- 1.3. The OfSis an example, however, of a regulator that has appeared to struggle with the interpretation and prioritisation of its general duties (section 2 of HERA), resulting in a lack of clarity about its regulatory interventions and expectations. It is not always clear to the sector what actions or outcomes are likely to prompt regulatory concerns, because the regulator itself appears unclear on how it is supposed to navigate a complex set of issues including where certain duties appear to be in tension. For example, minimum baselines for student outcomes set clear objectives but can prompt risk averse behaviours, deterring providers from recruiting certain students or delivering certain courses, thus reducing the student choice and access to higher education which the OfS aims to uphold.
- 1.4. The OfSas a regulator appears constrained by the absence of a consistent and wellarticulated higher education strategy in Government. We see a regulator trying to address all issues, often without a clear long-term strategic vision from Government or a robust evidence base supporting that vision, and without being given space to respond in an appropriate way.
- 1.5. It is important to note, however, that in the pursuit of darity we need to avoid adopting a one-size-fits-all model

4.1. The experience of the Of Ssuggests that the Government can too often see regulation as a mechanism through which to pursue its policy objectives even when tangential to the OFS core role as a regulator of English Higher Education. This is evident in the volume of orinisterial guidance. Between 2018 and October 2023 there have been <u>27 separate</u> pieces of published government advice and guidance to the OfS One impact of guidance on this scale means ongoing adaptation of a regulatory framework. This, in turn, creates an additional burden for the regulated entities who must navigate frequently changing requirements and expectations. Iniristentalesearch commissioned by UUK, we found a university, on average, has a full-time equivalent (FTE) of 17.6 dedicated solely to regulatory compliance. Across all 116 UUK members in England, this could amount to as much as 128 FTE at executive level, 638 FSBT/F1 11.04 Tf1 0 0 1 182.3 604.99 Tm0 g0 Qf)]TJETQq0.0000887

the level of prescription in guidance to the OfSis often considerable. For example, letters have stated the types of provider that should be investigated

supported by a team of 7 full-time staff members. We welcome ______ commitment to a review of data burden across the higher education sector, as announced in November 2023.

5.4. However, we have welcomed activities from the OfSto engage proactively with PSRBs in revising its guidance on the retention of assessment. This includes understanding assessment requirements for different subjects and being flexible on its own

7.1. Under HERA, the OfSmust assess or make arrangements for the assessment of quality and standards. <u>We believe an independent designated quality body (DQB) remains most</u> <u>appropriate for external quality assurance</u>. This is crucial for academic standards, which are set, maintained, and owned by the sector, and in the assessment of degree awarding powers. Both were ______ passing and informed clauses relating to establishment of an independent DQB. This recognises the role of academic expertise in

Regulators should be skilled in making regulatory decisions but should also look to utilise sector expertise effectively to inform those decisions.

- 7.2. We have welcomed the efforts made by the OfSto ensure academic expertise is embedded within their approach to quality investigations. However, hosting such a function in-house is inevitably subject to greater volatility. Even an independent regulator must respond, reprioritise, and redirect resource across its activities as events, intelligence, and ministerial guidance requires. Experts on quality need the space to make informed, impartial, evidence-based reports against which a regulator can then make a judgement. A dedicated DQB provides greater stability and reassurance, which is important for consistency in assessments and for darity of process among international audiences. It is also notable that while launched in May 2022, only three quality investigation reports have yet been completed. While these are complex cases, it would be reasonable to expect a timelier response.
- 7.3. As above, there are also areas where regulators can benefit from engagement with the sector they are regulating and other partners. For example, in the case of OfSand its proposals to regulate on harassment and sexual misconduct, the OfSwould need to recognise the complexity and challenge involved in tackling these issues, which differ substantially in nature to issues covered in many other conditions of registration. There is already considerable evidence of good practice in the sector to build on. There are also other agencies, for example community groups and local police forces, who have expertise to help improve campus safety. It should not be assumed that a regulator is always best placed to lead on an issue.

8. Who should hold the regulators accountable for their performance against their objectives? What is the appropriate role of Parliament in performing this scrutiny role?

8.1. Regulators should be accountable to Parliament but should also be accountable to the individuals or groups they are regulating on behalf of. There is arguably a role for greater student involvement in holding the OfSto account. During the recent inquiry into the OfS, there were significant concerns raised about the relatively powerlessness of the OfS
Student Panel and a lack of diverse student voices in the OfSgovernance structures. We are related at the relatively on the structures and that any Parliamentary scrutiny of the OfSinvites the views of the OfSstudent panel.

9. How should the Government and the regulators themselves facilitate appropriate scrutiny and accountability of regulators? Are regulators sufficiently transparent about their own performance?

9.1. The government should consider revisiting the approach by which it holds regulators accountable, while also evaluating the implementation of the Better Regulation Framework launched in September 2023. The experience of the OfShas demonstrated what happens when there is insufficient oversight and accountability. It is widely felt, as reported by the House of Lords Industry and Regulators Committee, that the OfScannot demonstrate how they are referring to the ______ and regulatory best practice.

9.2. Achieving greater over()]TJ2

engagement with the sector it regulates, the type and amount of correspondence, responsiveness, and an ability to meet deadlines.

10.3. The Of Swas due for a review of its fee model two years after its establishment. However, this is still yet to happen. We think that this should not only happen but that as part of annual reporting into the relevant sponsorship department, there must be consideration of how the costs of regulation are borne across a sector and how this interacts with factors such as size and risk, what the impact of this cost on providers is, and then crucially how any registration fee income has been spent.

10.4.

the context of the OfS, we have been consistent in saying that a new regulator should be given time to bed in and refine its regulatory requirements and approach. However, we welcome the expectation that any regulation which is failing to achieve its desired outcomes, or which creates unintended negative consequences in pursuit of them, needs to be revisited.

11. Do any of the international comparators address the above questions particularly well? What lessons, if any, can the UK learn from other jurisdictions on these matters?

11.1. Australian regulation of higher education, under the Tertiary Education Quality and Standards Agency (TEQSA), provides useful lessons for improving communication between the regulated and the regulator on areas of risk. TEQSA, undertakes an annual risk assessment of all providers, which is typically shared back to each provider. Providers can then respond, which may lead to an adjustment in the assessment and ensures the