

INDEPENDENT HIGHER EDUCATION

IHE response to the OfS consultation on payment of fees for investigations

April 2023

Independent Higher Education (IHE) has sought to address the core issue of payment of fees for investigations and the guidance provided. There are however concerns expressed by our members on the overall considerations OfS will prioritise when setting an investigation, its method and weighing the choices of OfS through the course of the investigation, against the findings to determine a cost. Therefore we are including concerns wider than the core consideration of this consultation.

Recognising the impact of costs

1. **In all cases OfS should recognise the impact that the cost of an investigation can have on the student experience. The costs of investigation will inevitably be born by students as the primary if not only source of income for most higher education providers, but especially smaller higher education providers, is student fees.**
 - a. OfS should consider each decision in process for initiating and designing an investigation with the same level of transparency and accountability students would expect from their individual providers. They should be accountable to the students of that provider for the costs they have levied as it is their funds they are spending.
 - b. It should be clear to students how decisions to conduct an investigation are made. OfS should publish a scheme of delegation that is accessible to students. This must be addressed before providers pay the costs of investigations that should not have been launched.
 - c. OfS should consider the percentage of student fees to be spent on the investigation in applying the fee. Where there is a high percentage of the fee

going to the investigation, OfS should consider waving some costs to reduce the impact on students.

Greater accountability and transparency

- 2. Providers should be informed when an investigation is likely, and not after an investigation as begun. OfS should not make providers liable for an investigation they have no knowledge of.**

Independent Higher Education providers have withdrawn from the Office for Students, or decided not to register due to the disproportionate costs of registration to the benefits. It remains the case that these costs remain disproportionate and the costs of investigations, particularly for smaller providers, could exacerbate that problem. OfS need to be clear when a decision has been made to launch an investigation and the potential costs, so providers can make decisions to meet these costs or withdraw as the costs would not be affordable or a good use of student funding.

- 3. OfS should clarify where their activity following a reportable event (para 13) would be part of core business, and where it would be covered under "investigations" in this guidance.**
 - a. OfS has core activities related to evaluating the risk of reportable events. These are often standard processes and not investigations. OfS should be clear where the process of assurance in reportable events moves to investigation.
 - b. There are activities that are more common in some types of providers, and should be core business of OfS to manage, rather than something which incurs an investigation that the provider should pay for. This includes things like a change of ownership or governing body, which are common in corporate providers but not in charities. The investigation process should not bias types of providers where reportable events may be more common but there is little to no evidence of issues where an investigation is warranted.

- 4. We disagree that OfS should charge for making a decision to conduct an investigation.**

Para 21 states that "making and communicating a decision to conduct the investigation" is part of conducting an investigation. We argue that making a decision to conduct an investigation is part of the core responsibilities of the OfS, and is inextricably linked to the processes of assuring compliance with their regulatory framework. The decision to conduct an investigation should be made through the appropriate committees and with sufficient evidence from the processes outlined in the regulatory framework as core activities of OfS (for example the processes for establishing a breach of B3 as published in October 2022). Providers should not expect to pay for the work of core committees within OfS such as the Quality Assurance Committee or the Provider Risk Committee who should make the decision to open an investigation, in the interest of transparency and accountability.

Costs and payment expectations should be more transparent

- 5. OfS should develop a schedule of indictive costs.** We have seen how indicative costs can be established in previous quality baseline and assessment for degree awarding powers. Clear expectations of the costs for different types of methods were possible to assess at a day rate. OfS should seek to replicate this model to ensure providers can estimate the costs of investigations. Investigations are likely to follow a recognisable

pattern to ensure they are done consistently and approximate costs can be attributed to this.

6. **OfS should seek to clarify how will costs be attributed for collective investigations? Where OfS is investigating cases involving a partnership, at what point will it become clear which of the partners will cover the fee for the investigation and to what extent?**
 - a. Para 17 notes that fees are paid by the provider whose activities are the subject of the OfS investigation. This is not however clear where providers are part of a join investigation, or there is an investigation into activities which form part of a partnership. There is specific concern where OfS has not defined what happens if the activities that are the focus of the investigation are of an unregistered partner?
7. **OfS must specify when they will notify providers of the cost for an investigation. This must be timely.** We have examples of OfS levying fines for other things two years after the initial decision on a breach of conditions. OfS should set clear expectations on when they would notify the provider of the cost of an investigation.

Micro providers

8. Micro providers should not pay the full fees for investigations

Micro providers are currently subsidised for OfS registration fees owing to the considerable impact of these costs on the provider and their students. Micro providers make up less than 4% of the register. The costs of investigations are unlike to vary considerably by provider size, although we can accept that there are some aspects where size can impact the complexity of an investigation. The cost of an investigation can be considerably detrimental to students.

Third party contractors in investigation

9. IHE have considerable concern on the use of third parties in investigations and the costs associated with these.

During the registration process OfS employed third parties to undertake governance assessments of some providers and many of these assessments were undertaken without due care, resulting in poor quality reports that supported neither OfS's nor the providers objectives. OfS must exercise caution and ensure that any third party engaged has the necessary training and support to undertake their role and has demonstratable expertise in higher education. Need a proper tendering process.

Points of clarification

10. **Para 30 of the consultation states that OfS should allow not less than 14 days for representations.** OFS should clarify if this refers to 14 working days, and if these are working days for OfS or the provider. OfS should seek to respect where providers have office closures over religious or national holidays specific to the provider and their student body and allow additional time for a response.