

**Guidance
to the
Director of Fair Access**

**Issued by
Secretary of State for Business, Innovation and Skills
and
Minister for Universities and Science**

February 2011

1. Introduction

1.1 Section 32(3) of the Higher Education Act 2004 requires the Director of Fair Access, in performance of his functions under Part 3 of the Act, to have regard to any guidance issued by the Secretary of State. Laid out below are our expectations for how you should approach the approval and monitoring of institutions' Access Agreements.

1.2 Increasing social mobility, extending fair access to Higher Education (HE) and the professions, and attracting a higher proportion of students from under-represented groups, particularly those most able but least likely to apply, are priorities for the Coalition Government. This guidance, which embraces the new arrangements for funding higher education from 2012/13, exemplifies the Coalition's determination to tackle these issues.

1.3 2011/12 will represent a transition to the new arrangements for funding higher education in 2012/13 and beyond. We need to move rapidly to put in place arrangements for Access Agreements as they will apply in 2012/13. But we expect those arrangements to be regularly reviewed, so that real and sustained progress can be made over the next few years. We have already announced our intention to publish a Higher Education White Paper, followed by a Higher Education Bill, covering a wide range of long-term issues, including participation and access.

1.4 Through this letter, 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. In particular, the Government believes that progress over the past few years in securing fair access to the most selective universities has been inadequate, and that much more determined action now needs to be taken.

1.5 Under-represented groups across higher education include students from less-advantaged backgrounds, students with disabilities, students from some minority ethnic groups, and care leavers. The Government also wants to support those wishing to study part-time in higher education, and mature students. We would like institutions to consider such students within their overall approach to access, and would like you to take account of their efforts in considering their Access Agreements.

1.6 The remit of the Director of Fair Access is to promote and safeguard fair access to higher education. The principal mechanism for achieving this will be requiring institutions that wish to charge more than the basic level of graduate contributions to agree new Access Agreements with you, setting out how they will promote access by under-represented groups and the progress they intend to make. The level of ambition set out by the Access Agreement should be proportionate to how much more than the basic level the institution intends to charge. While recognising that it is for each institution to determine its own admission arrangements, the Government believes that it would be appropriate for every Access Agreement to include a quantified assessment of the improvement the institution intends to make against appropriate benchmarks. The larger the gap between current performance and benchmarks for a given institution, the more ambitious its targets should be.

1.7 We have consistently said that we believe graduate contributions of £9,000 should apply only in exceptional circumstances. Institutions would need to charge considerably less than this to offset reductions in HEFCE funding, and higher charges impose higher costs for the public purse because of the generous subsidies in the loan system. This is at a time when there is also a general expectation of continued efficiency savings in universities and throughout the economy. It is, of course, not within your legal powers to

impose any quota for how many institutions charge what level of graduate contribution, and that is consistent with our policy of an autonomous higher education sector, where institutions take their own decisions. But if the sector as a whole appeared to be clustering their charges at the upper end of what is legally possible, and thereby increasing the pressure on public funds, we will have to reconsider what powers are available, including changes to legislation, to ensure that there is differentiation in charges. We intend to keep this under very close review for 2012/13.

1.8 In drawing up Access Agreements, all institutions should set out how they will attract students from under-represented groups to their more selective courses, and retain them. Institutions whose records show they have the furthest to go in securing a diverse student body should consider this particularly carefully. We recognise that this requires cooperation and support from schools and colleges. If it comes to your attention that schools or colleges are not offering this support, we would like you to tell us.

1.9 In discharging your duties you should look to promote value for money, for example in encouraging best practice. We are asking you to do more than OFFA previously did, and will discuss with you the resource implications of this.

2. Our Objectives

2.1 We want to make Britain a more open and meritocratic society, in which talent is not wasted. More specifically, we want to:

- increase social mobility by enabling more people from disadvantaged backgrounds to enter higher education, and subsequently gain employment in the professions and other rewarding, well paid occupations;
- make greater progress in extending fair access for applicants of the highest ability to the most selective higher education institutions;
- continue to make progress in widening participation to higher education at large, attracting a higher proportion of students from under-represented groups.

3. New Access Agreements

3.1 Since 2004, the Access Agreement has been the key instrument for agreeing with institutions how, in their particular circumstances, they will use a proportion of the income from student contributions to increase access from under-represented groups. The Government believes that insufficient progress on access has made, particularly in progression to the most selective institutions and courses, which are particularly important for fair access to the professions.

3.2 The basic and higher levels of graduate contribution are increasing significantly from 1 September 2012. Much more public funding will then be reaching universities via students, supported by up-front loans from the public purse. Any institution that intends to charge students over the basic level of £6,000 for any of their courses, or equivalent amounts for part-time students as described in paragraph 4.7 below, must agree a new Access Agreement with you. As these changes in the amounts of the higher and basic contributions are significant, we want to monitor their effects carefully. Therefore each institution's Access Agreement should be reviewed annually, at least during the transition to the new arrangements.

3.3 In your assessment of whether an institution's Access Agreement is appropriate, you should have regard to the progress being made and what more is required to achieve a properly diverse student body, including retaining students once recruited. This is especially important when undertaking your annual reviews of Access Agreements, and you will want to assess whether the institution's investment in outreach and other access activity remains at an appropriate level or needs to be enhanced or redirected. You will want to ensure that each institution is making sustained and meaningful progress towards a more balanced and representative student body, reflected year on year in its own benchmarks, measures and targets. You may also wish to look at the trends in access and retention at an institution over time, to put in context levels of progress in a single year. You should also recognise the work that universities do in respect of the broadest aims of widening participation, where work by one institution may lead to a student applying to courses at a different institution.

3.4 We want you to encourage universities to collect and monitor a range of information on their applications as well as their admissions. This could usefully include the number of applications to different courses; the offers made to applicants, including the grades and subjects required; and how many applicants are actually admitted. This will help direct and focus access activities, and increase understanding of the patterns of application and admission which best support wider participation. We will work with the sector, HEFCE, HESA and others to ensure that information about applications and admissions are integrated into the set of indicators which are collected and published across the HE sector.

3.5 In our December 2010 letter to HEFCE we stressed the importance of your joint work, including a single reporting cycle with an institution's widening participation strategic assessment (WPSA). WPSAs will continue to be required by HEFCE for all institutions, as widening participation and social mobility remains a strategic objective for all. We hope you will continue to work with HEFCE to ensure these documents are complementary, and that burdens on institutions are minimised.

4. Coverage of an Access Agreement – institutions and courses

4.1 Each Access Agreement belongs to the relevant institution and will be published. If institutions decide to include information in their Access Agreement that is outside your remit, your decision to approve or reject the Access Agreement should not be affected by that additional information.

4.2 An institution may set tuition charges for courses up to the threshold of £6,000. No institution may charge above £6,000 without having an Access Agreement approved by you. There is an absolute limit on charges at £9,000 per annum. The institution must ensure its charges and any financial support are clearly set out and publicly available, and that students are told about the proposed price for their course, and any support package offered by the institution, before they sign up. Institutions should not be expected to list the price limit and support for every course separately in their Access Agreements, unless they are different for every course. Institutions should not be charging higher tuition rates to students who started their courses before 1 September 2012.

4.3 In advance of a Higher Education White Paper and subsequent legislation, you will want to advise institutions of any expectations you have regarding the content and presentation of timely information to prospective students in respect of costs and the

availability of financial or other support. This might be information provided through institutions' own websites and other channels and through national channels, such as UCAS and Student Finance England. More generally, we expect you to continue to work with institutions and others to advise on the clear presentation of financial information and on information, advice and guidance more widely.

4.4 As the Access Agreement will cover the institution not the individual course you will want to assure yourself that there is an institution-wide approach to access. However, evidence has shown that certain courses, particularly those that lead to professional careers, tend to offer the greatest financial benefit to students. Securing fair access to those courses is an important component of promoting greater social mobility. We hope institutions will make particular reference to these courses in their Access Agreements, and may wish to target their outreach and other activities, such as foundation years, to where they can have greatest impact on access and social mobility.

Collaboration

4.5 Many institutions already do much effective collaborative work on widening participation. Access Agreements should build on this. We expect that all institutions, including those that are highly selective, will want to join in such work. This is the most effective way to minimise the burden on participating schools and colleges, provide efficiencies for institutions, and ensure wide geographical coverage. It also encourages the sharing of good practice and enables a greater strategic overview.

Franchised courses

4.6 Where a further education college receives direct funding from HEFCE or the Department for Education for a course for which it wishes to charge a tuition rate above the basic level, then that college will need its own Access Agreement covering that and other directly funded courses. Where a higher education course in a further education college is funded through a higher education institution (HEI), the HEI, not the further education college, should include that franchised course in its Access Agreement, if it wishes to set its charge above the basic level.

Regulation of Part-Time Courses.

4.7 The Government, subject to parliamentary approval, intends to bring part-time courses within the scope of the Higher Education Act 2004. The effect of this change will be that any institution wishing to charge above the basic level for such courses, as defined, will first need your approval through an Access Agreement. Where an Access Agreement is in place the institution will need to make arrangements to vary it, if it intends to charge above the basic rate for any of its part-time courses. We will discuss with you how this process could operate in practice.

5. Coverage of an Access Agreement – Content

5.1 In this first year, we expect your starting point to be the current levels of expenditure which you expect from institutions on access (subject to any change in circumstances), plus investment from additional income from charges over £6,000. You will also want to take account, as above, of the charges being proposed; the distance to travel against benchmarks and the level of ambition in the institution's own proposed targets for improvement; and the justification for the financial support being offered to students. The principle of additionality, that you have applied to date, remains. Judgements on the

details of these requirements in individual circumstances are for you to make as Director of Fair Access. At this stage, and in accordance with current arrangements, we are not proposing any minimum requirement in this area. But there is a reserve power to make regulations to require a prescribed proportion of tuition income to be devoted to access activities. We will consider in the Autumn, in the light of your advice and progress in drawing up the new Access Agreements for 2012/13, whether it would be appropriate to utilise that power as a means to make better and faster progress. Meantime, we would not expect the overall proportion of net additional teaching income devoted to access to fall.

5.2 The precise mix of components for individual Access Agreements and the weighting given to them will also be for you to determine in light of the circumstances of each institution. We want a focus on the outcomes of access and not just the inputs and processes. Universities should demonstrate, through their Access Agreements, a clear link to how, and to what extent, they expect their proposed activities to impact positively on their HESA access and retention benchmarks, alongside their own access measures and targets. The components which you will want to take into account may include any or all of the following:

- the scale and nature of outreach activity to be undertaken (singly or in partnership) with local schools and colleges – such as mentoring, school visits, student buddying arrangements, master classes in schools;
- the scale and nature of outreach activity to be undertaken to attract mature students – including work with local communities;
- the scale and nature of summer schools programmes or similar;
- the number and value of any targeted financial waivers or bursaries the university will offer (including any institutional evaluation of their effectiveness to date and your own findings at a national level); this might include support targeted at students entering through non-traditional routes such as apprenticeships;
- required commitment to participate in the new national scholarships programme;
- targeting pupils with potential (eg through use of contextual data, targeting low achieving schools) and improving aspiration and attainment through outreach;
- the support offered to students once enrolled on courses – for example additional study support, mentoring, pastoral support, contribution to living costs, help with basic skills;
- the range of programmes the university will offer which could be attractive to under-represented groups, particularly mature students. These include part-time courses, distance learning, two-year degrees, intensive accelerated degrees, supported foundation year.

5.3 We recognise that, if selective institutions are to make progress in admitting more students with high potential from disadvantaged backgrounds, they may want to admit some such students on the basis of lower entry qualifications than they would normally apply. To help them identify individuals with the greatest potential, institutions may sometimes want to use contextual data, for example about levels of average attainment in an applicant's school. The Government believes that this is a valid and appropriate way for institutions to broaden access while maintaining excellence, so long as individuals are considered on their merits, and institutions' procedures are fair, transparent and evidence-based.

5.4 The subsidised loans that Government offers students represent a significant cost to the public purse. You will therefore want to seek to ensure that institutions do not require students to take out higher loans, which the institution then recycles into poorly targeted

bursary schemes which your own evidence has shown are not an effective mechanism for widening participation. This will not apply to bursaries and scholarships that are well targeted and where there is evidence of their impact; nor will it apply to those supported outside of the public purse via endowments etc. But you should scrutinise carefully any intention by universities to charge at higher levels across the bulk of their provision, requiring students to take out higher loans from government, while offering financial or discount packages that are not targeted on making progress towards their benchmarks. You may wish to discuss any concerns you have about the effective use of public funds with HEFCE, who have responsibility for the use of public funds in relation to their grant funding and a wider interest in promoting institutional efficiency.

5.5 Where an institution wishes to include, and has good evidence to support, the use of financial assistance to students, as outlined in the Higher Education Act 2004, we hope you will encourage the use of financial waivers. A waiver has the effect of reducing the cost of borrowing to both the public purse and the student.

5.6 We have agreed that the new National Scholarship Programme will be closely monitored and evaluated against the Government's objectives for the programme in the initial period of its operation (2012/13). This is a new approach and we will make any changes necessary to ensure the programme is fully meeting our objectives by 2014/15 when the programme will reach its full annual budget of £150m. While there is a principle of match funding of the Government's contribution by institutions, we are prepared for the first year for you to consider the match funding pressures the new NSP may place on individual HEIs, and ensure outreach activities are protected. This will mean that in 2012 you can use your discretion to agree a reduction in the level of match funding for the NSP if you deem it necessary within the overall access investment totals of the institution concerned.

5.7 The exact terms of an Access Agreement will vary significantly from institution to institution. Previously there was an expectation that every institution would provide the poorest students with a minimum bursary. In light of recent evidence you provided on the limited influence of this measure, that expectation no longer applies. Institutions that have made bursary commitments to students who started their courses before 2012 will be expected to honour them and include information about them in their new Access Agreements. Targeted bursaries are an entirely legitimate way for an institution to pursue fair access, but very large scale schemes should attract your attention, for the reasons given in 5.4 above.

6. Measuring Success and reviewing Progress

6.1 In the new Access Agreements, institutions should agree with you a programme of defined progress each year – set within a five-year timeframe – in relation to appropriate benchmarks. This might include the access and retention benchmarks as calculated by the Higher Education Statistics Agency (HESA). The access performance indicators relate to the percentage of students admitted (i) from state schools or colleges, (ii) from lower socio-economic classes, and (iii) from low-participation neighbourhoods. We also hope you will take account of good retention performance in relation to benchmarks as an indicator of successful access activity, clarifying your expectations in this regard in your guidance to institutions.

6.2 Alongside any use of HESA benchmarks, we encourage you to agree measures with the institution, along the lines that you proposed in your report for the Browne review in early 2010. These should preferably use a methodology that you have agreed, as you described and recommended in your report last year. The advantages of such an approach would be that the additional measures would provide more rapid evidence of the rate of progress; take account of the individual context of the institution; and use an institution's own data; while still being calculated on an agreed, consistent basis. To date you have worked closely with HEFCE to bring together your monitoring and review arrangements with their processes for the widening participation strategic assessment. That process of alignment should continue wherever possible.

6.3 Many universities have a well-established record of offering a wide variety of outreach activities to facilitate wider and fairer access to higher education. We hope institutions will continue to research and monitor the effects of their own and their partnership initiatives, and publicise the results.

7. Enforcement and Sanctions

7.1 The major sanction available to you is not to approve or renew an Access Agreement, when it is reviewed each year. This would remove the institution's right to charge its students above the basic level. You also have available to you sanctions should an institution breach or fail to deliver its access agreement, viz:

- to impose a fine (via the funding body) up to a maximum of £500,000
- to require restitution if students have been disadvantaged or commitments have not been honoured.

7.2 In reaching your judgements about enforcement in relation to an institution's agreed programme of defined progress and its commitment to safeguarding and improving access, you should focus on institutional outcomes alongside the effort the institution is making to achieve them.

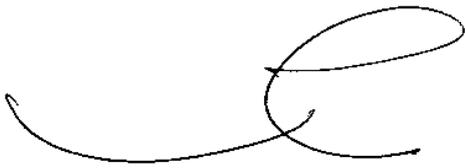
7.3 Where you consider that an institution is not making adequate progress or you suspect that an institution is responsible for a wilful and serious breach of its Access Agreement, you will want to investigate thoroughly the facts and background, and take action if such a breach appears to you well-proven.

7.4 If an institution disagrees with any of your decisions they have the right to ask for that decision to be reviewed by an independent person or panel, as set out in regulations.

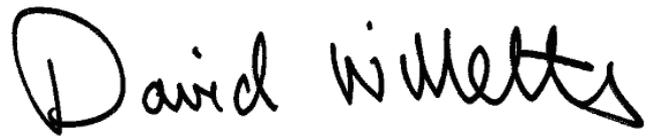
8. Monitoring and Reporting

8.1 We would like your formal Access Agreement monitoring outcome report to analyse and comment on institutions' performance against their own benchmarks, measures and targets, and how these become more ambitious in relation to how much above the basic level an institution intends to charge. You will also want to assess the progress being made across the sector. In addition, you will continue to produce any other reports we might request as well as taking heed of any pronouncements on your work from any Parliamentary Select Committee. We hope to see a high level of Parliamentary and public interest, nationally and regionally, in your reports and what they demonstrate about the speed of progress in achieving wider participation and fair access.

8.2 As set out in the introduction to this letter, 2012/13 is a transition year as we move to the new arrangements for funding higher education. In autumn this year (2011) we want you to report to Government on your experiences of approving Access Agreements and how well institutions have been able to respond to these new arrangements. Please include in that report 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.

A stylized, cursive handwritten signature in black ink, consisting of a long horizontal stroke on the left that loops back and underlines a large, rounded 'C' shape.

VINCE CABLE

A handwritten signature in black ink that reads 'David Willetts' in a cursive, slightly slanted script.

DAVID WILLETTS