

Rt Hon Sajid Javid MP  
Secretary of State  
Department for Business, Innovation and Skills  
1 Victoria Street  
SW1H 0ET

From: Alex Chisholm  
CMA Chief Executive

16 June 2015

Dear Secretary of State

**CMA report on regulation in Higher Education**

One of the items we discussed last week at our introductory meeting was the Competition and Markets Authority's (CMA) mandate<sup>1</sup> to advise and challenge the government on the impact its policies, practices and regulations have on competition. The CMA has recently used this to analyse the impact regulations governing undergraduate Higher Education (HE) have on student choice, quality, quantity and innovation in the HE sector in England. We see the HE sector as a very important one for the UK: for the impact HE has on the future life chances of students; for the contribution a well-educated and trained workforce makes to national economic performance, including productivity; and for the inward investment and export contribution arising from the UK HE Sector.

We have identified a number of issues and have made recommendations to government to improve the regulatory framework for the undergraduate HE sector in England. This letter set out our main findings and recommendations for you to consider. Further information can be found in our published report.<sup>2</sup>

Students should be able to expect that they will receive a good service when they select a HE institution. They are making a very important decision when they make this choice – which is difficult to reverse once a decision has been made to study at a particular institution. Competition between providers can help them make a good choice; regulation of the sector needs to underpin that competition by supporting good choices.

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<sup>1</sup> Under Section 7 of the Enterprise Act 2002, the CMA can give information or advice to Ministers and a Minister may request the CMA to make proposals or give other information or advice. The CMA's Strategic Steer recognises that government can affect markets through regulation, procurement and other activities, and asks the CMA to challenge government where barriers to competition are being or have been created.

<sup>2</sup> [An effective regulatory framework for higher education: a policy paper](#) (23 March 2015).

The HE sector is used to competing for promising students, research and teaching talent and funding. However, our report identified a number of issues with current HE regulations which make it hard for students to exercise choices and are holding back innovation and healthy competition between institutions. The issues we identified include:

- There are gaps and discrepancies in regulatory oversight that mean that different types of institution are being quality assured in different ways. Some institutions are not regulated at all. From the student perspective, it is often not clear that these differences exist. Even where the differences are known, the variance in regulation is hard to understand.<sup>3</sup> This makes it difficult for students to make informed decisions about which institution to select. Further, the absence of regulation may impact on their ability to challenge poor quality provision of teaching.
- Regulations have evolved largely to address public policy concerns such as exposure to public subsidy and loans. Whilst this is understandable, it does mean that different types of institutions are subject to different rules and sanctions which means they cannot compete on an equal basis.
- Validation is an important route to market for many institutions without Degree Awarding Powers. The current regulatory regime places accountability and responsibility on validating institutions for the performance of the institutions they validate. This model is under pressure because of the growing demands of regulators on validating institutions.
- Exit is an important part of an effectively functioning sector. Currently, there is no comprehensive, sector-wide system in place to facilitate exit and protect students in the event an institution leaves the HE sector. As a result, exit either may not happen when it should, or exit may occur and leave students unable to finish their studies.

To address these concerns the CMA has recommended the introduction of a sector-wide regulatory baseline which would provide all HE students with assurance that the provider they choose will meet certain basic requirements. Such a baseline would also provide validating institutions with assurance about the quality of those institutions they validate.

We envisage this baseline would, at its core, include provision of relevant, accurate, trustworthy information about the learning experience students are likely to receive.

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<sup>3</sup> BIS estimates that there are over 674 Alternative Providers in the UK. However, there is currently no accurate estimate of the number of Alternative Providers which are either only indirectly overseen by the Quality Assurance Agency via their validating partner or are outside the external quality assurance regime because they offer sub-degree courses, do not have Specific Course Designation or Highly Trusted Sponsor Status.

Such information requirements would build on providers' requirements under consumer protection regulations<sup>4</sup> and the progress sectoral regulators have made in recent years on provision of information to students. We welcome BIS's recent announcement that, subject to consultation, it will extend the Key Information Set (KIS) requirements to those alternative providers that fall within the scope of the current regulatory framework. Nevertheless, we would envisage information requirements covering all providers in the sector as part of any future baseline regulation.

It is however critical that the introduction of baseline regulation does not become a route for more prescriptive and detailed oversight that may hamper providers' willingness and ability to innovate and meet the long-term needs of the country. Even information requirements can be disproportionate and impose an undue resource burden on providers. We are therefore recommending that a rigorous competition assessment is applied to future regulatory proposals in the HE sector.

During our study, concerns were also raised that the funding and student support system is potentially hindering innovation. Specifically we heard that there is little financial incentive on the part of traditional providers subject to the £9,000 per year tuition fee cap to provide two-year 'accelerated' degrees as the fee income is currently capped at £18,000 for a two year course. To address restrictions on the provision of accelerated degrees we also recommend that BIS explore whether accelerated degrees could be encouraged within the overall funding cap to provide more choice for providers and users, and more opportunity for competition to drive efficiency.

We recognise that some of these reforms are likely to require legislation. We feel this is necessary to allow choice and competition to work in the interests of students.

We have worked closely with BIS and HEFCE in developing our recommendations and will continue to work with the Government and the sector to help ensure the regulatory framework supports healthy competition and does not impose undue burdens on HE providers. We also stand ready to advise on other aspects of HE policy based on the insights from our work.

I enclose a copy of our report and am copying this letter to the Minister of State for Universities and Science.

Yours sincerely

Alex Chisholm  
*CMA Chief Executive*

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<sup>4</sup> We have set out further guidance on how providers can comply with consumer protection regulations in CMA33 (2015) [UK higher education providers: advice on consumer protection law](#).