more suited to larger higher education providers and so was experienced as being disproportionate for smaller providers.

OfS response

Our primary concern is equality of opportunity and ensuring that all students, regardless of provider context and size, are supported to access, succeed in and progress from higher education. Providers in the Approved (fee cap) category of the OfS Register that wish to charge tuition fees above the basic level, are fully subject to condition A1 and are required to comply with this condition of registration. Our expectations of all providers seeking approval of an APP are therefore the same. However, how those expectations are met will be dependent on a provider's size and context. So, taking a proportionate approach to the assessment of plans is important. Therefore, we will continue to review and refine our assessment processes to ensure that they are proportionate, while continuing to be rigorous and robust.

Regulatory notice 1 and the FAQs on our website related to the assessment of performance³² provide advice on how to overcome issues relating to small numbers. As mentioned above, we are also reviewing the OfS access and participation data dashboard to see what more we can do to support providers who experience data suppression issues. One of the first steps is to include three-to-five-year aggregate data in the dashboard.

In recognition of the need for more tailored support for some providers, TASO is commissioning a project to support evaluation with small cohorts.

To help inform our approach to proportionality and to communicate our expectations and requirements, we have been engaging with bodies that represent smaller providers.

³¹ See www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/ p.4-5.

³² See www.officeforstudents.org.uk/advice-and-guidance/promoting-equal-opportunities/access-and-participation-plans/faqs/



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