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Regulating fair access to higher education in England, 2006-2021

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Abstract

In this Working Paper, presented as a CGHE webinar on 11 January 2022, the UK's former Director for Fair Access and Participation in the Office for Students, Professor Chris Millward, in a personal statement, reflects on 15 years of work on higher education access in the context of successive changes in the funding and regulation of higher education in England. The paper addresses three questions. What issues have access regulation in England sought to address? How have the access regulators pursued this and what has been learned? How might this change and what might be the effects? Professor Millward finds that the dominant pattern has been one of expanding opportunities to access higher education, but no progress yet on equality of opportunity. The paper also finds that policy and practice have failed to improve access for people entering later in life, part-time, through further education and while in work. 'Progress in this domain requires universities, colleges and employers to work together.' Concerned that policy may conclude from recent experience that it is necessary to reduce the number of people entering higher education, the author argues that what is needed instead is 'a new settlement for tertiary education in England, which enables the continued expansion of higher education to new people and places, whilst diversifying the modes of study and routes taken.'

Keywords: higher education regulation, funding, fair access, higher education in England

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Introduction and summary

This working paper – and the CGHE webinar on 11 January 2022 accompanying it – provides a personal perspective on the regulation of fair access in England, prompted by an invitation from Professor Simon Marginson to share my experiences when the Office for Students (OfS) announced that I would be ending my four-year period as the Director for Fair Access and Participation (DFAP) at the end of 2021. The intention, in Simon’s words, is to ensure that lessons learned are on the record. In January 2022, I commenced a new role as Professor of Practice in Education Policy at the University of Birmingham, which is concerned with the relationship between government policy and educational practice. I am grateful, therefore, to the Centre for Global Higher Education (CGHE) for providing a first opportunity for me to address this.

The DFAP is a statutory role responsible for promoting equality of opportunity in relation to access to and participation in higher education by students from under-represented groups. This is primarily delivered through the agreement of access and participation plans, which are required from universities and colleges if they wish to charge fees to their domestic undergraduate students above the basic level of £6,000 and up to the maximum level of £9,000¹. The role sits on the board of the higher education regulator, the Office for Students, which was established by the 2017 Higher Education and Research Act (HERA), and builds on the work of two previous Directors for Fair Access (DFA), who led the Office for Fair Access (OFFA) since its establishment by the 2004 Higher Education and Research Act.

In order to understand the approach taken during my period in office, I believe that it is important to consider the period preceding it, particularly the positioning of access regulation within the broader reforms made to the funding and regulation of higher education from 2006 and 2012. Both sets of reforms were intended to enable the continued expansion of places and widening participation by sharing an increasing proportion of the cost with students above an income threshold beyond graduation. For this reason, my narrative begins with the period from 2006 until 2018, drawing on

my experiences of working on higher education policy in England at that time, as well as the published legislation, guidance, accountability reports and media coverage.

I joined the Higher Education Funding Council for England (HEFCE) in 2006, working initially on the expansion of higher education to new places under a Labour government until 2010, then the transition to a system driven by student choice under a Conservative-Liberal Democrat coalition from 2010, and ultimately market regulation through the establishment of the OfS by the Conservative governments in power from 2015. So, my experiences straddle the transition from a funding body to a regulatory relationship between government and higher education in England, which itself influenced the approach to access regulation.

Clearly, the analysis and conclusions in this paper must be qualified by its subjectivity and immediacy. It is particularly difficult to draw conclusions on current government policy due to the coronavirus pandemic, coupled with its uneasy coalition of interests, preventing it from reaching a settled policy towards higher education two years on from its election. As I explain at the end of this paper, the current government has suggested that too many people now enter higher education, changing course from the pursuit of increasing and widening participation set by its predecessors during the 21st century to date. Yet it has also taken steps through the 2020 and 2021 admissions cycles to maximise the number of places available and we have seen record levels of entry. Was this a temporary response to mitigate the effects of examination disruption during the pandemic? Or does it signal that rhetorical statements about limiting higher education participation ultimately carry less weight than the difficulty – highlighted by the former higher education minister David Willetts in his book on university education² – for any government to tell parents from the steps of the Universities and Colleges Admissions Service (UCAS) that their child cannot have a university place? Perhaps the response to the 2019 Post-18 Review of Education and Funding³, which is expected finally to be published during 2022, will clarify this.

I have not in this paper tried to compare our experiences in England with other countries. It can, though, be said that whilst the model of access regulation pursued

in England is unique, it provides lessons for other countries that may be considering how to increase higher education participation by liberalising its financing, whilst minimising the effects on the most disadvantaged students. We can no doubt also learn lessons from other countries' approach to enabling progression through tertiary education, locally and nationally, which I advocate at the end of this paper.

With these qualifications, the paper aims to answer three questions: what issues have access regulation in England sought to address?; how have the access regulators pursued this and what have we learned?; how might this change and what might be the effects? Its conclusions in relation to these questions are summarised below.

When it was first introduced from 2006, regulation of access agreements by the Director for Fair Access made it possible to continue to increase participation and funding levels in higher education, whilst minimising the cost to the government through increasing tuition fees, from which a proportion would be devoted to financial support for the most disadvantaged students. This was one contribution to the pursuit of a knowledge-based society, within which the expansion of educational opportunities was intended to enable people from all backgrounds to succeed on the basis of merit.

From 2010, there was a re-affirmation of the vision for widening participation in higher education set out when access regulation was introduced. The government was able to continue to increase participation and funding levels in higher education, whilst minimising the cost to itself by increasing tuition fees. Access regulation not only provided assurance that this would not serve as a barrier for the most disadvantaged groups, it sought actively to improve their prospects and there was greater reliance on regulation of tuition fee investment, rather than government grant, to achieve this. Access regulation was again positioned as compensatory, albeit with greater investment and activity due to the weight of expectations flowing from higher tuition fees and the broader consequences of fiscal retrenchment.

Students from all backgrounds increased participation between 2006 and 2018, so there was an expansion of opportunity, rather than progress on equality of opportunity. Much of the expansion was delivered by lower tariff universities and there was limited progress in the most selective universities, which lead disproportionately to the highest paid and most prestigious jobs. There was a decline in mature student participation, particularly for part-time study and courses below the level of a full degree, and entrenched patterns of differential outcomes: both at a system level, due to the most disadvantaged studying disproportionately in those universities with lower retention rates, and lower rates of graduate employment and earnings; and within individual universities, most strikingly between the proportion of white and black students achieving the top degree grades.

Despite moving into a new regulator from 2018, access regulation continued to support the vision for higher education and social mobility pursued by previous governments and regulators. Using the broader powers and levers available to it, OfS positioned access and participation more centrally within the overall approach to higher education regulation and funding. This involved a shift from focusing on inputs, such as the provision of financial support to mitigate the effect of tuition fees and outreach to raise aspirations, to improving entry and outcomes across the student lifecycle, and the engagement of all parts of institutions with their access plans, which now explicitly included successful participation. It was underpinned by the establishment of a sector-level infrastructure in the form of common data, sharing of good practice and evaluation findings, and collaborative outreach partnerships across the country. Also by challenging universities and colleges to re-conceptualise equality of opportunity, as the statutory basis for access and participation plans, and their judgement of merit within admissions.⁴

During the coronavirus pandemic, grading and admissions data suggest that the poorest students and communities have fallen further behind. Record numbers of students have entered higher education from the most disadvantaged neighbourhoods, but even more from the most advantaged, particularly in the most selective universities. The pandemic is yielding a continuation of the patterns we have seen during the last two decades: expanding opportunities to access higher

education, but no progress yet on equality of opportunity. This creates a problem for university admissions decisions in the future, particularly if the number of places available to an expanding young population becomes more limited, which is now a serious prospect due to the different position the current government is taking towards higher education access and participation compared with its predecessors.

Instead of focusing on improving entry to their own institutions, the government has asked the regulator to drive universities to work more closely with schools, and specifically to focus on attainment raising. This is part of a broader vision within which school grades influence whether young people pursue academic routes into higher education or technical routes into further education and work. Tertiary education in the 21st century cannot, though, simplistically be divided between academic and technical routes. It is academic, technical, professional and creative, reflecting demand from students, but also the character of work and the demand from employers for broad and adaptable cognitive abilities, as well as specific skills. During my period as Director for Fair Access and Participation, the issue we failed to address is the improvement of access for people entering later in life, part-time, through further education and whilst in work, which requires universities, colleges and employers to work together. The demand-led system operating in England since 2012 has led to further concentration of undergraduate provision around a young, full-time, full degree model direct from school, which maximises the influence of inequalities flowing from school and minimises calibration between higher education and the workplace. Access regulation has been focused on individual institutions addressing inequalities within their existing patterns of provision, rather than changing it to meet the needs of students of all ages, communities and employers.

We need, then, to craft a new settlement for tertiary education in England, which enables the continued expansion of higher education to new people and places, whilst diversifying the modes of study and routes taken. That requires universities to figure centrally within the government's strategy for levelling up across the country, the post-18 education strategy to be focused on collaboration and progression between further and higher education, and access regulation to be positioned in support of this.

Establishing the access regulator

The role of Director for Fair Access was proposed in the 2003 White Paper on the future of higher education⁵ and established by the 2004 Higher Education and Research Act⁶. This was timed to commence alongside measures to enable universities to charge their domestic undergraduate students fees higher than the current level of £1,000 and up to a new maximum of £3,000, subject to commitments to promote equality of opportunity through an Access Agreement negotiated with the new Director.

The broader higher education reforms were intended to enable increasing higher education participation towards a target of 50% of the young cohort announced by the then Prime Minister Tony Blair in 2001, heralding a society ‘that is open and genuinely based on merit.’⁷ The commitment to expanding higher education was one element of the government’s pursuit of a knowledge-based society, within which greater choice and investment across the education system, coupled with open social and economic policies, would enable equality of opportunity and social mobility.

The government had concluded that an increase in fees was essential for increasing participation whilst sustaining the quality and standing of English universities, and that the squeeze on the unit of resource for each student under previous governments should not be repeated. It faced difficulties, though, persuading its own MPs in parliament, so together with measures to link re-payment to earnings and improve maintenance grants, the establishment of an ‘access tsar’ was intended to provide assurance that the fee increase would not deter, indeed would improve, participation by students from disadvantaged backgrounds, including in the most selective universities.

The then Education Secretary Charles Clarke summarised the case for the proposals at the start of his speech to parliament before the vote, stating that:

‘The barriers to access to university need to be lowered. The measures I'm announcing today mean that disadvantaged students will get financial support to study what they want where they want...Universities need more investment. Vice-chancellors will tell you that these proposals generate hundreds of millions of pounds new money for them to spend on improving the quality of teaching and compete with the best universities in the world.’⁸

These two imperatives – improving access to and quality in English higher education – would prove crucial to further increases to tuition fees once the fiscal environment had become more challenging. At this point, though, tuition fees and their deployment through access agreements would be additional to the existing funding provided to universities and colleges through the HEFCE teaching grant. This meant that the activity within Access Agreements would supplement widening participation programmes such as the Aim Higher outreach partnerships, Lifelong Learning Networks and new HE centres supporting collaboration between further and higher education across the country, and the expansion of routes developed with employers such as Foundation Degrees. It would also be underpinned by formula funding and additional places to incentivise the recruitment of students from under-represented groups.

The Education Secretary’s commitment to provide financial support for disadvantaged students would be central to the initial approach taken by the first access regulator Professor Sir Martin Harris. As a former President of Universities UK and Vice Chancellor of the universities of Manchester and Essex, he would be well placed to land the new requirements with a sceptical sector and promised a collaborative approach rather than the imposition of quotas.⁹

The first guidance to the new Director set him up well for this approach, stating that:

‘It is for institutions to make proposals to you for what they undertake to do to safeguard and maintain access...there has been concern that the poorest students applying to higher education may be put off because of the

perceived deterrent of higher fees...for this reason a central plank in our policy is to ensure that this perceived deterrent is minimised'¹⁰

The guidance also encouraged a broad definition of under-represented groups, minimising bureaucracy by focusing on those institutions making the least progress on widening participation and ensuring that students know about fee levels and financial support before they make their choice about where to study. Sanctions could be applied in the event that commitments were not honoured, either through an instruction to HEFCE to reduce grant or ultimately refusal to renew a plan and thereby prevent the charging of higher fees. This last measure – later to be described as a 'nuclear button' once universities became more reliant on higher level fees – would, though, be subject to independent review. The guidance was itself based on the secondary legislation governing access agreements, which has changed little during the 15 years since, notwithstanding fundamental changes to the scope and scale of the activity regulated, and the level of scrutiny and expectations from government, universities, students and the media.

Whilst the approach set out in the guidance may be considered to be nuanced, enabling institutions to address the particular barriers to access they could identify in their own context, it included two assumptions that would ultimately be proved wrong. Firstly, that finance would be the most important barrier to students from under-represented groups accessing higher education; secondly, that only the most selective universities – which were also the ones making least progress on widening participation due to the strong link between social background, school attainment and university admissions in England¹¹ – would be able to command higher fees.

Both assumptions gave insufficient credence to the weakness of the price mechanism in a system where student demand was strong and growing, and the ultimate price to the student would be the cost of loan re-payment, rather than the up-front fee paid by the government. They also underestimated the ability of teaching intensive universities to demonstrate that they could meet the ambitions of students and families across the country, a perspective that has continued since, no doubt

influenced by the predominance of graduates from Oxbridge and other highly selective universities among ministers and advisers.

In the first year of the new fee regime in 2006-07, the new Director and the Office for Fair Access (OFFA) supporting him negotiated spending of £99m on bursaries for disadvantaged students and £21m on outreach from 96 higher education institutions, which was around 20% of the additional fee income gained.¹² By 2011-12, the level of investment had increased to £387m on bursaries and £58m on outreach by 122 higher education institutions and 67 further education colleges, but this was again around 20% of the additional fee income, reflecting inflationary increases to fee levels, increasing student numbers and more universities and colleges than initially expected seeking access agreements in order to charge higher level fees.¹³

In conclusion, when it was first introduced from 2006 access regulation made it possible to continue to increase participation and funding levels in higher education, whilst minimising the cost to the government by increasing tuition fees and using a proportion of them to provide financial support to students, so they would not serve as a barrier to access for the most disadvantaged groups. This was one contribution to the pursuit of a knowledge-based society, within which the expansion of educational opportunities was intended to enable people from all backgrounds to succeed on the basis of merit. The compensatory role of access regulation may be considered to be analogous to the government's broader use of increasing tax receipts within a growing economy to address concerns about inequality, indeed its tolerance of inequality on the basis that improvements to education would enable meritocracy.

A step change in scale and scope

In its first year, OFFA heralded 'a diverse range of creative financial packages' focused on 'the need to ensure that no one is deterred from applying to higher education on financial grounds'.¹⁴ By 2011, though, it was encouraging institutions to 'concentrate more on the outcomes of their work', not least because 'although

participation has widened significantly across the sector in the last five years, this has not been the case at the most selective universities.’¹⁵

This shift was caused by two developments. Firstly, statistical analysis suggesting that the bursary packages being offered through access agreements were not affecting student behaviour, nor access to the most selective institutions, concluding that:

‘The introduction of bursaries has not influenced the choice of university for disadvantaged young people; applications from disadvantaged young people have not changed in favour of universities offering higher bursaries; disadvantaged young people have not become more likely to choose conditional offers from universities offering higher bursaries; since bursaries were introduced most of the increase in the participation of disadvantaged young people has been in universities offering lower bursaries.’¹⁶

Secondly, the imminent trebling of re-payable tuition fees from 2012-13. This had been recommended by an independent review commissioned by the Labour government, anticipating pressures on the funding of universities following the banking crash, but it was implemented by a new Conservative-Liberal Democrat coalition government intent on fiscal retrenchment. The Liberal Democrats had pledged to remove rather than increase tuition fees during the election campaign, but it fielded Vince Cable as the Secretary of State responsible for higher education in a business department, within which higher education was the biggest budget line.

By switching £3 billion teaching grant to re-payable tuition fees from 2012-13, the department identified that it could preserve quality and participation levels in higher education, whilst making its contribution to the overall reduction in public spending enshrined within the coalition agreement. For the majority party, this had the added benefit of strengthening consumer choice and competition in higher education. For the minority party, it would carry a political cost, which it would seek to mitigate through its guidance to the access regulator and by championing investment in a pupil premium intended to address inequality in schools.

Those universities charging above the new basic fee of £6k and up to the new higher fee of £9k, which again the government expected to be only the most selective, were told that they would be expected to contribute one third of the additional fee income to their access agreements, an arrangement that is still described as a tax on the higher fee. This would also be re-negotiated each year, so that increasing tuition fees could be accompanied by increasing investment.

By the first year of the new fee and access regime, the Education Secretary had appointed Professor (now Sir) Les Ebdon as the new Director for Fair Access, a former Vice Chancellor who had started his career as a research scientist at Imperial College, but spent most of his career in universities more focused on local accessibility. At his appointment hearing before the Education Select Committee, he signalled greater challenge to the most selective universities, telling the Education Select Committee that ‘if you ever say that you will never press the nuclear button, you do not have a nuclear button’.¹⁷ The appointment was opposed by some Conservative members of the government, particularly in the Department of Education, which considered that progressive university access policies could undermine their reforms to school standards.

Notwithstanding this, the Secretary of State confirmed the appointment and issued the most forthright guidance to the Director yet, stating that:

‘we want to encourage you and the higher education sector to focus more sharply on the outcomes of outreach and other access activities rather than the inputs and processes....progress over the past few years in securing fair access to the most selective universities has been inadequate...in the new Access Agreements, institutions should agree with you a programme of defined progress each year.’

The guidance also asked the new Director to report on his experience, including:

‘any recommendations you wish to make about ways in which the approach could usefully be strengthened, including any additional powers or

requirements that may be needed in order to secure rapid progress. We will want to consider your report as we consider future legislation.¹⁸

The concern to see progress on outcomes represented a step change from the previous focus on financial support to mitigate the effect of higher fees. Despite this – and the intention stated in the guidance that ‘graduate contributions of £9,000 should apply only in exceptional circumstances’ – the government did not ultimately strengthen the Director’s powers. Nor did it pass the legislation that was needed to protect the investment made by students and government due to the reduced influence of HEFCE’s grant, and thereby the financial memorandum, which was the mechanism for regulating universities and colleges. This was due to Liberal Democrat concerns that their own MPs would not support any legislation relating to higher education, given the political cost of reversing its position on tuition fees. The government would also prioritise the symbolism of demonstrating financial support for students through a £150m National Scholarship Programme ahead of the evidence that financial contributions of this kind had little influence on student behaviour, subsequently confirmed by the evaluation of the scheme.¹⁹

Most universities charged the highest fee, enabled by high demand from young students, again recognising that the price they were charged would not be the cost they would ultimately pay, as well as its value to them personally and professionally compared with the alternatives. Given the expectations set before the first year of the new fee regime, this led to substantial increases in access agreement investment. In 2012-13, universities and colleges spent £564m through their access agreements, including £74m on outreach and £417m on financial support for students.²⁰ In OFFA’s final year of operation in 2017-18, this had increased to £785m, including £152m on outreach and £396m on financial support.²¹ As these figures make clear, access agreements also included an increasing element of investment attributable to success on course, which supplemented the sustained funding for this through the HEFCE grant, though in my experience the attribution of investment commitments to this differed significantly between institutions.

HEFCE and OFFA's joint approach during this period was set out in a National Strategy for Access and Student Success published in 2014. The strategy demonstrated the breadth of work made possible by the investment through increasing tuition fee income, extending from direct support for students before and during their time in higher education to the use of data, evaluation and insights on the barriers experienced by different groups of students. It also described the relationship between the vision for expanding access to higher education and the government's broader socio-economic mission at that time:

'Widening participation to higher education is about ensuring that students from disadvantaged backgrounds can access higher education, get the support they need to succeed in their studies, and progress to further study and/or employment suited to their qualifications and potential. Social mobility is the outcome that the Government wishes to see: a society becoming less stratified by socio-economic class....Higher education benefits everyone. It helps individuals to unlock their potential [and] it is one of the best pathways to achieving a rewarding career...It also benefits the wider economy – creating jobs, helping businesses prosper by providing them with highly qualified and skilled staff, and stimulating long-term economic growth, innovation, and competitiveness in the global economy.'²²

Despite the change of government, this statement demonstrates a re-affirmation of the vision for widening participation in higher education set out when access regulation was introduced ten years earlier. From 2012, the government was able to continue to increase participation and funding levels in higher education, whilst minimising the cost to itself by increasing tuition fees. Access regulation not only provided assurance that this would not serve as a barrier for the most disadvantaged groups, it sought actively to improve their prospects and there was greater reliance on regulation of tuition fee investment, rather than government grant, to achieve this. Access regulation was again positioned as compensatory, albeit with greater investment and activity due to the weight of expectations flowing from higher tuition fees and the broader consequences of fiscal retrenchment. This was broadly the

settlement in place until the end of OFFA and the establishment of OfS in 2018, so it is worth reflecting on what was achieved.

Assessing progress and legislating for change

During the period from 2006-18, access regulation, coupled with measures to increase places in higher education, financed by sharing the cost with students through re-payable loans, succeeded in increasing young higher education participation in England, including among under-represented groups. Although the Labour government's 50% target for the young cohort was abandoned by its successors from 2010, their strategies for continuing to widen participation enabled it to be achieved in 2019.

This achievement must, though, be qualified. Students from all backgrounds increased participation across the period, so there was an expansion of opportunity, rather than progress on equality of opportunity.²³ Much of the expansion was delivered by lower tariff universities and there was limited progress in the most selective universities, which led disproportionately to the highest paid and most prestigious jobs.²⁴ There was a decline in mature student participation, particularly for part-time study and courses below the level of a full degree.²⁵ And there were entrenched patterns of differential outcomes: both at a system level, due to the most disadvantaged studying disproportionately in those universities with lower retention rates and worse rates of graduate employment and earnings; and within individual universities, most strikingly between the proportion of white and black students achieving the top degree grades.²⁶

There were a number of reasons for this. Despite pupil premium investment, progress on the attainment gap between the most and least advantaged students in state schools flattened, then began to worsen²⁷, and competitive pressures encouraged universities to pursue students they could identify as the 'brightest and best'²⁸, whose entry grades would figure positively within league tables. Incentives within the student finance system encouraged universities to focus on young, full-time, full degree, direct entry, which would maximise fee income and minimise costs

by enabling the alignment of teaching, accommodation and services to a similar profile of domestic and international students, rather than shorter-cycle and flexible provision enabling entry from further education and employment.²⁹

When I started as the access regulator in 2018, universities told me that the annual cycle of access agreements encouraged them to demonstrate spending and activity, rather than longer-term strategies to improve outcomes. This in turn encouraged high levels of investment in bursaries, which could clearly demonstrate spending and were popular among students, together with a wide range of outreach seeking to raise aspirations, rather than the sustained and targeted engagement with students, schools and communities that would shift expectations by creating pathways into their own institutions. University leaders described their access commitments as a tax on their higher fees and often demonstrated this by routing investment through a widening participation team operating separately from colleagues responsible for admissions, student services, learning and teaching, and careers.

People outside universities told me they were concerned about the level of spending through access agreements, limited evidence of its impact and, in their view, poor value for money. Many suggested that the funds (sometimes misrepresented as a single government pot, rather than investment of tuition fees belonging to universities) should be moved to support other priorities, particularly schools and apprenticeships.

Notwithstanding these concerns, the election of a majority Conservative government from 2015 led to continued support for widening access to higher education, framed as objectives to double the proportion of students from disadvantaged backgrounds entering higher education by 2020 from 2009 levels and (despite their over-representation relative to white students) to increase the proportion of black and minority ethnic students entering by 20%. The new government's main higher education priority, though, was to strengthen the student-led system heralded by the 2012 reforms. This included the introduction of a Teaching Excellence Framework, which would influence student choice and the level of fees that could be charged, and thereby balance the reputational and financial incentives arising from research

assessment and funding. Also, most significantly for access regulation, legislation to replace HEFCE and OFFA with a single market regulator, the Office for Students, and a strategic research investment body, UK Research and Innovation, which would bring HEFCE's research responsibilities together with the Research Councils.

In crude terms, learning and teaching was positioned as a private good requiring regulation, particularly in relation to quality and access, whereas research was positioned as a public good requiring strategic direction. This was, though, complicated by the level of public subsidy and interest in students, and the permeability of universities' education, knowledge exchange and research activities.

The government's white paper setting out the proposals³⁰ described increasing higher education participation, and the role of access regulation supporting this, in similar terms to its predecessors. The legislation would, though, be threatened by volatility arising from the referendum on leaving the European Union, specifically a change of Prime Minister and an election being called before it had completed its passage through parliament. With a diminished majority, the government was particularly pressured by opposition MPs on the Public Bill Committee and in the Commons about the strength of access regulation, and by university representatives in the Lords on issues such as autonomy, ownership of standards and the oversight of teaching and research, yielding concessions and assurances in these areas.

In the case of access regulation, it was considered imperative to demonstrate that although responsibilities would be moved within the new regulator, it would broadly continue with the powers and approach adopted to date. This would include a Director appointed by the Secretary of State as a member of the OfS board, who could be the only person with delegated responsibility for its functions in this area. Also, beyond the addition of the word 'participation' to reflect a stronger focus on supporting students beyond their entry to higher education, preservation of the wording in the primary and secondary legislation that had governed the plans agreed with universities and colleges since 2006. So, the new Director would continue to protect autonomy in relation to admissions and negotiate measures determined by

institutions themselves, which would address under-representation in their own context.

The intention was to demonstrate that the new regulator would make stronger progress on access and student success, but without impinging on university autonomy. Rather than being diminished by its location within an organisation with a broader set of responsibilities, it would be strengthened, as the Minister Jo Johnson told the Public Bill Committee:

‘We want to ensure in bringing forward our reforms that higher education providers do not lose sight of their vital role in promoting social mobility and in helping some of the most disadvantaged young people in our society to benefit from our world-class higher education system. The integration of the remit of the director of fair access into the OFS signals our commitment to making fair access and participation a priority. The OFS will have a new duty requiring it to consider equality of opportunity in connection with access and participation across all its functions, so widening access and participation for students from disadvantaged backgrounds truly will be at its very core.’³¹

Within this vision, all aspects of the regulator’s engagement with universities and colleges would be considered through the lens of access and participation, so matters such as quality, consumer protection, financial health and governance would all give specific attention to the needs of the most disadvantaged students. Access regulation would be designed so that it would complement other interventions, given particular momentum by its focus on successful participation as well as access, which would require the whole institution to be engaged.

A new regulator

Navigating the relationship between the access and participation functions and the other responsibilities of the OfS would be central to the responsibilities of the new Director for Fair Access and Participation required by the 2017 Higher Education and Research Act (HERA 2017). The levers available to the OfS extended well beyond

formal regulatory powers, including funding, the promotion of good practice and data, and private and public persuasion. As the first access regulator not to be a former Vice Chancellor, my appointment prompted concerns that I would not have the standing to be able to negotiate effectively with university leaders, particularly among the most selective institutions.³² I had, though, worked for the funding council for more than a decade, so I understood how the new powers and combined levers made possible by the legislation establishing the OfS could be deployed, notwithstanding the limited changes made to the regulations specifically governing the access and participation plans.

By positioning the approval of an access and participation plan as an ongoing condition of registration, which itself determined the ability to secure substantial public funding through higher tuition fees, OfS could approve a plan whilst applying escalating monitoring, specific conditions and sanctions, enabling more proportionate intervention than the 'nuclear button' of refusing a plan, which had been threatened but never deployed. By bringing access regulation together with funding within a single organisation, OfS could focus its investment on collaborative and innovative activities that could not be delivered by individual universities and colleges alone, thereby establishing a sector-level infrastructure to support the work conducted through the access and participation plans. OfS inherited HEFCE's analytical capability, which had been developed from before its foundation in 1992, and was particularly adept at linking data relating to schools and colleges, higher education and employment, and demonstrating the influence of student characteristics at each stage of the lifecycle. It also inherited the capability to audit institutions to ensure they were delivering on the commitments promised within their access and participation plans, including the much heralded £800m investment each year.

At the first meeting of the OfS board in January 2018, we proposed a broad strategy for access and participation in a paper summarising the patterns and powers described above. Reading the paper again now, it is striking how firmly it aligns access regulation with the vision for equality of opportunity and social mobility that had underpinned the case for widening participation for more than a decade:

‘As the government identifies in its social mobility action plan, every individual in England should have the opportunity to build a good life for themselves and to reach their potential, regardless of their background. This is important for individuals and for a cohesive, just and prosperous society.....Higher education can be a good life in itself and a gateway to it in the future. It provides knowledge, experiences and friendships that are valuable in their own terms, and skills, credentials and contacts that are important for the next stage. It can improve and indeed transform lives for those who gain access and succeed in it, whilst entrenching disadvantage for those who do not.’³³

It also, though, made the case for making progress on outcomes, not just inputs, stating that access regulation had: ‘increased opportunity, but not secured equality of opportunity, and this extends through all stages of the student lifecycle, including transition into work.’ Whereas in other areas OfS would regulate to give students confidence about a baseline level of outcomes and let the market drive progress, for access and participation the OfS wanted to drive progress, indeed the challenge set at the first meeting of the board was to be bold and achieve a step change.

This was clear from the statement made by the OfS chair in his introduction to the new regulatory framework laid before parliament, within which the requirement for an access and participation plan was positioned as the first ongoing condition of registration:

‘Our regulatory framework enables the Director for Fair Access and Participation to develop a bold new approach to supporting social mobility, and equality and diversity, through higher education. ...We will be radical and ambitious to make sure we deliver on the promise of higher education as an engine for social mobility, and a gateway to a better life for those who undertake it.’³⁴

This was itself consistent with government policy at that time, as might be expected from the leadership of a newly established regulator. The access and participation

guidance issued to the OfS by the Secretary of State in February 2018, to which the new legislation required the board to have regard, stated that:

'Given the strength of our ambitions for access and participation we will be looking for the OfS to push providers to set challenging targets for themselves within their plans and so drive further improvements across the sector....we know that there is more still to do in ensuring that students from disadvantaged backgrounds and under-represented groups can access and succeed in higher education...In the future, in addition to rightly focusing evidence-led inputs we would also like plans to feature a better balance between inputs and outcomes as formal commitments.'³⁵

Although the government had consulted on the regulatory framework, OfS would need to consult during 2019 on the specific changes to access regulation needed to address this and to base the first year of new plans on the approach taken by OFFA, whilst deploying the powers for negotiation and approval available to OfS. This enabled sanctions short of refusal for the first time to be applied and made public, including conditions of registration – requiring specific actions to address failure to deliver on previous commitments, lack of progress or weaknesses in the proposed plans – being applied to five institutions. Those relating to the universities of Oxford and Cambridge inevitably attracted the most attention³⁶, but conditions were also applied to another university, a further education college and a new provider, reflecting the focus not just on improving access to the most selective universities, but also student success in others.

OfS also put in place during 2019 the sector-level infrastructure we considered necessary to support the work of individual universities and colleges. This included an access and participation data-set³⁷, which demonstrated the proportions of different groups of students gaining entry, continuing with their studies, achieving the highest grades and progressing into further study or highly skilled employment, and equality gaps between different groups; this was intended to provide institutions with a common and rigorous basis for understanding their own position, as well as improving transparency and scrutiny, including from their own governors and

students. Also a 'what works' centre,³⁸ which was initially based at King's College London before becoming an independent charity; like other 'what works' centres established across government, this was intended to provide guidance and tools on evaluation methods and standards, and gather and share findings, with the aim of improving understanding of the effects of the interventions being delivered through access and participation plans. The OfS board also agreed, in tandem with reforms to the access and participation plans, to extend funding for a national network of collaborative outreach partnerships; this was intended to ensure a joined up approach to engagement with schools and communities between universities and colleges in 29 local areas, and enabled one of the largest evaluations of outreach work conducted in England to date.³⁹

In meetings with universities⁴⁰ and their representative bodies, we deployed evidence and insights on how some of the most selective universities in US, Australia, South Africa and Scotland were re-thinking fair access, equality of opportunity and merit to enable not just fair policies and processes, but also a fair chance for students from under-represented groups to gain entry and succeed. This, we argued, would be crucial for addressing the academic and cultural barriers experienced by these students, and ultimately shifting their expectations and entry rates.

In addition to publishing effective practice⁴¹ on support for specific groups of students such as those with disabilities or with experience of local authority care, and modes of entry such as part-time study and degree apprenticeships, we identified issues we would particularly champion in order to promote and support change. This was the case for access to the highest tariff universities and their use of contextual admissions, which we considered to be essential for a robust assessment of the potential of students from schools or communities with low levels of progression.⁴² Also for the degree attainment gap between black and white students, which had been the subject of extensive analysis and debate across higher education during the previous decade, but only limited action.⁴³

In these areas, the OfS board agreed Key Performance Measures (KPMs)⁴⁴ to provide a trajectory for change, which were not and could not translate into quotas for individual institutions, but were intended to demonstrate the step change we were seeking through the new access and participation plans. When we argued for greater ambition, we were told that this was prevented by the annual cycle of plans and we should be clear about the level of our expectations. The KPMs were intended to address this, demonstrating fundamental change across a generation and the trajectory towards this over a five-year period, on the basis of a 'something for something' agreement between the regulator and the sector: more time and lower burden for institutions, but greater ambition and outcomes in return.

There were three main elements to the reforms to access and participation plans proposed within the 2018 consultation and agreed by the OfS board in December of that year⁴⁵, then delivered through the negotiation of new plans during 2019: a more honest and rigorous self-assessment of the inequalities for students in each university or college across the lifecycle, based on common national data; greater focus on addressing inequalities relating to success on course and progression into further study and work, not just access, with universities and colleges prioritising the stages of the lifecycle and groups of students where their self-assessment suggested they had furthest to travel; strategies to be delivered across five years, demonstrating a theory of change, how interventions would be evaluated, and progress ultimately measured through outcomes, rather than input-based targets. Underpinning this approach was our view that meaningful promotion of equality of opportunity required not just activity and investment, and fair policies and processes, but also progress demonstrable by reducing equality gaps over time.

OfS published two documents analysing the impact of this approach following the negotiation and approval of the new 2020-21 onwards access and participation plans: the first, published in January 2020⁴⁶, summarised the commitments made within the new plans based on internal statistical and content analysis; the second, published in March 2021⁴⁷, considered behavioural change through surveys of universities and colleges, students and other organisations working on access and participation.

With regard to the two issues we had particularly championed, the analysis in the 2020 report suggested that the plans would enable 6,500 more students from the most under-represented neighbourhoods to access the highest tariff universities each year, and the degree attainment gap between white and black students to be halved. Alongside this, though, the report acknowledged issues that appeared to have been neglected within the new plans:

‘Relatively few providers have set ambitions to improve access for mature students. And we need increasingly to understand the effect of intersecting characteristics: the low levels of participation by men from the most disadvantaged areas, for example’.

The 2021 report demonstrated the way in which access and participation had become more centrally positioned within universities and colleges, including greater accountability from governing bodies.

‘Providers’ plans showed increasing commitment to the access and participation agenda through more strategic and whole-provider approaches.....the OfS’s aims for driving ambition in access and participation were supporting these shifts in behaviour’.

Alongside this, though, it identified that engagement with students had been challenging within the time available, that smaller institutions had found the process particularly difficult, and that institutions overall had been concerned about the level of the OfS’ expectations for stretching targets.

Despite moving into a new regulator from 2018, access regulation continued to support the vision for higher education and social mobility pursued by previous governments and regulators. Using the broader powers and levers available to it, OfS positioned access and participation more centrally within the overall approach to higher education regulation and funding. This involved a shift from focusing on inputs, such as the provision of financial support to mitigate the effect of tuition fees and outreach to raise aspirations, to improving entry and outcomes across the

student lifecycle, and the engagement of all parts of institutions with their access plans, which now explicitly included successful participation. It was underpinned by the establishment of a sector-level infrastructure in the form of common data, sharing of good practice and evaluation findings, and collaborative outreach partnerships across the country. Also by challenging universities and colleges to re-conceptualise equality of opportunity, as the statutory basis for access and participation plans, and their judgement of merit within admissions.

Navigating the coronavirus pandemic and a new government

When we published the statistical analysis of access and participation plan commitments in January 2020, we were becoming aware of two factors that would affect the delivery of the approved plans. Firstly, the spread of coronavirus, which would require remote learning and changes to assessment practices in schools, colleges and universities. Secondly, the election of a new government in December 2019, which would adopt a different approach to access and participation from its predecessors during the first two decades of the 21st century.

During the lockdown that followed, universities were unable to deliver outreach, student services and learning and teaching in the established ways, and some students such as those with disabilities or without family support needed particular support. This meant that some of the activities within their access and participation plans needed to change or be deferred, and funding needed to be diverted towards increased financial support for students. Evidence from OfS monitoring⁴⁸ suggests that some innovations to the modes of delivery and assessment were helpful to the most disadvantaged students. It is, though, still challenging in early 2022 for universities to engage successfully with schools, given the pressures on them to deliver a normal experience for students this year, whilst continuing to manage the pandemic and addressing the consequences of lost learning.

Grading patterns at GCSE and A-level⁴⁹ confirm that the poorest students and communities have fallen further behind during the pandemic and this has flowed

through to university admissions. 2021 admissions data shows record numbers of students entering higher education from the most disadvantaged neighbourhoods, but even more students entering from the most advantaged, particularly in the most selective universities.⁵⁰ The pandemic has, therefore, yielded a continuation of the patterns we have seen during the last two decades: expanding opportunities to access higher education, but no progress yet on equality of opportunity.

This creates a problem for university admissions decisions in the future, particularly if the number of places available to an expanding young population becomes more limited, which is now a serious prospect due to the different position the current government is taking towards higher education access and participation compared with its predecessors.

Perhaps the clearest picture of this shift in policy can be seen in the speeches made by the then Education Secretary Gavin Williamson before and after the December 2019 election. The first, to Universities UK in September 2019, urged them ‘to drive greater access’ with a familiar vision:

‘young people from deprived backgrounds who have the ability, deserve to benefit from studying for a degree...we cannot forget that ability is evenly spread across this country but opportunity – sadly – is not...we must continue to crusade to put that right....universities have just published more ambitious access plans which is good news...I will be watching carefully to see how these are now delivered and I will support the OfS in any action it takes if universities are not delivering against their commitments.’⁵¹

Under the headline ‘Uni Boost: number of young adults going to university rises above 50 per cent for first time’, he told the Sun newspaper: ‘I’m not going to be timid in naming and shaming universities that continuously lag behind, and aren’t willing to make the changes that are required.’⁵² But by July 2020, the same newspaper was reporting a speech in which he had ‘ripped up the target for 50 per cent of kids to go to university’ and ‘would be publishing plans to build a “world-class, German-style” further education system in the Autumn’.⁵³

What caused this apparent change of direction? During 2019 and 2020, from quite different political and national standpoints⁵⁴, there were compelling arguments that the pursuit of social mobility through increasing higher education participation had diminished the prospects and standing of people who did not want mobile lives and careers, and the prosperity of places that did not have a university or high levels of higher education participation. The promise of human capital growth and graduate skills utilisation also appeared not to have been realised.⁵⁵ This was perceived to have forged divisions between graduates and non-graduates, different generations and the places where they tended to live, and scepticism about the continued expansion of higher education.

From 2020, these arguments and evidence provided the basis for the government to position universities and further education colleges, and academic and technical education, in opposition to each other, and progressive strategies to address inequalities as an erosion of standards and individual freedom. In the words of the July 2020 speech previously mentioned:

‘what could be more dispiriting for a young person to think that the only way they can succeed is if they undertake a degree – only to find that it doesn’t open the doors that they dreamed of? Further education, our colleges, are fundamental to our success: to opportunity, to productivity and to levelling up every part of our great nation.’⁵⁶

One of nine guidance letters issued to OfS during 2021, reflecting a more interventionist government, stated:

‘Encouraging more and more students onto courses which do not provide good graduate outcomes does not provide real social mobility and serves only to entrench inequality....I would like to remind the OfS that it has a statutory duty to have regard to the need to promote equality of opportunity, not equality of outcome...the OfS should be guided by the approach to equality of opportunity set out by the Minister for Women and Equalities, one that is rooted in liberty, agency and fairness.’⁵⁷

Approaches that OfS had championed through our reforms to access and participation – the use of contextual admissions to identify the distance travelled by students and their potential to succeed in the most selective universities; the promotion of inclusive learning and teaching to address ethnicity and other degree attainment gaps; and the focus on improving outcomes to demonstrate meaningful progress on equality of opportunity – were considered to be encouraging students to enter higher education who would have been better off taking other routes, and diminishing universities through the self-reflection and changes to policies and practices they were implementing to support them. Instead of improving access to and success in their own institutions, universities should seek to raise attainment in schools, enabling school grades to determine whether young people pursue academic routes into higher education or technical routes into further education and work.

This is the basis for the guidance issued to my successor as Director for Fair Access and Participation, John Blake, who brings a new perspective from his experience of working in schools:

‘Since 2010, this government has fundamentally changed standards in schools. Our ambitious programme of reforms has given pupils access to a knowledge-rich curriculum, rigorous assessment and qualifications, and high-quality teaching...We would like to see the whole higher education sector stepping up and taking a greater role in continuing to raise aspirations and standards in education – and we would like to refocus the A&P regime to better support this.’⁵⁸

Universities make an important contribution to schools through their research and evaluation, teaching training, subject expertise and involvement in governance. In the guidance issued by the Education Secretary when I started in 2018, we were asked to continue to strengthen these relationships, with the particular goal of raising attainment to improve access to the most selective universities. We included this within our guidance to universities and colleges, and produced good practice resources to support their work, but we were cautious about positioning it more

strongly than would be appropriate for the regulator of higher education, rather than schools.

There were four main reasons for this: OfS could not compel universities and colleges to invest their own funds in schools or for specific purposes such as raising attainment; the investment made through access and participation plans was derived from the tuition fees of current students and they would legitimately question why they were being asked to pay for schools; any contribution universities made to raising attainment in schools would be a marginal one, so it would be difficult to determine how they would be held to account through access and participation regulation, other than for levels of spending and activity; and many of the institutions with access and participation plans were further education colleges and specialist providers recruiting adults from professions and communities, rather than young learners from schools.

Universities make independent judgements about the potential of applicants to succeed in higher education, within which school grades are an important but not the only factor. However excellent the efforts made by schools, colleges and universities during the coming years, it will be difficult to reduce the attainment gap between the most and least advantaged students and places. There may well, as the new guidance suggests, have been fundamental changes to standards in schools due to policies introduced since 2010, but this has been accompanied by a failure to reduce the attainment gap, even without accounting for private schooling and the impact of the pandemic. The use of school grades to separate students between academic and technical routes would, therefore, increase rather than reduce the divisions between the most and least advantaged people and places, which have been central to concerns about the consequences of increasing higher education participation.

Conclusion: what next?

What would I do instead, beyond pushing through the plans I agreed with universities and colleges in 2019? The answer to this brings me back to the last CGHE seminar in December, led by Hugh Lauder and Sin Yi Cheung, on the death of human

capital⁵⁹, which has important implications for the policy decisions that will be made about the shape and financing of tertiary education in England during the coming year.

As I have described in this paper, the case for expanding higher education in England has primarily been made on the basis of improving opportunities, enabling social mobility and thereby meeting the aspirations of individuals and families. Access regulation has been positioned in support of this, initially assuring that the tuition fee increases implemented to fund expansion would not discourage the most disadvantaged students, then increasingly seeking to reduce inequality across the student lifecycle. The case was also, though, underpinned by economic arguments about the returns to individuals and the economy from higher levels of qualification, and indeed well-funded universities, which were considered important for persuading individuals, their families and crucially the Treasury to pay for it.

These economic arguments are under strain, but just as importantly there is greater scrutiny of the social consequences of increasing higher education participation, particularly for the people and places that have not benefited from it. In the CGHE session, there were arguments for higher education to be free and financed on the basis of inherent value rather than the promise of employment, skills and human capital. In the current policy environment, however, I believe that the evidence is more likely to be used to justify a reduction in the number of people studying and ultimately working in the English higher education sector, and the promotion of other routes through life.

This would be a bad outcome for all of us working in higher education, but more importantly I do not think it will succeed, for two reasons. Firstly, increasing demand for higher education has driven governments in England since the second world war to facilitate expansion⁶⁰; we saw this continue during the pandemic, despite the rhetoric against it, and I expect it to continue. Secondly, tertiary education in the 21st century cannot simplistically be divided between academic and technical routes; it is academic, technical, professional and creative, reflecting demand from students, but

also the character of work and the demand from employers for broad and adaptable cognitive abilities, as well as specific skills.

My description of the reforms we made to access regulation during my period in office is inevitably a positive one. But I need to acknowledge the issue we failed to address, which is the improvement of access for people studying later in life, part-time, through further education and whilst in work, which requires universities, colleges and employers to work together. The demand-led system operating in England since 2012 has led to further concentration of undergraduate provision around a young, full-time, full degree model direct from school, which maximises the influence of inequalities flowing from school and minimises calibration between higher education and the workplace. Access regulation has been focused on individual institutions addressing inequalities within their existing patterns of provision, rather than changing it to meet the needs of students of all ages, and to support local and national prosperity.

We need, then, to craft a new settlement for tertiary education in England, which enables the continued expansion of higher education to new people and places, whilst diversifying modes of study and the routes taken. That requires universities to figure centrally within the government's strategy for levelling up across the country, the post-18 education strategy to be focused on collaboration and progression between further and higher education, and access regulation to be positioned in support of this.

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