

David Blaney, Chief Executive
Higher Education Funding Council for Wales
c/o Cliona O'Neill
Submitted by email to: cliona.oneill@hefcw.ac.uk

29 January 2016

Dear David

HEFCW W15/27HE Consultation on criteria for the assessment of quality, method for assessment of quality and investigation of matters relating to quality and standards

Please find below our comments on the in response to the above Circular.

The current consultation is intended to fulfill HEFCW's requirement to consult before issuing guidance on the criteria to be applied by HEFCW in assessing the quality of education of a regulated institution, and the matters that HEFCW will take into account in determining whether the quality of education (or a course of education) is adequate or likely to become inadequate.

We see consultation on these matters as very important. HEFCW faces new challenges with the introduction of changes to HE regulatory environment (in both Wales and England). HEFCW's duty now extends not only to existing universities, but to all regulated providers – which includes some FE colleges. Precise arrangements for specific course designation in Wales are not yet confirmed, but it is clear that the number and type of providers within the sector (both in Wales and England) will present new challenges in terms of quality assurance. As grant funding is removed, and increasing reliance is placed on full-time undergraduate fees, existing institutions will also experience fresh challenges in terms of their funding and long-term development which underpin the quality of experience. It is of paramount importance that HEFCW continues to be effective in its role of ensuring that institutions provide access to higher quality education that continues to command the confidence of students and maintain Wales' international reputation for the quality of its higher education.

As highlighted in our response to HEFCW's consultation on the Transitional Statement of Intervention, HEFCW's new duty extends to regulated institutions, no longer institutions which HEFCW funds. This poses particular issues in relation to part-time and postgraduate specialist providers (although special provision is made for the Open University in Wales), and for franchise provision under existing partnership agreements during the transitional period.

HEFCW has also gained significant new powers in relation to quality assurance, with effect from September 2015, which rely on the interpretation of its new statutory duty under the HE (Wales) Act 2015. HEFCW may direct institutions to take steps to improve the quality of education or prevent it from becoming inadequate – and HEFCW has full discretion to determine what those steps may be. Failure to comply with a direction can be a ground for refusing to approve a fee and access plan, which would lead to loss of regulated institutions status and with major financial and reputational consequences. If HEFCW deem that education is ‘seriously inadequate’, HEFCW may withdraw approval of a fee and access plan. In addition, HEFCW gains a number of general powers intended to allow HEFCW to perform its duty. It may issue guidance relating to quality that institutions are required by statute to take into account. It also gains new powers of entry and inspection.

Clearly, HEFCW’s interpretation of the new statutory duty is very important in this context. As highlighted in the circular, HEFCW’s new duty now differs from HEFCE’s (and HEFCW’s previous) duty in a number of important respects. The test of whether quality is to be deemed adequate or not is whether it meets the ‘reasonable needs of those receiving the education or undertaking the course’. What is the reasonable need of a student? From whose perspective must it be reasonable? What type of needs could this cover – academic, employment, or other requirements? Is it sufficient for providers to provide education which is assessed as high quality, if it doesn’t meet their needs in other ways? How far does this need to take account of individual needs and circumstances (factors which are potentially relevant for consumer protection legislation)? The duty now refers explicitly to a course of education, not just the quality of education. Does this raise issues about how far institutional level assurance is sufficient on its own? As pointed out in the circular, HEFCW must now satisfy itself not only that education is not inadequate but that it is not likely to become inadequate: there is a clear shift in emphasis towards anticipating and preventing inadequate quality. Under what circumstances could it be considered that quality is unlikely to become inadequate, and are the current systems sufficient to address this requirement?

Clarity on HEFCW’s interpretation and approach is absolutely vital for all stakeholders. It should be noted that in a case of dispute it would ultimately be for the courts to determine whether HEFCW has applied the test appropriately or not, it therefore is in everyone’s interest that the way in which HEFCW interprets its role covers its statutory obligations.

1. Quality Code. Do you agree with the proposal to continue to use the Quality Code as a criterion for the assessment of quality under the 2015 Act until further notice?

We welcome HEFCW’s intention to maintain the current processes as far as possible and to continue to use the Quality Code as the basis for its assessments, pending the introduction of changes resulting from the outcomes of the joint quality assessment consultation. Future arrangements with the QAA or successor body are also uncertain at this stage, and on a practical basis arrangements will need to be revisited as the outcomes of the retendering process become clear.

As set out provisionally in the Transitional Statement of Intervention, HEFCW has provided guidance that it will consider the reasonable need to be met for the purposes of the 2015 Act if an institution obtains judgements of ‘Meet(s) UK expectations’ or ‘Commended’ in all four judgement categories in

QAA review. In every case, a regulated institution receiving a 'requires improvement' or 'does not meet' outcome will be deemed to have, or to be at risk of having, inadequate quality.

While we support this pragmatic approach, HEFCW will need to ensure that the arrangements resulting from the joint consultation are fit for purpose given the changes to HEFCW's quality assurance duty that have been introduced by the 2015 Act. As highlighted in the circular, HEFCW's statutory duty is now different to HEFCE's in a number of important respects.

The current QAA UK Quality Code for Higher Education was not designed specifically to address HEFCW's statutory duty and does not expressly apply a 'reasonable needs' test. The 'expectations' and indicators cover a range of reasonable needs e.g. information to inform choice, opportunities, and processes of student engagement. However, the overall judgement is based on a range of indicators which do not all so clearly relate to these statutory requirements. Part of HEFCW's task will be to ensure that QA requirements clearly map against the statutory duties. We suggest, however, that there needs to be a thorough review of what are the reasonable needs of students in this context. Should employability and enhancement feature more prominently, for instance? How should institutions cater for individual circumstances or requirements (see above)?

The current arrangements cover the systems and processes for quality assurance at an institution, which should in theory ensure that the assessment provides assurance about future adequacy of quality, not just current adequacy. However, in previous discussions HEFCW have identified that the current quality assurance arrangements focus more on outcomes and are in some instances better suited for the assessment of current rather than future quality arrangements. Care will need to be taken to ensure that appropriate emphasis is placed on monitoring and enforcing future arrangements.

A third issue is that the range of education provision which HEFCW is under a duty to assure is wider. HEFCW is responsible for the quality of all education provided by (or on behalf of) a regulated institution. This means, for instance, that HEFCW has an overlapping duty with the Welsh Government in respect of further education. The current arrangements referred to in the Statement only relate to higher education at the moment, and further guidance for other levels of provision would appear to be required. We will look forward to further guidance, and presumably statutory consultation, on this in due course.

A further issue is that HEFCW's duty now only extends to the provision of regulated institutions wholly or principally in Wales. A reciprocal arrangement has been established with England to ensure that provision in England falls under the regulation of the Act, but no similar arrangements are in place for elsewhere in the UK or beyond. This leaves potential differences in the coverage of existing quality assurance arrangements and HEFCW's new duty. A negative quality assessment based on provision that does not fall under HEFCW's duty for instance, should presumably not provide the basis for triggering its regulatory powers. This clearly may have implications for what provision is covered by the assessment(s), which would need to align with HEFCW's new duty.

2. Higher Education Review: Wales (HERW). Do you agree with the proposal to rely on the judgements from the revised HERW handbook in assessing the quality of education provided by regulated institutions?

See answer above. In our response to the Transitional Statement of Intervention, we recommended that the existing HERW guidance was revised to signpost the HE (Wales) Act 2015 and more clearly address the new statutory requirements.

We note that HERW was revised in October 2015 to include reference to the HE (Wales) Act 2015. Page 2 in particular summarises the changes applying from 1 September 2015. This confirms that the QAA has been designated as an authorised person for certain purposes of the Act including the powers of entry and inspection, and to require the provision of documents. Inadequate quality is not a term used by QAA. For purposes of the concerns procedure, the document states that the term unsatisfactory quality relates to HEFCW's powers in respect of inadequate quality (p.2).

The HERW also states (p.20) that HEFCW has an 'inadequate quality process' for addressing 'unsatisfactory quality' in institutions in its Transitional Statement of Intervention. This comes into force if a provider:

- receives a judgement of 'does not meet UK expectations' in two successive QAA reviews
- makes insufficient progress on its action plan after receiving a judgement of 'does not meet UK expectations'
- receives more than one judgement of 'does not meet UK expectations'
- is unable to initiate an action plan within a reasonable time frame.

We would suggest that the definition of inadequate quality (p.2) needs to be amended for consistency with the definition proposed by HEFCW in this circular. In other words, for purposes of triggering the powers and duties under the new Act, inadequate quality would mean an institution that does not obtain judgements of 'Meet(s) UK expectations' or 'Commended' in all four judgement categories in QAA review.

More generally, greater clarity is needed about the criteria which determine when QAA may exercise its powers under the new Act. What constitutes a reasonable likelihood that education will become inadequate? How will QAA/HEFCW identify 'seriously inadequate' quality? The revised HERW will need further work in this respect, once the outcomes of the joint consultation are clearer.

3. Concerns. Do you agree with the proposal to continue to rely on the outcomes of any concerns investigations until further notice?

We agree that with the pragmatic approach proposed. However, HEFCW will clearly need to review all relevant concerns procedures in future.

As highlighted in the circular, in October 2015, the QAA concerns procedure was updated to reflect the HE (Wales) Act (see Annex B in particular).¹ We would suggest that the definition of inadequate quality in this document also needs to be amended for consistency with the definition proposed by HEFCW in this circular (see p.23 and comments on HERW above). We would also suggest that further consideration may need to be given to the guidance on timescales and publication/notice of inadequate quality to ensure that these are consistent with the approach in the HE (Wales) Act 2015 for dealing with inadequate quality, particularly since QAA is commissioned/effectively the agent of HEFCW in this respect.

We also note that currently QAA's concerns procedures apply only in specified situations. Concerns, according to QAA, mean concerns about how higher education providers manage their academic standards, the quality of learning opportunities, and the information that they make available about their provision (p.1). The QAA does not attempt to resolve individual complaints against providers, however the QAA "can look at individual complaints for evidence of broader failings in the management of academic quality and standards. Where we consider that these indicate serious systemic or procedural problems, we will investigate them as concerns". HEFCW will need to satisfy itself that the current situations covered by this procedure – in conjunction with any other arrangements – are sufficient to satisfy requirements.

In this respect, a key issue to arise from discussions at HEFCW's workshop on implementation related to how HEFCW would directly handle allegations relating to either fees or quality in future. It was suggested that HEFCW should seek to ensure that students (and staff) follow the appropriate internal procedures at their institution, and that HEFCW should commit to making appropriate inquiries to the institution concerned.

In our response to the Transitional Statement of Intervention consultation, we recommended that HEFCW review its current procedures for dealing with external complaints with stakeholders to ensure that they are fit for purpose in the new regulatory context. All stakeholders need to have a clear understanding of how allegations should be raised and dealt with by HEFCW and within institutions, and institutions may need to review their own complaints procedures and information accordingly. How far would HEFCW wish to encourage direct allegations? If a student/staff member is to be expected to have exhausted internal procedures before raising an allegation, are current internal procedures appropriate? A prompt review of this may be particularly important given the need for institutions to ensure for purposes of consumer rights requirements, that the complaints processes are transparent.

HEFCW has previously signaled its intention to coordinate investigations by other bodies such as the OIA or CMA as far as possible, but to reserve the right to intervene directly if necessary. This seems a reasonable position but will need working through carefully. While it is possible that these different bodies could effectively investigate or take action on the same matter (e.g. overcharged fees) and consider similar issues, the legal basis on which they would consider a matter would be different and

¹ <http://www.qaa.ac.uk/en/Publications/Pages/Information-And-Guidance-Details.aspx?PubID=2908#.VqjHIW1FAdU>

the bodies could legitimately reach different verdicts on the basis of the same evidence. At the same time, it would appear desirable to reduce the duplication of processes and evidence, or unnecessary differences in evidence or process which could increase the chance of inconsistency between bodies.

We hope that these comments are useful to you in the further development of these arrangements.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Colin Riordan', written in a cursive style.

Professor Colin Riordan
Chair of Universities Wales