

For: EBC, OM, Perspectives, NCR, Blogs

THE GREEN PAPER ON HIGHER EDUCATION

The much-heralded and long-awaited Green Paper on Higher Education at last emerged from the BIS HQ on 6th November 2015 – ‘Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice’, Cm 9141, BIS/15/623. (The Consultation closes 15th January 2016.)

The media and blog-o-sphere speculation over the months running up to its issue has been mixed also with speculation about what the Government’s annual Spending Review (due 25th November) will mean for HE. Thus, we have had such questions posed as: Will the BIS pass to HE the hefty spending or ‘austerity’ cuts demanded by Chancellor Osborne? Will the Government follow a think-tank’s suggestion that significant public funding be shifted from HE to FE? Will the research councils be merged? Will more, or less, funding be put into research? Will there be a TEF to mimic the REF that then allows the £9000 tuition fee to increase at some universities? Might the REF be killed off, along with the HEFCE grant for the teaching of STEM and indeed along with HEFCE itself if there is no R-money nor STEM-dosh for it to divvy out? Could the QAA bite the dust? Will far-reaching legislation be proposed as an HE Bill 2016 designed to reduce entry-barriers for new HEPs and also to establish exit-regimes for existing HEPs that protect the student-consumer as a failed university winds up? Will such legislation seek to offer better consumer protection

to students generally? – might we get an HE regulator, an ‘OFHE’ or even an ‘OFTE’ wrapping up HE and FE; and should prospective students be given far more useful (and honest!) data about (say) seminar sizes or (horror!) on just how much/little of the £9k tuition fee is spent directly on undergraduate teaching? Will the terms of student loan repayments be changed? Will access and widening-participation funds be cut?

The Universities Minister, Jo Johnson, himself added to the speculation over a potentially tough and radical Green Paper when back in September he told the VCs at their UUK annual away-day that ‘teaching is highly variable across higher education’ with a ‘patchiness’ ranging from the ‘extraordinary’ to the ‘lamentable’. In some institutions there has been a focus on pursuing the cash and kudos of research at the expense of neglecting teaching: even to the extent of academics and students striking what he saw as a ‘disengagement contract’ - citing Palfreyman & Tapper, ‘Reshaping the University: The Rise of the Regulated Market in Higher Education’ (Oxford University Press, 2104). In fact, this is not an innovative analysis and a catchy phrase cleverly invented by my co-author and me – we were referring to David Riesman’s 1980 assessment of mass USA HE where the student-consumer seeking party time and the academic-provider wanting research time agree not to trouble each other too much. There is, as we put it, ‘a cosy convenient conspiracy’ whereby (in Riesman’s words): ‘Even the most shoddy, cut-rate, and cut-throat degrees are not necessarily frauds on the consumer. They may, in fact, be

examples of collusion between academic vendor and student buyer to secure a credential at some monetary cost but almost no cost in time or effort.’.

This is not, warned the Minister, ‘a contract I want taxpayers to underwrite’ and he expressed determination to ‘address’ shoddy teaching that ‘must be driven out of the system’. We do not know how all this went down with the huddled mass of VCs (the collective noun for such creatures in the 1980s as they gathered within the CVCP (now the UUK) was ‘a hot-bed of cold-feet’ in terms of their alleged feebleness in resisting the Thatcher funding cuts; today we might think in terms of an ‘ignorance’ of VCs as to what actually goes on at the chalk-face, or perhaps a ‘complacency’ or ‘arrogance’ in terms of not really caring anyway). He was, however, later publicly told off by one VC who – rather pompously – declared that he must not be seen talking down UK HE plc given its export earnings by way of recruiting international students: clearly, the Emperor must always be declared to be fully and finely clothed (despite so much evidence to the contrary in the annual HEPI surveys of just what teaching the students get and the damning ‘Which?’ survey of whether they can detect value-for-money). In fact, Johnson also warned the ‘hubris’ of VCs that they should correct for current ‘significant information asymmetries’ by providing ‘greater transparency’ on how the fee income is spent and on ‘what actual teaching’ will be delivered (each as called for by the influential ‘Which?’ whose website contains a depressing wealth of negative material about how HEIs sail close to the wind in ignoring

consumer law). And all this is indeed something the CMA has belatedly also recently begun to challenge universities about, usefully reminding them that under the Consumer Rights Act 2015 a University is simply in Law a ‘trader’ in the business of supplying a service (teaching and assessment) to the student-consumer... (Chapter 6 of Palfreyman & Tapper, op cit, on ‘The Student as Consumer’ and Chapter 12 on ‘The Student Contract’ in Farrington & Palfreyman (2012, Oxford University Press), ‘The Law of Higher Education’: a student-university Model Agreement is offered as a template on pp 443-447.)

So, while we still await news of possible funding cuts in the imminent Spending Review and several months after the Minister put the ‘denial’ of VCs on notice, what does his Green Paper propose to do about the 2015 State of HE and by way of building on the 2011 BIS document ‘Students at the Heart of the System’? The 2015 Green Paper runs to just over 100 pages and is to be greatly welcomed as an attempt to create a more effective market in HE and one in which the fee-paying student-customer is given better consumer protection.

Some edited high-lights...

‘This consultation contains proposals to reshape the higher education landscape to have students at its heart. Its core aims are to raise teaching standards, provide greater focus on graduate employability, widen participation in higher education, and open up the sector to new high-quality entrants... [also] to reduce the regulatory burden on the sector.’ (All indeed as

Palfreyman & Tapper in 'Reshaping the University...' could ever have hoped for!)

It notes that 'the graduate earnings gap is in decline' and that 'teaching has been regarded as the poor cousin to academic research' – hence the need for the proposed (manifesto commitment) TEF, and in addition for enhanced competition from new HE providers by way of 'a faster route to becoming a university' ('More choice between providers means that students can demand better value for money for their tuition fees.'). Moreover, 'we also propose to ensure protections are in place for students if an institution closes a course or exits the sector' – in real and efficient markets businesses do go bust (and need to do so if the market is to be effective – no zombie universities!).

Action is required to tackle 'imperfect information about teaching quality, course content and graduate outcomes', citing the annual HEPI surveys referred to above. And also to deal with the fact that 'teaching quality is variable' – the TEF will allow the highly-rated HEIs to up fees 'in line with inflation' from 2017/18 (say, CPI at 2% in 2017/18 thereby adding £180 for 2018/19 to the £9000 fixed from 2012/13?); and it 'should change providers' behaviour' (or some will just find themselves 'withdrawing from the sector' and thereby 'leaving space for new entrants'...).

But what is 'excellence' in the proposed TEF? To be considered via the Consultation and then 'the criteria and metrics used for the TEF will develop over time' as administered by 'a panel of independent experts

['convened for each discipline'] against an assessment framework' – that said, the BIS 'ambition for the TEF is far reaching', and may well include the HEI's 'track record' in relation to its 'having measures in place to facilitate the access and success of disadvantaged groups' (hence the OfS inherits not just what is left of HEFCE's functions but also rolls in the OFFA). The QAA one assumes, as a creature owned by the sector, might yet survive and be contracted by the OfS to provide it with the TEF assessments of HEPs – their 'teaching intensity', their students' 'learning gain', 'how they are addressing any issue of grade inflation', etc etc.

The TEF metrics will be 'valid... robust... comprehensive... credible... current...' – and will be applied across all HEPs 'in a consistent, transparent and fair way'. So, no great challenges there then! The focus, initially at least, will be on employment, retention, student satisfaction; and also taking into account 'student commitment to learning' (attendance at lectures and seminars?), 'training and employment of staff' (how much teaching is fobbed off onto casuals? – perhaps also asking awkward questions about whether the academics are teacher-trained?), and 'teaching intensity' (good news for the Oxford Tutorial approach? – as indeed experienced by the Minister himself as he 'read' Modern History at Balliol: see Palfreyman, 'The Oxford Tutorial', OxCHEPS 2008; with Chinese translation usefully available from Peking University Press!).

And attention must be paid, as already noted, to the exposure by the worthy and wonderful ‘Which?’ of HEPs ‘not complying with all of their legal obligations’ – as well as to the CMA 2015 guidance on the application of the Consumer Rights Act 2015 to the student-university contract (‘We will consider how the TEF can best drive best practice in compliance with consumer law...’ – Farrington & Palfreyman could ask for no more!).

The Green Paper mentions the possibility of radically invading historic university autonomy in the name of social justice by the OfS perhaps having the draconian power ‘to set targets for providers that are failing to make progress on agreed widening’. Depending on just what is meant by ‘targets’ and ‘progress’, this is potentially a major change in that it take OFFA beyond what it is at present prohibited from doing, by way of interfering with admissions, under the HEA 2004 that established it. Be clear – OFFA can lawfully demand only that PoshUni sets targets for increasing applications from disadvantaged socio-economic groups and is barred from requiring a University to achieve admissions targets of any kind. One awaits the ISC response to this Green Paper idea by 15th January! (Fewer Jo Johnsons getting into Oxford from public schools and Home Counties posh postcodes, and all those massive school fees wasted - and (once again, as in the 1960s/70s) more oiks such as the author from a State school and Manchester cluttering up Oxford colleges?)

There is need ‘to transform the regulatory landscape’ now that ‘the majority of funding for course costs flows

through students’ – time for ‘the Office for Students (OfS)’ as ‘a new regulator and student champion’, overseeing ‘an open, market-based and affordable system’. This new entity would also oversee the faster single route for new entrants to the HE market, controlling the allocation of Degree Awarding Powers and the use of the title ‘University’ – and replacing the role now undertaken by the quaint old Privy Council. Most of this, of course, will need primary legislation. The OIA and UCAS would each continue to be ‘sector owned’; while the BIS itself might organise the distribution of the remnants of good old UGC-style teaching grants (mainly the £1500 or so top-up for STEM courses). The OfS would be financed by a sharing its costs across the HEPs it regulates. The suggested HE regulatory model borrows heavily from that developed since the 1980s as former nationalised industries (telecommunications, the utilities, etc) have been deregulated and privatised – OfWat, OfCom, etc.

The Secretary of State will direct the OfS – end of the very English constitutional concept of the 1919 UGC as a buffer of old academic buffers mediating between the State and independent universities, a concept steadily watered down by the shift to the UFC and then to the businessmen- dominated HEFCE. There will also be a power for the BIS ‘to enter and inspect’ (!) HEPs if there is reason to suspect ‘a breach of the conditions of receipt of (direct [research funds?] or indirect [H/EU tuition fees financed by loans?]) public funding’. (This may well stem from the frustration of Ministers when confronted by the

financial scandals and governance failure at a few HEIs in recent years.)

As a piece of 'Further deregulation' the HECs, as are most of the post-92 ex-poly universities, will be granted the same legal freedoms as the chartered pre-92 entities: the latter are legal persons with the same legal powers as a biological person, while the powers of the former are only what their statutory basis under ERA 1988 permits (ie 'unnecessarily restrictive and burdensome' such that their legal framework and constitution may 'stifle innovation and growth'). The HEC could, for instance, elect to dissolve itself and become, say, a limited charitable company (as is the LSE or London Met). And the Privy Council could lose its power to approve changes to the 'governing documents' of HEIs, the task being transferred to the OfS in terms of protecting any 'public interest'.

The Green Paper suggests improving 'the research funding landscape to make it more strategic, coherent and effective' – so, probably the exit of HEFCE from any role and enter some entity in accordance with the impending Nurse Review? The REF, at an estimated cost of £250m (sic) for the 2014 version (cf £65m or so for the 2008 RAE), needs to be simplified and its burden/cost reduced – ideas to the BIS by 15/1/16, please.

On 'Provider exit and student protection' the Green Paper proposes that the HE industry and/or all HEPs individually should set up an exit process for failed HEPs that duly protects 'the interests of the student' – and failure might, in extreme circumstances, include being ushered out of

existence ‘as a result of regulatory activity by OfS’! The exit scheme would either somehow offer continuity of study (other HEIs taking in the students?) or appropriate financial compensation (not that, as yet, any Court has definitively assessed the range and level of such a damages award under contract law...), the cost perhaps funded through ‘an insurance policy, a bond, reserve funds, or Escrow accounts’. Consideration of OfS-inspired ‘mergers, amalgamations, acquisitions or restructuring’ would also be relevant (all, of course, subject to ‘the formal Insolvency Regime for any type of provider’...).

The consultees, thee and me and anybody and everybody (legal person or real human), will now need to decide whether and how to respond on any or all of the above, perhaps in the context of considering whether the Green Paper helpfully take English HE in the right direction or in total it amounts to the worrying nationalisation of English universities (in much the same way as, arguably, via a different mechanism, the Scottish universities are about to lose their institutional autonomy...).

Now, as a bit of light relief after all that HE policy stuff a couple of historic comments on teaching in universities, as arguably the key theme of the Green Paper...

First, on the dumbing-down that seemingly has been going on since Abelard studied at Paris in the twelfth-century, as expressed by ‘more means worse’ Kingsley Amis in ‘Lucky Jim’ (1954 – before even the 1960s Robbins expansion, let alone 1980s massification): ‘It’s the same everywhere you look; not only at this place, but all provincial universities...

my God, go to most places and try and get someone turfed out merely because he's too stupid to pass his exams – it'd be easier to sack a prof...'. On the sacking of incompetent and lazy profs delivering dull teaching, Amis (himself then a Lecturer at Swansea University) may have been thinking of the mid-1940s Bruce Truscot (a pseudonym for a real-life Professor of Spanish at Liverpool University) who wrote of 'a large number of idle professors' holding 'life appointments for the lazy' and doing nothing once tenure had been safely secured leaving them occupying 'one of the softest jobs to be found on the earth's surface'. Certainly his 'Lucky Jim' character, Jim Dixon, finds his departmental heavily tweed-suited pompous Professor Welch distinctly unimpressive in academic terms and has Dixon telling the newly-installed businessman Chancellor that 'Bad teaching's the main thing. Not bad students...'. And the NUS mid-1940s' surveys of university teaching read much like a 'Which?' report on student (dis)satisfaction in 2015!

Second, the ever-thus problem of idle and unmotivated, or innocently under-prepared, undergraduates as identified in Newman's 'Note on the Role of the College Tutor' (1854 – would Newman have to amend his guidance for dealing with the student-customer of 2015?): 'It will be prudent in him to anticipate, in the case of many of his charges, little love of study and no habit of application, and, even in the case of the diligent, backwardness and defective or ill-grounded knowledge... [There follows advice on handling 'the more promising' tutees with a light touch, while as for 'the backward'] he will force upon them the fact of their

wanting of grounding and other defects... [And for ‘the idle’] he will be in the practice of sending for them [and] treating them throughout with good-humour, but with the steadfastness of the superior...’. Of course, in 2015 he (and now she) as the front-line academic may well be an adjunct on a temporary or even zero-hours contract providing cheap teaching labour, and thus adding to the great mystery of just what the University spends the £9000 pa on – other than, in some cases, heavily subsidising its research activity and in most cases other than servicing the vast new debts taken on to build glitzy new infrastructure and on the bloated layers of over-paid and under-competent management! The 2016 HE Bill might usefully force HEIs to employ independent forensic accountants to identify the actual direct cost of undergraduate teaching?

Finally, I fear, however, that, with regard to the Green Paper’s entirely laudable intent to introduce greater consumer protection for the hapless fee-paying undergraduate, the teaching quantum and quality in undergraduate HE is at present protected only by the role of professional bodies in those vocational courses (medicine, nursing, law, surveying, engineering, etc) where the gaining of the degree is also an entry to a regulated activity keen to control access and standards. The proposals in the Green Paper will, sadly, probably do as little in relation to the bulk of university teaching as the QAA, the CMA, and the thickening layers of fancy PVCs (The Student Experience, Teaching Quality, Learning Enhancement, etc) have achieved, and hence we must

await the ultimate force for consumer protection of the student-customer: the arrival of the MumsNet generation of students in the few years' time.

These vociferous and articulate Mums of Islington will be challenging via social media and the CEO's personal email address the 'squirm' of VCs when they discover that for Jocasta's £9000 she has reached the end of Term 1's overcrowded lectures with the zero-hours grad student adjunct leading related seminars of 25 or more and has yet to submit any written work - or is now in Term 2 sans any face-to-face feedback on Term 1's modest assignment, or is in Term 3 and all lectures & seminars have ceased! (A sorry state of affairs based on a young relative's experience at a mighty Russell, and countless colleagues' reports of 'the student experience' for their nieces and nephews across the HE industry – Shame on the 'misrepresentation' of VCs, even if, one hopes, it is merely (innocent or recklessly) negligent misrepresentation and never (deliberately) fraudulent...)

Pending this new force impacting on English universities, we must rely on the good survey work of HEPI (albeit, of course, studiously ignored by UUK – a 'short-sightedness' of VCs?) and on the power of 'Which?' (albeit not yet deploying its nuclear weapon under the Consumer Rights Act) – but preferably reinforced by a few timely CMA-inspired prosecutions by local trading standards departments as the enforcers under the CRA15 of the most dodgy university 'traders'...

David Palfreyman, OxCHEPS (9/11/15)