

EDUCATIONAL OVERSIGHT? THE INCURSION OF THE UK BORDER AGENCY INTO THE QUALITY ASSURANCE OF HIGHER-EDUCATION PROGRAMMES

In April 2011 the UK's coalition government introduced sweeping new rules and regulations governing the admission into this country of 'Tier 4' students – that is, persons ('international students') who are not citizens of any country within the European Economic Area and who wish nonetheless to enter the UK for the purposes of post-16 education.¹ These controversial reforms followed a public consultation, and their implementation has caused further contentious debate. The number of hours of work legally permitted to international students during their studies has been reduced from twenty to ten, and indeed to zero if a student has chosen to enrol at a non-taxpayer-funded institution.² The former right of international students to seek a time-limited amount of post-study work in the UK after graduation has been largely rescinded.³ And new restrictions have been introduced in respect of dependants permitted to enter the UK to accompany Tier 4 students.⁴

In the view of one respected independent think-tank the blatant discrimination against private-sector institutions of higher education (namely the complete abolition of the right to work whilst studying therein) has resulted in a 70% reduction in international student enrolments at such establishments.⁵ At the end of 2011 the well-regarded Cavendish College, established in 1985 and with (in July 2010) well over 800 students and an annual turnover of £4 millions, announced that owing to a severe decline in its recruitment of international students it was closing its doors. It is reliably estimated, indeed, that in 2011 no less than 169 private educational institutions recruiting Tier 4 students had become insolvent.⁶ There is little doubt that

¹ *Tier 4 of the Points Based System – Policy Guidance* (UK Border Agency, April 2011)

² There are a handful of exceptions to this – notably private institutions who subscribe voluntarily to the Quality Assurance Agency.

³ With effect from April 2012 international students who wish to work in the UK after graduation must demonstrate that their annual earnings will total no less than £20,000, and they must work for companies approved by the Home Office.

⁴ See generally Edward Acton, *The UKBA's Proposed Restrictions on Tier 4 visas: implications for university recruitment of overseas students* (Higher Education Policy Institute, 2011); professor Acton is the Vice-Chancellor of the University of East Anglia.

⁵ Chris Nicholson, *Tier 4 Tears: how government visa controls are destroying the private HE sector* (CentreForum, London, 2012). I do not deal in this paper with the politically expedient motives that induced the UKBA to target the private HE sector. But it is worth noting that this sector evidently presents a 'soft' target insofar as the reduction of immigration to the UK is concerned. According to a UKBA study, *Overseas Students in the Immigration System: Types of Institution and Levels of Study* (December 2010, p.8) privately-funded HE/FE institutions had the highest proportion of 'non-compliant' students – 26 per cent as compared with 8 per cent at publicly-funded establishments. But the study itself admitted that 'These percentages should be considered the maximum potential estimate of non-compliance, as the coverage for those leaving the UK and the focus of roll-call investigations mean that the actual levels of non-compliance [i.e. failure to adhere to the terms of the visa] are likely to be lower.'

⁶ The estimate is from the accountants Wilkins Kennedy: <http://thepi news.com/news/insolvencies-soar-through-visa-policy-uk/> [accessed 8 May 2012]. In 2010 the number of such insolvencies had

most if not all of these closures were the direct result of the government's Tier 4 policy inaugurated last year.

These developments and the policies from which they derive have been the subject of much public debate. But what has attracted hardly any public comment, and what was – deliberately and explicitly – excluded from the government's public consultation that preceded them, was a fundamental reform of the manner in which private-sector HE institutions are inspected for the purpose of being approved to recruit Tier 4 students in the first place. This reform deserves close scrutiny, if for no other reason than that it embodies unwelcome precedents in respect of the entirety of higher education in the UK.

With effect from April 2012 any educational establishment in the UK that wishes to recruit Tier 4 students must possess 'Highly Trusted Status' (HTS). This qualification – the possession of which was formerly not obligatory - is conferred by the UK Border Agency (UKBA) following special scrutiny by one of a small number of designated inspectorial agencies. Originally (before 2011) these agencies comprised the British Accreditation Council (BAC), the Accreditation Service for International Colleges (ASIC), Accreditation UK, the Association of British Language Schools, and the Church of England Ministry Division. Educational establishments in the public sector - and subject, for example, to inspection by the Office for Standards in Education (Ofsted) or the Quality Assurance Agency (QAA) - were exempted from this scrutiny requirement, and continue to be so, as were and are private-sector institutions that subscribe to the QAA voluntarily. These exemptions apart, all Tier 4 'sponsors' must now undergo what is termed 'Educational Oversight' (EO). A satisfactory EO outcome will not by itself guarantee HTS. But it is deemed by the UKBA to be a necessary prerequisite.⁷

But EO is now longer carried out by the five designated agencies aforementioned. In April 2011, without any public consultation, the UKBA terminated its arrangements with these five bodies. The work of inspection – insofar as further and higher education are concerned – has been given instead to the QAA (in the case of institutions delivering mainly higher-education programmes) and the Independent Schools Inspectorate (ISI) in respect of institutions mainly delivering further-education courses. For this purpose the QAA and the ISI has each developed its own distinctive EO methodology.

Why were the five formerly-designated accrediting agencies given their marching orders? No public explanation has ever been proffered. At a meeting I attended⁸ with the UKBA in December 2010 it was stated from the UKBA side that, ideally, it would have preferred to deal with one immigration accreditation body, namely Ofsted. But the fact of the matter is that by law Ofsted can only engage directly with taxpayer-

stood at 117, so the increase was of the order of 44%; over the same period the total number of corporate insolvencies as a whole had risen by just 3%.

⁷ There is however one instance known to the author of a private college having gained HTS in spite of a very adverse EO report.

⁸ In my capacity as independent vice-chair of the ASIC advisory board.

funded entities. At the same meeting the UKBA voiced its dissatisfaction with the five accrediting agencies, which it accused of ‘holding the hands’ of the colleges they inspected. Put bluntly (we were told), too many private colleges were being approved. It was hoped that new inspectorial arrangements, combined with other measures, would result in a drastic reduction in the number of private establishments licensed for Tier 4 purposes.

There was perhaps a certain logic to the choice of the QAA as the preferred agency to inspect private colleges delivering mainly higher-education programmes, for such programmes are typically themselves validated by QAA-inspected universities. And, in any case, the QAA has (for better or worse) a track record of reviewing the delivery of FE programmes in HE institutions and of HE programmes delivered in FE colleges. But the choice of the ISI is puzzling to say the least.

The ISI began life as a wholly-owned subsidiary of the Independent Schools Council, established in 1974 by the major providers of private primary and secondary education in the UK. At the beginning of 2012 the ISI became a legally separate entity with its own board of directors, nominated by its founding ‘members.’⁹ These ‘members’ comprise eight associations representative of schools in the private sector. No association representing further or higher education is currently or, apparently, likely in the foreseeable future to be included in the membership category, nor is any association representative of language schools, which also now come within the EO remit as operated by the ISI; these schools were historically accredited by the British Council, but the BC’s prestigious imprimatur was – for reasons that remain unexplained - deemed by the UKBA to be unacceptable for EO purposes.

The new ‘stakeholders’ of the ISI – private institutions offering further and higher education – in fact have no forum or framework within which they can be consulted about the EO process. They must accept whatever the ISI presents to them. The ISI’s current EO inspection procedure was, I am told, ‘formulated by a group of inspectors and professional within ISI and agreed with the Home Office.’¹⁰ Who were these inspectors? Who were these ‘professionals?’ We simply do not know. But the admitted role of the Home Office is noteworthy. It means that a significant segment of FE and HE provision in the UK is now subject to an inspection process overseen by a department of government that has no experience whatever of these sectors, and whose interests fall far from those with genuine expertise in these matters. The Home Office’s sensitivities in this regard are palpable. My request under the Freedom of Information Act to see copies of relevant communications between the HO and the ISI (and the QAA, incidentally) was – of course – refused.¹¹

⁹ Its Articles of Association and related documents are available at the website of Companies House (Company Number 6458829).

¹⁰ Email from ISI Head of Communications to the author, 20 April 2012.

¹¹ Neither the QAA nor the ISI is subject to the Freedom of Information Act. But whereas the QAA is ‘committed to meeting its standards of openness and accountability’ (see its ‘Information Publication Scheme’ available at its website), the ISI is not, and conducts itself in secrecy even when carrying out public functions. The Department of Justice has informed me (by telephone, 7 March 2012) that the inclusion of the ISI within the remit of the Act is under ‘active consideration.’

How has the ISI organised itself to take on its new responsibilities? Every institution subject to ISI inspection must produce an organisational chart. But when I asked the ISI for a copy of its own organisational chart I was told that this was ‘not available to the public.’ Why this should be was never explained. What we do know – on the record - is that the ISI’s ‘head of communications’ acts also as its quality assurance supremo and that its chief inspector is also its chief executive: she is presumably, therefore, in line-management to herself!¹²

These matters must surely be of public concern, the more so when we realise that a great many of the institutions inspected for EO purposes by the ISI do in fact teach at higher as well as further education levels. Some, indeed, teach programmes at Master’s level.¹³ The scrutiny of these by inspectors (however conscientious and well-intentioned) whose inspectorial experience has not hitherto extended beyond that of the secondary school is deeply worrying to say the least. Scarcely less worrying is the complete absence of independent professional scrutiny of the manner in which the ISI carries out its EO work. Even a cursory review by Ofsted would (one hopes) be better than nothing, not least because Ofsted already publishes annual reports on the quality of the ISI’s school-related inspections. But it does so under the terms of section 162A (1) (b) of the Education Act 2002, and at the request of the Department for Education. This request does not encompass the ISI’s work in its new role inspecting private providers in the post-16 FE and HE sectors, which sectors are, in any case, beyond that Department’s current remit.¹⁴

The fact remains, however, that Ofsted is no more qualified to supervise the EO work of the ISI - insofar as that work bears upon the world of higher education – than is the ISI to carry out that work. The involvement of the QAA is, however, in principle far less problematic. Yet even here there are concerns that need addressing.

One has to ask why the QAA – or, for that matter, the ISI – agreed in the first place to become (in effect) an instrument of the immigration policy of the UK government. The ISI is typically secretive on this topic. But in the papers of the QAA’s Board of Directors (available at the QAA’s website) we are afforded a glimpse into the thinking of the Agency’s senior officers during the crucial early months of 2011.

Two years earlier, following a lengthy parliamentary inquiry, the QAA had been found wanting in the manner in which it carried out its core duties. The then chair of the House of Commons’ Committee on Universities had publicly accused the Agency of being ‘toothless,’ in that it had complacently presided over a decline in the academic standards of the HE sector as a whole.¹⁵

¹² Email from ISI Head of Communications to the author, 20 April 2012.

¹³ Typically, a student at a private college successfully completing – say – a business & management diploma at Level 7 of the National Qualifications Framework (or of the Framework for Higher Education Qualifications) will be eligible for admission to the final (dissertation) semester of an MBA degree.

¹⁴ Ofsted to the author, 30 April 2012.

¹⁵ House of Commons Committee on Innovation, Universities, Science & Skills, *Students and Universities* (London 2009), vol. 1, especially paras. 206-20. See also Rebecca Attwood, ‘MPs call for “toothless” watchdog to be put down,’ *Times Higher Education*, 12 March 2009:

The Committee's report, published in the summer of 2009, amounted to a public-relations disaster for the Agency. The approach by the UKBA in 2010-11 was evidently seen primarily as a welcome opportunity to restore the QAA's public image. It could be presented as a massive vote of confidence in the QAA and its work. It would extend the authority of the QAA, because any institution – however prestigious - 'failing' a QAA review would lose (or fail to gain) its Tier 4 sponsorship licence. And it would boost the QAA's income.

A paper prepared for the QAA's Board (1 July 2011) put the matter thus:

The EOP [Educational Oversight Project] is a highly significant development for QAA and UK HE. Not only will it represent the largest single programme of review activity since the termination of Subject Review, it will also extend QAA's safeguarding role into areas of HE provision not previously directly covered by our reviews. It will help to establish QAA as the single agency for the assurance of all types of HE provision and establish a common framework for the oversight of academic standards.¹⁶

In the course of research for this paper the author has been scrutinising the EO procedures used by both the QAA and the ISI¹⁷ and talking with senior administrators and owners of academies subject to inspection in this way. The two sets of procedures are alarmingly dissimilar. The QAA is not interested in auditing actual classroom teaching and makes no provision for this within its one- or two-day inspection visit. Nor does it monitor an institution's attendance policies. ISI inspectors, by contrast, do, but they also spend a great deal of time in the classroom, and for this purpose, and as has already been noted, the ISI apparently sees nothing untoward in authorising teaching observations by complete non-specialists. In the case of one private college (delivering both FE and HE programmes) two ISI inspectors spent (2012) two full days of a three-day inspection observing little apart from classroom teaching.

But both the QAA and the ISI are very expensive, and (presumably) deliberately so. A medium-sized college can expect to pay almost £20,000 for an initial inspection, plus (in the case of the QAA) an annual 'maintenance' fee of £4,000. The BAC and ASIC were charging less than half these amounts. At an ISI meeting in held in London on 23 January 2012 it was announced that annual re-inspections were being considered

<http://www.timeshighereducation.co.uk/story.asp?storycode=405759> [accessed 8 May 2012]; and G. Alderman, 'The right to award degrees must be vetted regularly,' *The Times*, 4 August 2009. 22.

¹⁶ 'QAA's role as an Educational Oversight body,' paragraph 4: <http://www.qaa.ac.uk/AboutUs/corporate/board/Documents/BD201123-EOP-Paper-23611.pdf> [accessed 8 May 2012]

¹⁷ ISI, *The Educational Oversight of Private Further Education and English Language Colleges: Inspection Guidance* (2011); QAA, *Review for Educational Oversight: Handbook* (2012). The QAA operates no less than three types of EO, each applicable to different types of institution offering HE programmes; but the basic principles governing these inspections are common to all three categories: <http://www.qaa.ac.uk/InstitutionReports/types-of-review/tier-4/Pages/default.aspx> [accessed 11 May 2012]

(although this is not a UKBA requirement), for which – naturally - an additional charge would be made. Little wonder that there were shouts of “extortion” from the audience.¹⁸

Amazingly, there is no written agreement between the Home Office and the ISI or the QAA covering their EO work and responsibilities. But the Home Office has apparently provided both bodies with deeds of indemnity. That means that, ultimately, the costs of any successful legal challenge to an EO inspection will be borne by the taxpayer. This itself seems to me to constitute sufficient grounds for a formal inquiry into the manner in which these essentially private bodies – the ISI and the QAA – now perform their public, immigration-related duties.

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¹⁸ The author was present at this meeting.