

Thank you for the invitation to speak. Vice-Chancellors have had a lot to think about lately and it is a mark of just how much is going on – amid Brexit and linked issues of overseas students and migration – that the Higher Education and Research Bill might seem like a calm island of certainty in a wider sea of change. It is, however, the first major HE Bill since 1992, and arguably more far-reaching than any since the 1960s. The landscape around the Bill, moreover, has changed: a year ago there was limited enthusiasm in some quarters - some saw it as a Christmas Tree on which a variety of Devon Treats might be hung. Now, I think, there is a greater acceptance of its reforms among VCs and in the wider sector: in a sharply different context, it has become a point of continuity, stabilising regulatory issues that could prove awkward in the new post-Brexit environment. The minister's thesis is that current regulation was designed for a wholly different world (with grants, numbers caps, etc.), and now needs to move to catch up. A counter was that we are muddling along ok, and, as noted at the Commons Bill Committee, the Bill, if highly desirable, is not considered to be essential by some. But there are, inevitably, risks in retaining old regulatory fabric, as Bagehot observed: 'an ancient and ever-altering constitution is like an old man who still wears with attached fondness clothes in the fashion of his youth: what you see is the same, what you do not see is wholly altered'.

From a VC/sector perspective, none of the big things in the Bill are opposed. Recognising the highest teaching quality, a manifesto commitment now rendered as the TEF, provides a corrective to the balance of teaching and research that was probably long overdue. While it is true that research assessment is what one makes it inside an institution, and even though the sector's global standing is driven by research, having an exercise for each of the two symbiotically linked and defining pillars of a University – namely T&R – will help to reset the balance and to deal with some of the knottier behaviours. For example: imbalances in perceived rewards for T&R; too much teaching by PhD students; staff (allegedly) pining for paradise island where there are no students, only research; etc. It is salutary to reflect that even at the apex of the US system professors who don't teach barely exist, and that the most distinguished aspire to teach the first-year class, knowing their junior colleagues can teach upper-level, close-to-research courses perfectly well. As the REF generally is, the TEF in itself is likely to be a good thing (though by no means straightforward, and at best a proxy measure of excellence); and though the linkage to fees could drive complexity, the government's acknowledgement that it is developmental has helped and gives the sector something to work with.

Success has many parents, and it was interesting to see the *ST* league table, which compiles data on several of the TEF ingredients, assert its claim to be a proto-TEF. Likewise, on the regulatory and sector architecture, UUK's 2015 report *Quality, Equity and Sustainability*, prefigured some of the Bill's provisions in seeking a regime with greater emphasis on the needs of students, and support for UK HE's world-leading reputation for excellence in teaching and research. The Bill goes some way on that. It provides a single point of entry

into the sector through a register of higher education providers. It embeds risk-based regulation, not one-size fits all. It enacts a commitment to enable the fee cap to rise by inflation. And it enables a more transparent regime on data held around the sector (and in government).

Overall then, the thrust of this Bill seems positive, and its motivations judicious, expert and progressive. The minister's own personal commitment, and predisposition to listen, have been widely appreciated in the sector, as has the work of his Bill team and policy officials. And the publication on Monday this week of new amendments on some key areas of concern is especially welcome – particularly in revising the powers of the SoS to frame guidance, directions and terms and conditions of grant by reference to specific courses (one of the most contentious areas of the Bill, owing to concerns about its negative impact on academic freedom and institutional autonomy). But there also remain points where the concern is that the words of the Bill do not (yet) match the more nuanced intent of the Government, as expressed in numerous very positive engagements, and could enable a less benign or intelligent future regime to cause damage to universities, advertently or inadvertently. Fundamentally, this comes down to concerns over autonomy, and the risks this poses to the dynamism and responsiveness of the sector. So where, then, are the remaining worries?

1. Competition. Clause 2 of the Bill gives the OfS a duty to encourage competition where this is in the interests of the student or the employer. It is a fairly widely shared view in the sector that this list of beneficiaries could be broadened to include wider society, and also that competition could be leavened with collaboration. Competition alone risks waste and inefficiency; it may also benefit successful providers more than it benefits students. Incentives to collaborate could be stronger, helping to avoid an arms race in facilities, and to answer questions such as why 130 universities need 130 IT services. Alternative Providers have often led the way here. More widely, however, it is very welcome, to see the introduction of a new clause giving the OfS a duty to monitor the financial sustainability of the sector. This goes a long way to meeting the appetite, across the widening variety of providers, for a general duty to maintain confidence in the health, viability and reputation of the sector, helping to protect the student, and alumni – and public asset – interest.

2. Quality and Standards. The fine-grained nature of the distinction between quality and standards is well known, and the Bill unhelpfully elides the two. In HE parlance generally, 'quality' relates to how a provider supports students to enable them to progress and achieve their award, 'standards' relates to the calibration of student attainment by a provider, and both have established definitions in the Quality Code. The drafting of the Bill presents three issues. First, the language is orthogonal to that commonly used. Second, the provisions of the Bill move accountability substantially towards the state and away from universities, in a way that is not consistent with the requirements and dynamics of

autonomous institutions. Thirdly, the power given to OfS to rate standards as well as to assess them potentially opens the door to unintended and undesirable outcomes, e.g. the adoption of an Ofqual mind-set, or the rating of universities' degrees 'platinum', 'gold', 'silver', etc. (rather than just a quality mark). Under the 1992 Act, standards are the responsibility of universities, and are an important element of their academic autonomy and freedom. Since then the Funding Councils have taken a role in ensuring that frameworks are in place to assure standards, and universities have worked together with the QAA to set baseline standards (which protect against passing off, e.g., A-level work). But it can be argued that the things the legislation sets out to do – guarding against grade inflation, and giving the OfS a locus in the discussion of standards – can be achieved under the Revised Operating Model published by the Funding Council last March. A UKSC is the keeper of UK-wide co-regulation: OfS has a seat at the table and if it thinks there is a problem it can call for a report, get it published, and reflect its concerns through Annual Provider Review. If grade inflation is an issue, therefore, then better to bring an expert, cross-sector, and UK-wide co-regulation to bear on it.

3. Powers of the OfS to validate degrees. Clause 47 of the Bill allows the OfS to act as a validator of last resort, to avoid the prospect of a lock-out by established providers unwilling to provide this service. With over a hundred validating bodies now, and probably more in future and all in competition, it is perhaps open to question whether this will arise. But the real issue is whether OfS can reasonably be poacher and gamekeeper at the same time. Another fundamental issue here is whether an arm's length body of government validating degrees would, over time, undermine sector autonomy.

The themes of competition, autonomy and standards cover most of what I have described, but not all. Brexit, and whether the Bill is still fit for purpose; WP and part-time students; setting the barrier to sector entry at the right level; the fortunes of Innovate UK, the RCs and UK science inside UKRI; ensuring that research and teaching are not driven apart (where documents published this week are relevant); the devolved nations implications of TEF and UKRI; and the health of a vibrant and diverse research base are all matters about which concerns have been expressed. So too is the effective abrogation of university charters, secured by transplanting the ability to revoke Degree Awarding Powers from the Privy Council to the OfS. Privy Council process is not light touch, but the existence of such a 'super authority' does force the authors of change to think. And charters, for all that they are part of Bagehot's 'dignified' rather than 'efficient' apparatus, do have symbolic force, and real soft-power utility at home and overseas. Giving OfS executive power over DAP/UT does make it very powerful, so checks, balances and accountability (notwithstanding a diminished role for the Privy Council) become all the more important.

In conclusion, however, I return to my opening comments. None of the big things in the Bill – the TEF and the regulatory counterpart to earlier reforms – is contested. There is ample

evidence that the minister and his teams have a good and subtle understanding of the issues and mainly share the sector's motivations, as reflected in the changes made this week. But there is still some way to go, and what is now needed is for the language in some other parts of the Bill, as it enters its next stages, to catch up.